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

SECOND SECTION

DECISION

Application no. 14859/24
N.L.
against Germany

The European Court of Human Rights (Second Section), sitting on 6 May 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Anja Seibert-Fohr*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 14859/24) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 May 2024 by a Kenyan national, Ms N.L., who was born in 1982 and lives in D. ("the applicant") and was represented by Mr T.C. Hummel, a lawyer practising in Gröbenzell;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the proceedings regarding withdrawal of the applicant's custody (*Personensorge*) of her child A., a girl born on 23 March 2018.

2. The applicant, a Kenyan national, came to Germany in 2018 and married L. In 2020 she brought A., for whom she held sole custody, from Kenya to Germany. They lived together in the matrimonial home.

3. In August 2021 the applicant moved out and reported L. to the police on the suspicion of having sexually abused A. At that time the applicant appeared mentally unstable due to an approaching acute phase of her diagnosed bipolar affective disorder. She was first transferred to sheltered accommodation together with A., and later to a psychiatric clinic alone. With her consent A. was placed in temporary foster care. When the applicant

withdrew her accusations against her husband and refused to give further evidence, the Public Prosecutor closed the criminal investigation against L. On 20 December 2022, following a different set of proceedings, L. was convicted for the possession of child pornography. On 28 November 2023 the Court of Appeal terminated the criminal proceedings considering that L.'s guilt was minor and that there was no public interest in prosecution.

4. On 10 November 2021 the Youth Office applied to the Family Court for a transfer of certain custody rights in order for A. to remain in foster care. During the proceedings the Family Court heard A., her guardian *ad litem (Verfahrensbeistand),* the applicant and the Youth Office.

5. On 17 October 2022 the Family Court transferred the right to determine A.'s place of residence, the right to decide in health care matters and the right to apply for youth welfare measures from the applicant to the Youth Office. The Family Court held that the transfer was rendered necessary by a high risk of significant damage to A.'s well-being. The court based its reasoning *inter alia* on an expert opinion of 14 March 2022 (supplemented on 4 May 2022) by the court-appointed paediatric psychiatrists Dr L. and Dr B., who had heard A., the applicant, A.'s former foster mother and the guardian *ad litem*.

6. The applicant appealed against the Family Court's decision.

7. On 16 March 2023 the Court of Appeal first heard A. *in camera*, in the presence of Dr L. and Dr B. and the guardian *ad litem*. The girl stated that she did not want to return to L., who had hit her and had touched her intimate parts. Afterwards, the Court of Appeal heard the applicant, the guardian *ad litem*, the Youth Office, and A.'s former foster mother as well as Dr L. and Dr B. The experts answered extensively the questions of the presiding judge and the applicant's counsel. They noted that, in line with their written expert opinion and their further written observations, there had been a grave disorder in A.'s past development, but they were unable to give a more specific account of what had happened to A. They were certain that there had been some form of abuse in the matrimonial home. In any case the applicant had transmitted a transgenerational artefact (i.e. the self-understanding as a (possible) victim of abuse) to A. In the experts' view, both findings – possible sexual abuse and the transgenerational artefact – posed a grave threat to the child's development, and they recommended not to return A. to the applicant.

8. By decision of 1 August 2023 the Court of Appeal confirmed the Family Court's decision of 17 October 2022 and transferred the custody rights which had until then remained with the applicant (including, *inter alia*, the right to decide on access to A. and in all matters of care and education) to the Youth Office. The court reasoned that A. had been subjected to a situation which had deeply disturbed her physical and mental health. In this regard it considered that the statements the applicant had made to the police and to the Youth Office in 2021 were credible despite her state of illness. Furthermore, A. had told various persons of the abuse. The Court of Appeal also considered

the applicant's private expert opinions which criticised the independent expert opinion for being contradictory. The court assumed a high risk of future harm to A. through abuse and, in the case that L. had not sexually abused her, by the transgenerational artefact identified by the experts. The court further noted that less invasive means than withdrawal of custody did not exist: firstly, the applicant was not prepared to leave L. Secondly, in view of the artefact, it would be harmful for A. to stay with the applicant in any case. The Court of Appeal endorsed the court-appointed experts' opinion and held that no further expert opinion was needed. Regarding the transfer of further custody rights, the court noted that co-operation between the Youth Office and the parents was a prerequisite for the functioning of foster care arrangements. However, the Youth Office had been faced with obstructive and uncooperative behaviour by the applicant and L. Transferring further rights to the Youth Office was thus deemed necessary and to be in the best interest of the child.

9. On 20 November 2023 the Court of Appeal dismissed the applicant's motion to be heard.

10. On 31 January 2024 the Federal Constitutional Court did not admit the applicant's constitutional complaint, in which she had complained of a violation of her parental rights and the right to be heard, for adjudication without providing reasons (1 BvR 2390/23).

11. On 17 April 2024 the Family Court decided, in separate proceedings, to grant the applicant access to A. by supervised visits of two hours every six weeks.

12. Invoking Articles 8 § 1 and 6 § 1 of the Convention, the applicant complained about the withdrawal of her custody rights. In her view, the Court of Appeal had failed to properly investigate the facts from which it concluded a risk of future ill-treatment to A. It should have established the facts in greater detail and, to this end, commissioned an expert opinion on the applicant's statements to the police in 2021. The expert opinion by the two court-appointed experts had been contradictory. Another independent expert opinion dealing with the private expert's criticism would have been required. The private expert had not been heard in person. Lastly, she complained about the Court of Appeal's failure to consider less intrusive measures.

THE COURT'S ASSESSMENT

13. The Court is not bound by the legal grounds adduced by the applicant under the Convention and its Protocols, and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). It notes in the present case that the applicant's complaint concerns allegations of a breach of her

right to respect for her family life with regard to the custody of her minor daughter. Accordingly, it considers that the case falls to be examined under Article 8 of the Convention only.

14. The general principles concerning decisions on the withdrawal of parental authority and the respective decision-making process have been summarised recently in *I.M. and Others v. Italy*, no. 25426/20, §§ 104-08, 10 November 2022 (see also *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 202-13, 10 September 2019).

15. The Court notes in this regard that the transfer of custody to the Youth Office, a transfer which interfered with the applicant's right to respect for her family life, had a basis in domestic law (Article 1666 § 1 of the Civil Code) and pursued, *inter alia*, the legitimate aim to protect the "health" and "rights and freedoms of others", namely of the child concerned.

16. In determining whether that interference was necessary in a democratic society, the Court observes that the Court of Appeal based its decision on the best interest of the child, relying on the fact that she had either been abused by L. in the matrimonial home and risked suffering further abuse or had been transmitted a transgenerational artefact by the applicant, both reasons posing a grave danger to A.'s future well-being. The Court considers therefore that the Court of Appeal adduced relevant reasons to justify the withdrawal of custody.

17. In examining whether these reasons were sufficient and, in this context, whether the decision-making process sufficiently protected the parent's interests, the Court observes that the applicant had been assisted by counsel throughout the proceedings, had made written and oral submissions and had contributed through private expert opinions which the Court of Appeal took into account. As can be seen from the minutes of the hearing of 16 March 2023, the applicant made extensive use of the opportunity to question the court-appointed experts. The Court of Appeal, in its comprehensively reasoned decision of 1 August 2023, considered the applicant's submissions including her private expert opinions, but placed greater reliance on A.'s statement, the witness statement of A.'s former foster mother and, in particular, the expert opinion of March/May 2022 submitted by the court-appointed paediatric psychiatric experts Dr L. and Dr B. and their answers during the court hearing, after they had again seen the child (contrast *Strand Lobben and Others*, cited above, § 222, and *Saviny v. Ukraine*, no. 39948/06, § 58, 18 December 2008). Given that as a general rule it is for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Strand Lobben and Others*, cited above, § 213), the Court is thus satisfied that the procedural approach adopted provided the Court of Appeal with sufficient material to reach a decision on the question of custody in the present case and that the applicant had been sufficiently involved in the decision-making process.

18. Lastly, the Court has to assess whether it was proportionate to transfer custody rights from the applicant and to have A. stay with a foster family as a result. Taking children into care and thereby splitting up a family constitutes a very serious interference with the right to respect to family life protected under Article 8 of the Convention and should only be applied as a measure of last resort (see *Wetjen and Others v. Germany*, nos. 68125/14 and 72204/14, § 84, 22 March 2018).

19. The Court observes that the Court of Appeal gave detailed reasons why there was no other option available to protect A. from physical or mental ill-treatment by either L. or the applicant which was interfering less with the applicant's parental rights. The Court of Appeal found that the applicant was not able or, in any case, not willing to protect A. from L. Greater assistance from the Youth Office was considered by the court but could not, in its view, ensure A.'s safety at all times.

20. The Court further observes that the transfer of custody did not prevent the applicant from maintaining contact with her daughter, which allows their family ties to be maintained. The impugned decisions did not deprive the applicant of access rights. Under Article 1696 of the Civil Code she also has the possibility to request the Family Court to review the current custody arrangement if the circumstances so justify.

21. Consequently, the Court finds that the Court of Appeal did not overstep its margin of appreciation and that the interference with the applicant's right to respect for her family life was necessary in a democratic society.

22. Accordingly, the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 May 2025.

Dorothee von Arnim
Deputy Registrar

Jovan Ilievski
President