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

SECOND SECTION

# DECISION

Application no. 44598/19
R.A.
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. 44598/19) 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 12 August 2019 by a Norwegian national, Mr R.A. ("the applicant"), who was born in 1968 and lives in Sarpsborg, and was represented before the Court by Mr F. Gundersen, 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, Mr M. Emberland, of the Attorney General's Office (Civil Matters);

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The application concerns the domestic authorities' refusal to grant the applicant contact rights in respect of his daughter, X, who was born in 2003 and had been placed in foster care.

2. X was placed in public care in 2016 on an emergency basis at first. X's parents – the applicant and X's mother – initially consented to her placement in foster care. Subsequently, in 2017, the parents withdrew their consent but

the County Social Welfare Board decided to continue the foster care arrangement and to grant the parents contact of two hours six times per year.

3. The parents brought the case before the City Court for a review. The City Court appointed an expert to examine the case, prepare a written report and give oral evidence in the proceedings.

4. In its judgment of 11 October 2018, the City Court upheld the decision to continue the foster care arrangement but withdrew both parents' contact rights. The judgment stated, *inter alia*, that the court-appointed expert had explained during the hearing that she had attempted to convince the parents to withdraw the case in the light of clear statements made by X about the consequences which would follow if she were was to return to her parents against her will, but that that attempt had been futile.

5. On 20 December 2018 the High Court refused the parents leave to appeal against the City Court's judgment.

6. On 13 February 2019 the Supreme Court's Appeals Leave Committee dismissed an appeal by the parents against the High Court's decision.

7. Relying on Article 8 of the Convention, the applicant complained that the refusal to grant him contact rights had entailed an unnecessary interference with his right to respect for his family life. Under Article 6 he argued that the trial had been unfair, in particular because the court-appointed expert had wrongfully urged the parents to withdraw their case on appeal.

## THE COURT'S ASSESSMENT

### A. Alleged violation of Article 8 of the Convention

8. The Court notes that the applicant's complaint under Article 8 of the Convention concerns the decision not to grant him contact rights in respect of his daughter, who had been placed in foster care.

9. In the instant case the Court finds that the decision not to grant the applicant contact rights entailed an interference with his right to respect for his 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. It pursued the legitimate aim of protecting the child's "rights" and her "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

10. The relevant general principles in this regard 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).

11. In determining whether the domestic authorities provided relevant and sufficient reasons for their impugned decision, the Court notes that the decision to withdraw the applicant's contact rights was first taken by the City

Court in its judgment of 11 October 2018. It appears from that judgment that the court endorsed the court-appointed expert's view that contact between the child and the applicant would be harmful to the child. X, who was fifteen years old at the time, had herself given inconsistent statements about the issue of contact but had indicated that "two or fewer sessions per year would be best". The City Court concluded that in the circumstances, no contact rights should be granted and stated that if X wanted contact, the child welfare services would have to facilitate it but that it would not impose contact on X at that time.

12. Moreover, in the High Court's decision of 20 December 2018 in which leave to appeal against the City Court's judgment was refused, the High Court noted, *inter alia*, that the child was receiving treatment in an outpatient psychological clinic for children and adolescents in connection with the trauma and painful experiences she had endured during her childhood; she suffered from anxiety and had periodically been suicidal and struggled with depression. Furthermore, the High Court noted that X needed treatment and a safe setting to work on creating and maintaining good relationships with her peers after a long period of having been bullied and socially excluded and that she felt that she was receiving that support in the foster home and that she had made progress. The High Court, taking into account that a particularly vulnerable, almost 16-year-old child had stated clearly and in a well-founded manner that it was not good for her to have contact, concluded that the situation involved exceptional circumstances in which it was necessary not to grant the parents contact rights.

13. The Court is mindful 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 and in which it has identified various shortcomings relating to justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes based on conclusions already reached when children have been taken into care to the effect that the care orders are likely to be long term. Those shortcomings have either in themselves led to the finding of a violation (see *K.O. and V.M. v. Norway*, no. 64808/16, §§ 67-71, 19 November 2019) or formed important parts of the context in which violations have occurred (see *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). In cases with facts similar to those in the above-mentioned cases with regard to the justifications given for decisions to severely limit the right to contact between the parents and their children, the Court may find that a decision on contact rights does not stand up to the "stricter scrutiny" that it requires where such far-reaching measures as those adopted in the instant case have been imposed (see, for example, *A.L. and Others v. Norway*, no. 45889/18, § 51, 20 January 2022).

14. In the instant case the child welfare services had been involved with the family since 2014, after first having been contacted by the children's and adolescents' psychiatric polyclinic services. The parties have provided the Court with extensive information about the years thereafter, including a number of concerns raised by the child welfare services about the family situation – including violence and mental health-related problems – and about assistance measures offered by the child welfare services which were in part accepted and in part declined. The Court notes that unlike the situation in several of the other applications containing complaints about child welfare measures in the respondent State, the child welfare services had already had considerable experience with this family over several years (contrast, for example, *Strand Lobben and Others*; *K.O. and V.M. v. Norway*; *M.L. v. Norway*; and *A.L. and Others v. Norway*, all cited above). In the instant case the authorities had also attempted a number of less intrusive measures before resorting to those complained of.

15. The Court further notes that on 11 October 2018, when the City Court took the impugned decision not to grant the parents any contact rights in respect of X, that decision was based on the situation as it stood at the time of its judgment. X was 15 and a half years old at the time and the City Court stated in its conclusion that if X wanted contact with her parents, the child welfare services would have to facilitate it but that the City Court would not impose contact on X at that time.

16. The Court finds no reason for calling into question that the domestic authorities, in taking that decision, intended to ensure the child's best interests, which, according to the Court's case-law, are paramount in cases such as the present one (see, for instance, *Strand Lobben and Others*, cited above, § 204). Furthermore, in the Court's assessment, the importance given to the child's own wishes in the light of her age and level of maturity aligned with its general case-law concerning the importance that ought to be given to children's views in matters which concern them (see, for example, *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017, and the cases cited therein). The Court observes that X was herself party to the proceedings at issue, had her own counsel and, *inter alia*, opposed her parents' appeal against the City Court's judgment in which they were not granted any contact rights.

17. The Court is satisfied, in the particular circumstances of the present case, that the domestic authorities advanced reasons that were both relevant and sufficient to justify the impugned decision not to grant contact rights. The Court reiterates in that connection that its task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *Strand Lobben and Others*, cited above, § 210, and, as a more recent example, *Roengkasettakorn Eriksson v. Sweden*, no. 21574/16, § 80,

19 May 2022). The Court has also repeatedly stressed that it is mindful that in cases such as the present one, there will inevitably be particular circumstances that need to be accommodated, and takes into account that it falls to the domestic authorities to make the proper assessment to that end (see, for instance, *A.L. and Others v. Norway*, cited above, § 49). 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 decision-making process in the domestic proceedings and that it differs on relevant points of fact from those cited above (see paragraph 13 above). In the light of these elements, the Court finds that the interference with the applicant's right to respect for his family life was proportionate to the legitimate aims pursued and thus "necessary in a democratic society", for the purposes of Article 8 § 2.

18. 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.

### B. Alleged violation of Article 6 of the Convention

19. The applicant's complaint under Article 6 of the Convention relates to the court-appointed expert, and in particular that she had recommended, out of concern for the child, that the proceedings themselves should not take place, which had rendered the trial unfair.

20. The Court reiterates that a fair hearing within the meaning of Article 6 of the Convention encompasses the requirement of a "fair balance" between the parties. Equality of arms implies that each party must be afforded a reasonable opportunity to present their case – including their evidence – under conditions that do not place them at a "substantial disadvantage" *vis - à - vis* the other party (see, for example, *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). In its case-law the Court has recognised that the lack of neutrality on the part of a court-appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial. In particular, regard must be had to such factors as the expert's procedural position and role in the relevant proceedings (see *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007, and *Letinčić v. Croatia*, no. 7183/11, § 51, 3 May 2016 with further references).

21. The Court emphasises that the question before it is not whether the court-appointed expert acted in accordance with her mandate or contrary to any rules or expectations when recommending that the applicant should withdraw his case, but whether he enjoyed a fair hearing. Having reviewed the proceedings as a whole, it finds that there is nothing to indicate that the court-appointed expert was not neutral in making the report which she was charged with, in particular on the question whether contact with the applicant

was in the child's best interests. Moreover, it was, in any event, for the domestic courts to take a final stance in this regard, on a question which was not particularly technical. Therefore, the application discloses no appearance of a violation of Article 6 of the Convention for lack of a fair hearing on account of the court-appointed expert's conduct.

22. In the light of the above, the Court considers that this part of the application is also 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.

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