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

SECOND SECTION

DECISION

Application no. 12825/20
Å.N.
against Norway

The European Court of Human Rights (Second Section), sitting on 11 July 2023 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. 12825/20) 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 29 February 2020 by a Norwegian national, Ms Å.N. ("the applicant"), who was born in 1980 and lives in Bærum, and was represented before the Court by Mr O. Tellesbø, a lawyer practising in Oslo;

the decision not to disclose the applicant's name;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application, lodged with reference to Article 8 of Convention, concerns care order proceedings during which limitations were imposed on the applicant and her children's right to contact with each other.

2. On 23 March 2018 the applicant's four children (W, who was born in 2010; X, who was born in 2012; Y, who was born in 2013; and Z, who was born in 2015) were placed in foster care on an emergency basis.

3. On 3 July 2018 the County Social Welfare Board issued care orders and granted the applicant contact of four times per year with each child.

4. On 15 November 2018 the City Court upheld the decision to issue the care orders and increased contact in respect of W, X and Z to twelve times per year. Contact in respect of Y was maintained at four times per year.

5. The child welfare services appealed against that judgment in so far as it concerned the contact rights with W, X and Z and the applicant lodged an ancillary appeal concerning the care orders. In a decision of 12 February 2019 the High Court granted the child welfare services leave to appeal and refused the applicant leave to appeal. On 12 April 2019 the Supreme Court likewise refused the applicant leave to appeal against the decision in respect of the care orders.

6. On 27 June 2019 the High Court set the applicant's contact with W, X and Z at four times per year and dismissed a request submitted by her for contact among the children.

7. On 18 October 2019 the Supreme Court refused the applicant leave to appeal against the High Court's judgment.

8. The applicant complained under Article 8 of the Convention about the restrictions on her right to contact with her four children (W, Z, X and Y) after they were taken into public care.

THE COURT'S ASSESSMENT

A. Complaint regarding contact rights in respect of Y

9. The Court notes that it is not disputed between the parties that neither the applicant nor the child welfare services appealed against the decision of the City Court relating to the applicant's contact rights in respect of Y. The higher courts accordingly did not examine this complaint included in the application lodged with the Court. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

B. Complaint regarding contact rights in respect of W, X and Z

10. The Court finds that the proceedings relating to the domestic courts' decisions on contact rights in respect of W, X and Z entailed an interference with the applicant's right to respect for her family life for the purposes of Article 8 § 1 of the Convention. That interference was in accordance with the law, namely the 1992 Child Welfare Act, which applied at the time. It pursued the legitimate aim of protecting the children's "rights" and their "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

11. In that connection, the relevant general principles applicable in cases such as the present one 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).

12. In determining whether the domestic authorities gave relevant and sufficient reasons for their impugned decisions, the Court notes that it appears from the domestic decisions that the children were originally placed in public care on the basis of findings relating to an untenable care situation involving isolation, conflict and lack of structure. The Court also takes note that the City Court, when upholding the care orders issued by the County Social Welfare Board, considered that a reunification between W, X, Z and the applicant would be possible in the short term, provided that the applicant received treatment for mental health issues from which she suffered and made the necessary improvements as to the care given to her children. It was for those reasons that the City Court increased the frequency and duration of the contacts. Furthermore, in view of the fact that new information regarding the applicant's mental health came to light after the City Court's judgment, the High Court carried out a lengthy assessment of how the situation had developed up to the time of its judgment. It noted in that regard that the applicant had been hospitalised and diagnosed with paranoid psychosis and that she had moved to Sweden where she planned to live. It further noted that contact sessions had been carried out in November 2018 and March 2019, after which no sessions had been held, since the applicant had found it difficult to accept the conditions set by the child welfare services for the contact sessions. As to the reasons provided for the limitations on the applicant's contact with W, X and Z, the High Court took into account the continued uncertainty as to the applicant's mental health and caring abilities, as well as her lack of understanding of how her behaviour and situation had affected her children. The High Court referred to the contact sessions that had taken place, during which the applicant had had emotional outbursts or been "detached from reality". On one occasion, those outbursts had resulted in one of the children crying and the applicant having abruptly left the meeting. The High Court further noted that the children had had adverse reactions to the contact sessions, such as problems sleeping and issues with anger and uneasiness. In its assessment, the High Court also took into account the two oldest children's wishes regarding contact with the applicant, which they had expressed in their conversations with a court-appointed psychological expert.

13. The Court bears in mind that it has recently given judgments in several cases involving the respondent State in which it has 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 *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, where shortcomings in relation to decisions on contact rights in themselves led to the finding of a violation; see also *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; and *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020, where similar shortcomings formed important parts of the context in which violations had occurred).

14. The Court considers, however, that there are important differences in the facts of this case compared to those cited in the previous paragraph. It notes, in particular, that the High Court's decision to limit the applicant's contact with W, X and Z was based on the specific circumstances of the case and the development of those circumstances during the proceedings, including considerations related to the applicant's mental health and experiences during previous contact sessions. The Court notes in that connection that the High Court observed that the applicant had had emotional outbursts or been "detached from reality" in the contact sessions that had been carried out, which had resulted in the children crying or being upset, and that the children had had adverse reactions to the sessions. The Court also notes that the domestic authorities did not rule out that the circumstances might change in such a way that the applicant could regain care of the children. As to the High Court's having proceeded on the basis that the children's placement in foster care could be long term, the Court observes that that court also pointed out that there was no justification for concluding that the care order would last for the children's entire childhood and that, when refusing the applicant leave to appeal on 18 October 2019, the Supreme Court's Appeals Leave Committee held that it was not necessary to determine whether it had been appropriate to set the contact rights on the basis of the placement being long term, since this would have to be examined further once circumstances in other respects had allowed for increased contact between the applicant and the children. In the circumstances of the instant case, the Court considers it relevant that, under domestic law, biological parents may apply to have the contact rights decided anew when a certain period of time has passed or there is information about significant changes in the situation relevant to the issue of contact rights (see, *mutatis mutandis*, *E.M. and Others v. Norway*, no. 53471/17, § 59, 20 January 2022).

15. Having regard to the foregoing, the Court finds that the reasons provided for the limitation on the applicant's contact rights, based on the children's best interest in this regard, were relevant and sufficient in the

circumstances of the case. The impugned decisions do not indicate that insufficient regard was paid to the respondent State's positive duty to take measures to preserve family bonds to a reasonably feasible extent. In its examination of the other issues raised by the applicant and the case as a whole, the Court is likewise unable to identify any other matters which disclose a violation of the Convention in the particular circumstances of the instant case. Moreover, having reviewed all the material presented to it, and particularly in the light of the above factors, the Court considers that the instant case does not disclose any shortcomings relating to the domestic decision-making process. In the light of these elements, the Court finds that the interference with the applicant's right to respect for her family life was proportionate to the legitimate aims pursued and thus "necessary in a democratic society", for the purposes of Article 8 § 2.

16. The Court concludes that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 September 2023.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President