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

FIFTH SECTION

DECISION

Application no. 73890/16
Marius BODNARIU and Others
against Norway

The European Court of Human Rights (Fifth Section), sitting on 26 November 2020 as a Committee composed of:

Ganna Yudkivska, *President,*
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 December 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Government of Romania, who had exercised their right to intervene in accordance with Article 36 § 1 of the Convention,

Having regard to the comments submitted by the Governments of the Czech Republic and the Slovak Republic and by ADF International and Ordo Iuris, who had been granted leave to intervene as third-parties in accordance with Article 36 § 2 of the Convention,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

1. The facts of the case, as submitted by the parties, may be summarised as follows.

2. The first two applicants are Marian Constantin (Marius) Bodnariu, born in 1979, and Ruth Johanne Bodnariu, born in 1979. They are the parents of the third applicant, Juditte Eliana Bodnariu, born in 2006, the fourth applicant, Naomi D'aniela Bodnariu, born in 2008, the fifth applicant, Matei Daniel Bodnariu, born in 2011, the sixth applicant,

Ioan Samuel Bodnariu, born in 2013, and the seventh applicant, Levi Ezekiel Bodnariu, born in 2015.

3. In the autumn of 2015 the child welfare services received notifications of concern that the children were being subjected to violence in the home because the third, and to some degree the fourth, applicants had said at school that they were being beaten and punished physically.

4. On 17 November 2015 the child welfare services adopted a decision to place the third to sixth applicants in emergency foster homes (*beredskapshjem*). The County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*), by its chairperson, preliminarily approved that decision on 20 November 2015. The third and fourth applicants were placed in one emergency home, the fifth and sixth in another. On 19 November 2015 the child welfare services adopted a decision in emergency that the seventh applicant also be placed in an emergency foster home. The Board, by its chairperson, preliminarily approved that decision on 23 November 2015. The seventh applicant was placed in a third emergency home.

5. On 24 November 2015 the first two applicants appealed against the above decisions taken by the child welfare services.

6. On 30 November 2015 the Board dismissed the appeal insofar as concerned the placements in emergency care. The Board additionally decided that the first two applicants were to be granted contact rights of two hours, twice a week with the seventh applicant, and of two hours, once a week with the fifth and sixth applicants. The Board did not grant contact rights with respect to the third and fourth applicants. The child welfare services were authorised to supervise the contact visits and it was also decided that the parents should not be informed of the children's whereabouts.

7. On 22 December 2015 the child welfare services applied to the Board for a care order. Six days later, on 28 December 2015, the first two applicants brought the Board's emergency decision before the District Court (*tingrett*). The municipal child welfare authorities, in their response, informed the court that it had applied to the Board for a care order and that that case had been listed for hearing on 30 May 2016. In the course of those proceedings, two experts had been appointed in order to examine the applicants. The experts had been given a deadline of 15 May 2016.

8. The District Court examined the appeal against the Board's emergency decision on 14 and 15 March 2016. Its judgment was handed down on 4 April 2016. As to the third to sixth applicants, the District Court found it appropriate that they remain in emergency foster care until the case had been completely elucidated and heard by the Board. It was, however, appropriate to increase the contact rights as concerned the fifth and sixth applicants. The seventh applicant was returned.

9. The Board's hearing of the case on the care order and the issue of contact rights started on 30 May 2016. On the fourth day of the hearing,

subsequent to the statements of the two experts (see paragraph 7 above), an agreement was made between the municipal child welfare services and the first and second applicants to terminate the public care for the children. A plan was made for their gradual return. Furthermore, part of the agreement was that the second applicant would receive payments so that she could be free from work until the end of the year. The first applicant was to attend a course in anger management. International Child Development Programme (ICDP) therapy was to be considered towards the end of the year. Treatment at the Children's and Young People's Psychiatric Out-Patient Clinic (*Barne- og ungdomspsykiatrisk poliklinikk*), as concerned the fourth and seventh applicants, was to be followed up. Lastly, the child welfare services would offer assistance measures to relieve the parents, preferably by use of their family network.

10. As the case had been settled by the parties to the domestic proceedings, the Board lifted the case. The children were returned to the first and second applicants before the applicant family lodged their application with the Court.

B. Relevant domestic law

11. Sections 4-6 and 4-12 of the Child Welfare Act (*barnevernloven*) of 17 July 1992 provide the legal basis for decisions on emergency placement in care and care orders, respectively.

12. The domestic courts have on different occasions assessed claims relating to alleged errors, wrongful assessments and defamatory statements made by child welfare services, but primarily in suits against the responsible municipalities and based on domestic tort law, for example in the judgments of the Supreme Court (*Høyesterett*) of 6 February 1995 (*Norsk Retstidende* (*Rt*.) 1995-209) and the Frostating High Court (*lagmannsrett*) of 3 June 2013. However, the Supreme Court held in its decision of 4 March 2003 (Rt-2003-301) that a claim that Article 8 of the Convention had been violated could form the basis for a suit instituted against the Government. In that specific case, the application was dismissed as the Supreme Court concluded that the claimant did not have any arguable claim.

COMPLAINT

13. The applicants complained that the child welfare measures adopted in respect of the family during 2015 and 2016 had entailed a violation of their right to respect for their family life under Article 8 of the Convention.

THE LAW

14. The applicants complained under Article 8 of the Convention about the placement of the family's children in emergency foster care and about the circumstances surrounding those placements. Article 8 reads, in so far as relevant, as follows:

> "1. Everyone has the right to respect for his ... family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

15. The applicants submitted that the reasons for separating the children from their parents, while relevant, had not been sufficient; placing the family members in different homes and not returning them to the parents had not been necessary in a democratic society; and it had not been in the best interests of the children to be separated from their family.

16. The Government maintained that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention and that the application was therefore inadmissible. They pointed out that the applicants could, among other things, have applied to the domestic courts for a declaratory judgment to the effect that their rights under Article 8 had been violated and they could claim compensation due to the alleged errors in the child care proceedings. They gave examples of decisions from domestic courts in proceedings of that nature.

17. As to exhaustion of domestic remedies, the applicants argued that it would, in the circumstances of their case, undermine the spirit of the Convention if they had to suffer the rigid formalities of bringing separate claims against the domestic authorities. They stated in that context that they are *persona non grata* in Norway.

18. Some of the third-party interveners commented on the question of exhaustion of domestic remedies. The Government of the Slovak Republic argued that the systemic character of the substantive issue at stake in the instant case could be taken into account in the Court's examination of whether relevant remedies had been exhausted. Ordo Iuris submitted that legal remedies against emergency care orders in the domestic system were extremely poor and, as to a civil suit against the Norwegian Government, that the Court should not only examine whether it would be effective, but also whether the applicants had had a real possibility to lodge such an action.

19. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their

obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014, and *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 115, ECHR 2015). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success.

20. As to the instant case, the Court notes that the alleged violation relied on by the applicants was not ongoing when they lodged their application with the Court. The applicants' complaint under Article 8 of the Convention related to the proceedings that had entailed a separation of the family members, who were reunited following the agreement made with the municipality during the hearing before the Board (see paragraph 9 above). At the time when they applied to the Court, the relevant remedies under Article 35 § 1 would accordingly be of a declaratory and compensatory nature (see, in contrast, *S.J.P. and E.S. v. Sweden* (dec.), no. 8610/11, § 72, 16 December 2014). On this point the applicants have not contested the information provided by the respondent Government to the effect that they could in principle have applied to the domestic courts for a declaratory judgment concerning their Convention rights and for compensation due to the alleged shortcomings in the child welfare proceedings, supported with references to domestic cases in order to show that these were real opportunities. It is undisputed that the applicants did not do so and they have not provided any special circumstances absolving them from the obligation to exhaust the domestic remedies at their disposal.

21. It follows that the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 17 December 2020.

Martina Keller Deputy Registrar	Ganna Yudkivska President