EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# DECISION

Application no. 41803/22
Maria Abdi IBRAHIM
against Norway

The European Court of Human Rights (Second Section), sitting on 13 December 2022 as a Committee composed of:

Jovan Ilievski*, President*,
Lorraine Schembri Orland,
Diana Sârcu*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 41803/22) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 August 2022 by a Norwegian national, Ms Maria Abdi Ibrahim ("the applicant"), who was born in 1993, lives in Grimstad and was represented by Ms A. Lutina, a lawyer practising in Oslo;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. On 16 June 2020, following a judgment by a Chamber of this Court on 17 December 2019 in which the Court found that there had been a violation of Article 8 of the Convention in the context of proceedings relating to replacement of foster care of the applicant's child with adoption, the applicant requested that the High Court reopen those proceedings. The request was put on hold as this Court had in the meantime referred its case to the Grand Chamber. After the Grand Chamber had given judgment on 10 December 2021, again finding a violation of Article 8, the application to reopen the proceedings before the High Court was considered.

2. On 1 March 2022 the High Court refused the request to reopen the adoption proceedings as it found it clear that a rehearing was unlikely to lead to any change in the outcome. It noted, among other things, that it was a

matter of a child who had been adopted by his foster parents, with whom he had lived for more than eleven years, more than eight years earlier. On 25 April 2022 the Supreme Court unanimously found that the applicant's appeal against the High Court's decision could not succeed and dismissed it in a summary decision.

## THE COURT'S ASSESSMENT

3. The Court observes that the applicant's complaints relate to proceedings in which the domestic courts refused to reopen proceedings concerning replacement of foster care with adoption in respect of her child, and that the complaints refer to Articles 6, 8 and 46 of the Convention.

4. As regards the question whether the Court is prevented by Article 46 of the Convention from dealing with the complaints made by the applicant, the Court reiterates that questions of compliance by the High Contracting Parties with its judgments fall outside its jurisdiction if they are not raised in the context of the "infringement procedure" provided for in Article 46 §§ 4 and 5 (see, for example, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 33, ECHR 2015, and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 102, 11 July 2017). However, the Committee of Ministers' role in the sphere of execution of the Court's judgments does not prevent the Court from examining a fresh application concerning measures taken by a respondent State in execution of a judgment if that application contains relevant new information relating to issues undecided by the initial judgment (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 61-63, ECHR 2009, and *Bochan (no. 2)*, cited above, § 33).

5. As regards Article 8 of the Convention, the Court finds that the complaint under that provision, which is that the violation found by the Court in its judgment in the case of *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, 10 December 2021) is ongoing, is a complaint about an alleged lack of compliance with that judgment and does not contain relevant new information relating to issues undecided by that judgment, to be considered separately (contrast, for example, *Serrano Contreras v. Spain (no. 2)*, no. 2236/19, § 25, 26 October 2021). It follows that the Court has no jurisdiction *ratione materiae* to deal with that complaint.

6. As regards Article 6 of the Convention, the Court notes that the matters complained about, namely the manner in which the proceedings to reopen the adoption proceedings were conducted, arise from facts postdating those that were addressed in its said judgment of 10 December 2021. It thus includes new aspects which were not determined in the initial judgment and Article 46 of the Convention therefore does not preclude the examination of the new complaint under Article 6. However, it follows from the long-standing and established case-law of the Court that extraordinary remedies by which the reopening of terminated judicial proceedings may be sought do not normally

involve the determination of "civil rights and obligations" or of "any criminal charge" and that therefore Article 6 is deemed to be inapplicable to them (see, for example, *Bochan (no. 2)*, cited above, § 44; and *Moreira Ferreira (no. 2)*, cited above, § 60). This approach has also been followed in cases where the reopening of terminated domestic judicial proceedings has been sought on the grounds of a finding by the Court of a violation of the Convention (ibid., § 45; see, also, in relation to a criminal case, *Franz Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI). Indeed, should an extraordinary remedy lead automatically or in the specific circumstances to a full reconsideration of the case, Article 6 applies in the usual way to the "reconsideration" proceedings (see *Bochan (no. 2)*, cited above, § 46, and *Moreira Ferreira (no. 2)*, cited above, § 60). However, that did not happen in the applicant's case; her complaint lodged with the Court relates to proceedings concerning a failed request to reopen a case. It follows that this complaint is equally incompatible *ratione materiae* with the provisions of the Convention.

7. As all of the complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), the application must be declared inadmissible in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 19 January 2023.

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| Dorothee von Arnim<br>Deputy Registrar | Jovan Ilievski<br>President |