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

SECOND SECTION

DECISION

Application no. 1461/21
R.A.
against Norway

The European Court of Human Rights (Second Section), sitting on 13 February 2024, 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. 1461/21) 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 18 December 2020 by a Norwegian national, Ms R.A. ("the applicant"), who was born in 1980, lived in F. and was represented before the Court by Mr J. Mæland, a lawyer practising in Oslo;

the decision to give notice of the application to the Norwegian Government ("the Government"), represented by their Agents, Mr M. Emberland and subsequently Ms H. Busch, of the Attorney General's Office (Civil Matters);

the decision not to disclose the applicant's name;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns public care of one of the applicant's children and the regulation of contact rights.

2. The applicant has two children, including a boy, X, who was born in 2009. After a notification of concern from the hospital in 2009 related to substance abuse, the applicant was offered different assistance measures, including a 3-month stay at a family centre for parents and children.

3. X was placed in public care on an emergency basis in 2013 and on 8 November 2013 a care order was issued in respect of him. Concerns about the family situation, which had initially related to drug use in the family, were subsequently mitigated by changes made by the applicant and she and the child welfare services agreed that the care order should not be upheld by the District Court. Following the lifting of the order, X was returned to the applicant's care. Various assistance measures were offered to the applicant, including guidance.

4. Following further notifications of concern about X's behaviour and his care situation in the applicant's home, a new emergency placement decision was made on 17 November 2016. A care order was issued on 3 April 2017.

5. In the proceedings at issue, the applicant applied to have the care order lifted in August 2018. Her application was dismissed by the County Social Welfare Board on 17 January 2019.

6. On 22 February 2019 the applicant applied for judicial review of the Board's decision. In that context, on 12 April 2019 she requested that the District Court consider appointing an expert to examine the case. On 24 May 2019 her request was refused.

7. Following a hearing from 16 to 18 December 2019 the District Court gave judgment on 15 January 2020, dismissing the applicant's request.

8. The District Court noted that X had major behavioural and control issues, had struggled with "cracking the code" of social interaction and that there had been anger and violent behaviour towards other children and adults. He had since 2015 regularly been assessed by an educational psychological service and was considered to have special care needs. He received medication related to his ADHD diagnosis and the foster home provided him with an environment in which he could develop. The applicant functioned at a low level of maturity and the District Court found nothing to indicate that she could provide X with the care that he needed; the care order, accordingly, could not be lifted.

9. Turning to the issue of contact rights, the District Court considered, for the same reasons, that X's placement should be long term. The applicant and X had had contact on a monthly basis for some time and this arrangement had been positive for X, who was attached to the applicant and had requested contact with her. The District Court accordingly set contact at six hours once per month. X had also asked for overnight stays with the applicant, which the District Court considered could not be carried out because, *inter alia*, the applicant disagreed with his being medicated and as it was likely that overnight stays would entail a disruption of the routines that he had in his foster home, of which she was mistrustful. X's father's contact rights were also set in the District Court's judgment.

10. On 22 April 2020 the High Court refused the applicant leave to appeal against the District Court's judgment and on 25 June 2020 the Supreme Court dismissed an appeal by the applicant against the High Court's decision.

11. In her application before the Court the applicant relied on Article 8 of the Convention and submitted that it had been unnecessary to maintain the care order, as she could provide X with adequate care. The authorities, furthermore, had not attended to their positive obligations with regard to seeking the reunification of the family and the contact rights in that respect had been too limited. Under Articles 6 and 8 she argued that an expert should have been appointed in the domestic proceedings.

THE COURT'S ASSESSMENT

A. Preliminary issue

12. On 19 February 2023 the applicant passed away. By a letter of 7 November 2023, the applicant's further child and heir, born in 2002, expressed her wish to pursue the application in the applicant's stead.

13. In accordance with its well-established case-law on the matter (see *Mile Novaković v. Croatia*, no. 73544/14, §§ 33-34, 17 December 2020, with further references), the Court considers that the applicant's child as her heir has standing to continue the proceedings in the applicant's stead.

B. Alleged violation of Articles 6 and 8 of the Convention

14. The Court firstly reiterates that it is the master of the characterisation to be given in law to the facts of the case and that it has previously held that whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. It considers that the complaint raised by the applicant under Article 6 of the Convention is closely linked to her complaint under Article 8 and may accordingly be examined as part of the latter complaint (see, for example, *J.M.N. and C.H. v. Norway* (dec.), no. 3145/16, § 22, 11 October 2016).

15. The Court finds that the decision to maintain the care order and to set the applicant's contact with X at one visit per month entailed an interference with her right to respect for her family life with X for the purposes of Article 8 § 1 of the Convention. The interference was in accordance with the law, that is to say the 1992 Child Welfare Act, which was applicable at the material time, and it pursued the legitimate aim of protecting X's "health" and his "rights". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2.

16. The general principles relevant to the necessity test were extensively set out in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019) and have since been restated in a number of cases, including *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145,

10 December 2021). From those principles, it follows that the Court must determine whether, in the light of the entirety of the case, the reasons adduced to justify the measures in question were relevant and sufficient for the purposes of Article 8 § 2 and whether the parents have been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

17. In connection with the applicant's complaint regarding contact rights, the Court also bears in mind that it has recently given judgments in several cases involving the respondent State in which it found a violation of Article 8 of the Convention relating to the justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes (see, for cases where shortcomings in relation to decisions on contact rights in themselves led to the finding of a violation, *K.O. and V.M. v. Norway*, no. 64808/16, §§ 67-71, 19 November 2019, and *A.L. and Others v. Norway*, no. 45889/18, §§ 47-51, 20 January 2022; see also, for cases where similar shortcomings formed important parts of the context in which violations had occurred, *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others v. Norway*, no. 39710/15, §§ 67-69, 10 March 2020; *Hernehult v. Norway*, no. 14652/16, §§ 73-74, 10 March 2020; *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020; and *Abdi Ibrahim*, cited above, § 152).

18. However, in the instant case the Court notes that the District Court thoroughly examined X's care needs and the applicant's caregiving skills. It also took into account X's own opinions (see paragraphs 7-9 above). The Court finds that the reasons advanced were both relevant and sufficient to justify the decision not to lift the care order and for the regulation of the contact rights. It considers that it cannot be called into question that the domestic authorities sought to pursue X's best interests. In view of, in particular, the regular contact between the applicant and X that was maintained while he was in public care and the various measures that were otherwise offered to assist the applicant in being able to care for X, the Court does not, furthermore, consider that the applicant has substantiated her submission that the authorities had paid insufficient regard to the ultimate aim of reuniting the family. It does not find it decisive in that respect that the psychologist, E.S., who had also assisted in the initial care order proceedings had at that time proposed different assistance measures than those offered.

19. In respect of the applicant's submissions concerning the decision-making process and notably the fact that an expert was not appointed to examine the case following her application to have the care order lifted, the Court reiterates that it would generally be for the domestic authorities to decide whether expert reports were needed (see, for example, *Strand Lobben and Others*, cited above, § 223). In the instant case that question was the topic of separate assessments by the domestic courts dealing with the case, which found that appointing an expert was unnecessary in view of the evidence

available overall. The Court does not find that it has any basis for concluding that the fact that an expert was not appointed in the course of the proceedings in issue entailed a shortcoming in the decision-making process that amounted to a violation of Article 8 of the Convention in the light of the following.

20. The Court indeed observes that H.N. gave evidence as an expert witness, both before the Board and before the District Court, on whether the care order should be lifted, although he had in fact not carried out any examinations since the order had been issued. In the Court's assessment, by hearing H.N. alone the domestic courts could not have sufficiently established whether the care order was to be lifted on the grounds that circumstances had changed, in particular as the care order had initially been issued in proceedings where the authorities had relied on H.N.'s assessment. The Court must, however, note that in the specific circumstances of the instant case, the child welfare services did not have limited access to information and had followed up on the applicant. In particular, the child welfare services had taken steps to increase the amount of contact between the applicant and X. Furthermore, in contrast to, for example, the facts in *Strand Lobben and Others* (ibid.), the present case concerned a care order issued in respect of an 11-year-old boy who had many opinions on his situation that were obtained through a representative who was appointed for him. It was additionally a case with numerous sources of evidence because of the extent to which X had been attended to by the health services.

21. In addition, the Court notes that, unlike in *A.S. v. Norway* (no. 60371/15, § 68, 17 December 2019), which concerned a situation where the applicant mother and the child were ultimately refused any contact with each other, which affected the factual basis available to the domestic courts for their judgment, in the instant case the applicant and the child continued to enjoy family life through the contact regime which had been established and which was extended. In the present case, the Court further finds it relevant that under domestic law, the applicant can reapply to have the care order lifted or the contact rights changed further (see, for example, *E.M. and Others v. Norway*, no. 53471/17, § 59, 20 January 2022). The Court has taken note of the information provided by the parties to the effect that such proceedings were instituted subsequent to the application before the Court and that a fresh expert assessment has been ordered in that context.

22. In view of the above-mentioned particular circumstances of the instant case, the Court is satisfied that the impugned decision-making process did not fall short of the requirements flowing from Article 8 of the Convention on grounds relating to the fact that an expert was not mandated to examine the case concerning the possibility of lifting of the care order, and that H.N. returned as an expert witness.

23. In the light of the findings above, the Court concludes that the interference with the applicant's right to respect for her family life was proportionate to the legitimate aims pursued and was thus "necessary in a

democratic society" for the purposes of Article 8 § 2. Accordingly, the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President