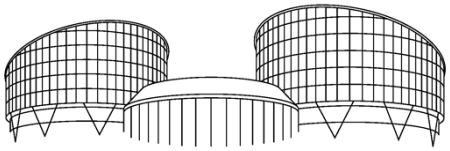

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF S.S. AND J.H. v. NORWAY

(Application no. 15784/19)

JUDGMENT

STRASBOURG

12 September 2023

This judgment is final but it may be subject to editorial revision.

In the case of S.S. and J.H. v. Norway,

The European Court of Human Rights (Second Section), sitting 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. 15784/19) 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 8 March 2019 by two Norwegian nationals, S.S. ("the first applicant") and her son, J.H. ("the second applicant"; together "the applicants"), who were born in 1987 and 2013 respectively and live in Norway, and were represented before the Court by Ms C. Hagen, a lawyer practising in Oslo;

the decision not to have the applicants' names disclosed;

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

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Government of the Czech Republic, the Government of the Slovak Republic and the Ordo Iuris Institute for Legal Culture, who had all been granted leave by the President of the Section to intervene under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court;

the decision to reject the respondent Government's objections to the examination of the application by a Committee.

Having deliberated in private on 11 July 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns replacement of foster care with adoption.

2. The second applicant was placed in foster care, on an emergency basis at first, four days after his birth in 2013. Ten days later it was decided that the parents should not have any contact with the child. Later that same year, a care order was issued. When he was approximately one year old, the child was moved from the emergency foster home to the foster home in which he has since remained.

3. In December 2015 the municipal child welfare services applied to the County Social Welfare Board, seeking the withdrawal of first applicant's parental responsibilities in respect of the child and the authorisation of his adoption by his foster parents. The Board allowed the application in February

2016, but its decision was set aside by the District Court later that year. In the District Court's judgment, no contact rights were granted. On appeal to the High Court, however, the Board's decision was upheld and an appeal by the first applicant and the child's father to the Supreme Court was unsuccessful. The Supreme Court gave a final judgment in the proceedings on 11 September 2018.

4. The applicants complained under Article 8 of the Convention of the decision to withdraw the first applicant's parental responsibilities in respect of her son, the second applicant, and to authorise his adoption by his foster parents.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

5. The Court observes that the first applicant did not request before the Supreme Court that the care order be lifted or that she be granted contact rights and that, accordingly, the case concerns solely the application lodged by the municipal child welfare services to have the care order replaced by an authorisation for adoption. The applicants have maintained that that measure entailed a violation of their right to respect for their family life as enshrined in Article 8 of the Convention.

6. The Government contested those complaints.

7. The Court does not identify any conflict of interest or other obstacles to the first applicant's lodging an application with the Court also on behalf of her son, the second applicant, relating to the proceedings in which his adoption was authorised (see, for a similar approach, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 156-59, 10 September 2019, and *A.L. and Others v. Norway*, no. 45889/18, § 29, 20 January 2022; and contrast, for example, *E.M. and Others v. Norway*, no. 53471/17, §§ 36 and 63-65, 20 January 2022).

8. Moreover, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

9. The Court finds it established that the measures decided during the proceedings at issue, namely the withdrawal of the first applicant's parental responsibility in respect of the second applicant and the authorisation of his adoption by his foster parents, entailed an interference with the applicants' right to respect for their family life as guaranteed by Article 8 of the Convention. The measures complained of had a basis in national law, namely the 1992 Child Welfare Act, which applied at the time, and pursued legitimate aims within the meaning of Article 8 § 2 of the Convention, that is to say, the protection of the "health" and "rights" of the second applicant. It follows that

the legal issue arising is whether the interference was "necessary in a democratic society" within the meaning of that provision.

10. In that connection, the Court recalls that the general principles relevant to the proportionality analysis in cases involving child welfare measures (including measures such as those at issue in the present case) are well established in its case-law and were extensively set out in *Strand Lobben and Others* (cited above, §§ 202-13). The Court has since reiterated and applied those principles in, *inter alia*, *K.O. and V.M. v. Norway* (no. 64808/16, §§ 59-60, 19 November 2019); *A.S. v. Norway* (no. 60371/15, §§ 59-61, 17 December 2019); *Y.I. v. Russia* (no. 68868/14, §§ 75-78, 25 February 2020); *Hernehult v. Norway* (no. 14652/16, §§ 61-63, 10 March 2020); *Pedersen and Others v. Norway* (no. 39710/15, §§ 60-62, 10 March 2020); *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020); *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021); *A.L. and Others v. Norway* (cited above, §§ 43-44); *E.M. and Others v. Norway* (cited above, §§ 52 and 54); and *Roengkasettakorn Eriksson v. Sweden* (no. 21574/16, § 70, 19 May 2022).

11. Considering that the instant case concerns the replacement of a foster home arrangement with adoption without parental consent, the Court reiterates in particular that such measures – which result in the legal ties between the parents and the children being definitively severed – should only be applied in "exceptional circumstances" and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests. It is thus incumbent on the Court to carry out a "stricter scrutiny" of whether the circumstances in the instant case were so exceptional that such a measure was justified (see, among other authorities, *Strand Lobben and Others*, cited above, §§ 207-09).

12. Turning to the reasons provided by the domestic authorities for the impugned measures in the present case, the Court notes that the Supreme Court, in its final judgment on the merits, emphasised that shortly after the second applicant's birth it had already become clear that his parents should not provide daily care for him, which they had accepted. In this connection, the Court observes that before the child's birth, the child welfare services had received notices of concern pertaining to the first applicant's mental health, her hygiene and conflict with the second applicant's father. After the child was born, the child welfare services expressed concern about the fundamental shortcomings in daily care, including the first applicant's lack of awareness regarding the child's food intake. In its reasons, the Supreme Court further noted that the boy had never had any contact with his parents and, even if he were not adopted, he would nonetheless continue to live with his foster parents. Furthermore, the Supreme Court gave weight to the views of a court-appointed expert psychologist, who emphasised that any children living in foster homes might experience emergency situations on a continual basis, due to the lack of stability and protection, and that the second applicant, on

account of his history and psychosocial development, needed more stability than other children. The experts, at all levels of the national proceedings, had described the child as having a significant developmental delay both linguistically, socially and cognitively. The expert also emphasised the fact that, if he were not adopted, his biological parents could institute proceedings to be given contact rights. The Supreme Court considered it uncertain whether the second applicant would ever understand the difference between biological parents, foster parents and adoptive parents, but adoption could be a source of stability and predictability for the child, in particular as it would give the foster parents full authority to decide on all matters, including any possible contact with the biological parents. The Supreme Court, in response to arguments raised by the first applicant, noted that "any past neglect" on the part of the authorities or "mistakes ... made in the past" with regard to the way in which the authorities had dealt with the second applicant's child welfare case could not have any significant impact on its decision as to whether or not the second applicant should be adopted.

13. In the Court's assessment, the Supreme Court's reasons, given at a time when the second applicant had been living with the adoptive parents for approximately four years, were relevant to the issue of whether his foster care arrangement should be replaced with adoption. As to whether they were also sufficient, the Court finds it necessary to emphasise that its jurisdiction in the instant case is limited to the adoption proceedings and does not extend to the previous proceedings concerning the foster care of the second applicant and the applicant's (and the father of the child's) contact rights. Those proceedings may nonetheless be relevant as context (see, for example, *Strand Lobben and Others*, cited above, § 148), and the Court is particularly mindful that in recent years it has given several judgments involving the respondent State in which it found that violations had occurred in connection with decisions to replace foster care with adoption and in which it took into account whether such decisions had been taken in situations where, following a child's placement in care, only minimal parent-child contact had been allowed (ibid., § 221; see also, for example, *Pedersen and Others*, §§ 67-69; *M.L. v. Norway*, § 92; and *Abdi Ibrahim*, § 152, all cited above).

14. Furthermore, the Court has emphasised that it is mindful that its approach to cases such as the instant one – which entails the practice of considering each case within its own context, in the light of the case as a whole and in retrospect – may systemically differ from the approach followed by domestic childcare services and authorities (including the domestic courts), which have to decide what to do with the child (and his or her family) on the basis of the child's and the family's situation at the time at which the decision in question is taken and with an eye primarily on the future (see *M.L. v. Norway*, cited above, § 98, and *Hernehult*, cited above, §§ 75-76).

15. In the instant case the Court observes that by the time the municipal child welfare services had initiated the adoption proceedings on 28 December

2015, which had at first been dealt with in conjunction with an application by the parents to have contact between them and the second applicant established, the second applicant had been in his foster home since his arrival there in September 2014, that is, for almost one year and four months. The Court takes particular note that from the outset, the child welfare measures were taken with the view that the child should grow up in foster care and that the parents should have no contact rights at all. This was in part related to concerns that the parents might remove the child from the foster home and to the foster parents' concerns in that respect.

16. At the same time, it appears that the parents had no objections to supervision or even police assistance in connection with contact sessions or to the non-disclosure of the address of the foster home. The Board noted in its decision to issue the care order that the child welfare services had not consulted any authority, such as the police, with regard to the issue of contact sessions and security measures, as the Board had previously recommended. In the judgment in which it decided not to grant the adoption request, the District Court noted that it was not possible to know if parent-child contact would be positive or negative, as it had never been attempted. In the High Court, the majority found that all the conditions for consenting to adoption had been met. In contrast, the minority of the High Court, similar to the District Court, pointed out shortcomings in the child welfare services' approach and concluded that there were no particular weighty reasons for adoption. Viewed in the light of that information, the Court further considers it relevant that the Supreme Court's judgment stated that the first applicant's situation had improved and that she had apparently cooperated well with the child welfare services of another municipality that had withdrawn her parental responsibility in respect of another younger child of hers.

17. The Court, taking note of the existence of factors such as those set out above, and having examined all the material submitted to it as concerns the functioning of the child welfare process as a whole since it was first initiated shortly after the second applicant's birth, has not found any facts or arguments capable of persuading it to reach a different conclusion on the necessity in a democratic society of the interference with the applicants' right to respect for their family life from that reached in the above-mentioned cases of *Strand Lobben and Others*, *Pedersen and Others*, *M.L. v. Norway* and *Abdi Ibrahim*.

18. In particular, the proceedings through which the adoption of the first applicant's child was ultimately authorised and the reasons advanced for the measures decided in those proceedings reflected the fact that, from the outset of the child welfare proceedings, (i) insufficient importance was attached to the aim that placement in care be temporary and an affected family be reunited, and (ii) insufficient regard paid to the positive duty to take measures to preserve family bonds to the extent reasonably feasible (compare also *Strand Lobben and Others*, cited above, § 220; *Pedersen and Others*, cited above, § 71; and *M.L. v. Norway*, cited above, § 99). It follows that the Court

is not persuaded that the procedure to which the instant application relates was accompanied by safeguards proportionate to the gravity of the interference and the seriousness of the interests that were at stake (see, for a similar approach, *Strand Lobben and Others*, cited above, § 225).

19. It follows that that there has been a violation of Article 8 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

I. DAMAGE

20. The applicants claimed 25,000 euros (EUR) each in respect of non-pecuniary damage. The Court considers that the first applicant must have experienced anguish and distress due to the violation found. The Court accordingly awards her EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (see, for a similar approach, *Strand Lobben and Others*, cited above, § 230, and *M.L. v. Norway*, cited above, § 104).

21. In respect of the second applicant (the child), the Court considers that, in view of his age at the time of the impugned proceedings and the fact that he did not experience the proceedings in question in the same way as the first applicant (his mother), the finding of a violation can be regarded as sufficient just satisfaction (see, for a similar approach, *Strand Lobben and Others*, cited above, § 230, and *A.L. and Others v. Norway*, cited above, § 62).

II. COSTS AND EXPENSES

22. As to costs and expenses, the applicants made a general claim to the effect that the State should pay for any such expenses, but submitted no specific claim. The Court accordingly has no basis for making any award on that account and dismisses the claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the second applicant;
   (b) that the respondent State is to pay to the first applicant, within three months, EUR 25,000 (twenty-five thousand euros), plus any tax that

may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President