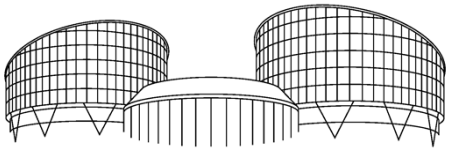

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF R.O. v. NORWAY

(Application no. 49452/18)

JUDGMENT

STRASBOURG

1 July 2021

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

In the case of R.O. v. Norway,

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

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

Having regard to:

the application (no. 49452/18) 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") by a Norwegian national, Ms R.O. ("the applicant"), on 15 October 2018;

the decision to give notice to the Norwegian Government ("the Government") of the complaint concerning Article 8 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the Government's not having objected to the application being examined by a Committee;

the comments submitted by the Governments of the Czech and Slovak Republics and the organisation Ordo Iuris Institute of Legal Culture, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 10 June 2021,

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

INTRODUCTION

1. The application concerns a complaint under Article 8 of the Convention in relation to the placement in public care of the applicant's child, and the applicant's contact rights in that regard.

THE FACTS

2. The applicant was born in 1997 and lives in R. Before the Court, she was represented by Ms R. Arnesen, a lawyer practising in Bergen.

3. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms H. Busch, attorney at the same office, as Co-Agent.

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

5. The applicant became pregnant in 2016. Due to concerns relating primarily to her mental health and drug abuse – and concerns in relation to the child's father, with whom the applicant did not live – the child welfare

services considered that the applicant could not take the child home with her after the birth. The applicant was informed of the child welfare services' conclusion at a meeting in April 2017 and when she gave birth to a boy, in May 2017, a formal emergency placement decision was made in respect of the boy. He was then placed with his paternal grandmother and her husband. The applicant appealed against the emergency placement, but later withdrew her appeal in a meeting before the Board, having reached an agreement with the child welfare services. During the emergency placement, the applicant and the boy's father visited the boy twice weekly, each time for approximately two and a half hours.

6. On 18 August 2017 the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) issued a care order in respect of the boy, against which the applicant and the boy's father appealed to the District Court (*tingrett*). The District Court, whose bench comprised a professional judge, a psychologist and a lay person, heard the case from 27 to 28 November 2017. In addition to the parties, ten witnesses gave evidence.

7. In its judgment of 13 December 2017 the District Court upheld the care order. It noted that, although the applicant appeared to have gained in maturity during her pregnancy – she had stopped using antidepressants and seemed to have abstained from drugs, but she had not attended all tests – there were still considerable concerns relating to her functioning.

8. The District Court observed that the applicant had had mental health issues for many years. During her pregnancy she had been in contact with a resource centre for pregnant women. At first, their cooperation had worked well, but challenges had arisen. The applicant had been offered help and attempts had been made to assist her with challenges related to activities in her daily life, but she had not been consistent. It was also clear to the District Court that her capacities with regard to daily life activities were lacking. It pointed to how witnesses had referred to her having problems with cleaning and disposing of rubbish; the applicant had, among other things, a number of cats and her apartment smelled strongly since she did not clean out their urine and excrements effectively. A guardian had been appointed for the applicant. The guardian managed the applicant's finances, paid bills for her and gave her "pocket money" three times weekly. Furthermore, the applicant had not managed to attend school and had had difficulties in following a work-training engagement that required attendance for six hours, twice weekly. Due to difficulties in her relationships with her own family, only her grandmother could be assumed to be supportive.

9. Assistance measures were, in the District Court's view, not feasible, among other reasons because the applicant did not respond to advice and guidance. The child welfare services had therefore nothing to offer that could remedy her shortcomings. Placing the applicant and the child in a parent-child institution would not be in the child's best interest as there was

a risk that this would entail further moving, with the broken relationships that would involve for him.

10. In deciding on the contact rights, the District Court found that there were uncertainties with respect to whether the applicant would in time become able to take care of a child; in any event it would take a long time to reach such capacity. It stated that it agreed with the child welfare services that the placement would most likely be long-term, which entailed that the purpose of contact was limited to ensuring the child's increasing need to know about his biological origin. At the same time, the contact sessions worked out well and the child lived well and thrived in his foster home. The applicant was therefore granted contact rights six times yearly, each time for two hours – while the boy's father was granted contact rights four times yearly. Supervision was authorised so that the applicant could be given advice and guidance during the contact sessions. The District Court emphasised that these were the applicant's legal rights and as such only the minimum contact; it would be for the child welfare services to assess continuously to what extent there should be contact beyond her legal rights.

11. The applicant appealed against the District Court's judgment to the High Court (*lagmannsrett*), which refused leave to appeal on 9 March 2018. Her appeal against that decision was dismissed by the Supreme Court's Appeals Leave Committee (*Høyesteretts ankeutvalg*) on 12 April 2018.

RELEVANT LEGAL FRAMEWORK

12. Under section 4-8 of the 1992 Child Welfare Act (*barnevernloven*), a newborn child may be taken into public care if it is highly probable that living with the parents would lead to such a situation or risk to the child as mentioned in section 4-12. Pursuant to the latter provision a child may be taken into public care if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security needed by the child according to his or her age and development. Contact rights between a child in public care and his or her parents are regulated in section 4-19, which provides that the extent of the contact rights is decided by the County Social Welfare Board. Under the same provision, the private parties can demand that the matter be reconsidered by the Board as long as at least twelve months have passed since the Board or the courts last considered it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. The applicant complained that the proceedings relating to the public care of her child and the measures adopted therein, notably to issue a care order and to limited the applicant's right to contact with her child, had

violated her right to respect for her family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

A. Admissibility

14. The Government argued that in so far as the applicant complained about the emergency placement decision, the complaint was inadmissible since she had not appealed against it.

15. The applicant acknowledged in response that it was true that she had not exhausted domestic remedies against the emergency placement decision as such. She argued, however, that the Court had to have regard to that decision and the proceedings relating to it when examining the subsequent proceedings relating to the care order. Moreover, she emphasised that it was not always possible to exhaust domestic remedies against emergency placement decisions because the authorities were obliged to follow up such decisions with applications for care orders, and when the care orders were issued, they would replace the emergency decisions.

16. The Court considers that emergency placement decisions made in order to ensure the security of the child while the child welfare services apply for a care order, and the relevant authorities consider that application, must sometimes effectively be viewed as a step in the course of the care order-proceedings and that exhaustion by way of appeal against the emergency decision cannot always be required where a care order has replaced that decision (see, *mutatis mutandis*, *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII). However, in this case the Court notes that the applicant formally withdrew her appeal against the emergency placement decision in 2017 in a meeting before the County Social Welfare Board, upon having reached an agreement with the child welfare services about that placement (see paragraph 5 above). She applied to the Court over a year later, when the care order proceedings had come to an end in 2018. In the circumstances of the instant case, the Court agrees that the applicant could not lodge a separate complaint with the Court about the emergency decision viewed in isolation.

17. The Court still adds that as the applicant has also submitted that the care order proceedings cannot be examined without having regard to the emergency placement as well – she has, *inter alia*, argued that the care order was unnecessary because the authorities had not offered adequate assistance

measures instead of placing the child immediately in care by way of the emergency decision – there is reason to emphasise that the Court's not in the present case having competence to examine on the merits whether the ordering of an emergency placement in itself entailed a violation of Article 8 of the Convention, it must still examine all of the applicant's arguments relating to the care order proceedings, including those which relate to the emergency placement as part of the context.

18. In the light of the above, the Court finds that the applicant's complaint under Article 8 of the Convention in so far as it must be construed as a separate complaint against the emergency placement decision as such, is inadmissible for non-exhaustion. The remainder of the Article 8-complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 and must be declared admissible.

B. Merits

19. The applicant argued that the case had started with an emergency placement decision without the authorities having sufficiently attempted less invasive measures. The reasons later adduced for placing her child in foster care had not been either relevant or necessary and the decision-making process had neither been fair nor had it afforded due respect to her rights. She argued that outdated reports had been used and other possible remedies had been disregarded.

20. As to the contact rights, the applicant maintained that neither the extent of her contact rights nor the manner in which they had been implemented had aligned with the aim that she and her child should be reunited.

21. The Government submitted that relevant and sufficient reasons had been advanced for the impugned measures. Moreover, the decision-making process had been fair and afforded due respect to the applicant's rights.

22. On the issue of contact rights, the Government emphasised that the limitations imposed on the applicant's right to contact with the child had not hindered reunification of the family. They stated that they were aware that the Court had indicated that similar limitations were incompatible with the aim of reunification in some other judgments against Norway – including *K.O. and V.M. v. Norway*, no. 64808/16, §§ 68-70, 19 November 2019, although the family in that case had in fact been reunified – and that they could not but disagree on that point.

23. The third party interveners – the Governments of the Czech and Slovak Republics and Ordo Iuris Institute of Legal Culture – primarily made submissions on the general principles within which to examine applications with complaints relating to proceedings that have concerned childcare-measures. Ordo Iuris also made a comparison of public childcare-practices in Norway and Poland.

24. The Court notes that the general principles applicable to cases involving child welfare measures (including measures such as those at issue in the present case) are well-established in the Court's case-law, and were extensively set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019), to which reference is made. The principles have since been reiterated and applied in, *inter alia*, the cases of *K.O. and V.M. v. Norway* (cited above, §§ 59-60); *A.S. v. Norway* (no. 60371/15, §§ 59-61, 17 December 2019); *Pedersen and Others v. Norway* (no. 39710/15, § 60-62, 10 March 2020); *Hernehult v. Norway*, (no. 14652/16, § 61-63, 10 March 2020); and *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020).

25. Turning to the facts of the instant case, the Court finds that the impugned childcare-proceedings and the measures adopted therein entailed an interference with the applicant's right to respect for his family life as guaranteed by Article 8 of the Convention; that the measures were in accordance with the 1992 Child Welfare Act (see paragraph 12 above) and that they pursued the legitimate aims of protecting the applicant's son's "health and morals" and his "rights". Accordingly, the question is whether they were also "necessary in a democratic society" within the meaning of the second paragraph of Article 8.

26. In that context, the Court reiterates that while 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 (see, for example, *J.M.N. and C.H. v. Norway* (dec.), no. 3145/16, § 22, 11 October 2016). In the instant case, the case was heard by the County Social Welfare Board and the District Court. Both instances held meetings where the applicant attended with legal aid-counsel, and could present witnesses and other evidence (see paragraph 6 above).

27. As to the applicant's argument that a psychological expert should have been court-appointed, the Court reiterates that that issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Strand Lobben and Others*, cited above, § 213; and *Sommerfeld v. Germany* [GC], no. 31871/96, § 71, ECHR 2003-VIII (extracts)). In the circumstances of this case, the Court does not find that the domestic authorities' not having appointed a psychological expert indicates that the decision-making process as a whole did not protect the applicant's interests.

(a) Care order in respect of the applicant's son

28. Proceeding to the measures adopted, the Court notes that the District Court advanced a number of reasons to justify the necessity of the care order. It assessed in detail the applicant's history and functioning at the time, including with regard to mental health issues (see paragraph 8 above).

It also examined whether assistance measures could remedy the shortcomings with regard to the applicant's caring skills, but found such unfeasible (see paragraph 9 above).

29. Bearing in mind the wide margin afforded to domestic authorities in respect of care orders, the Court considers that the reasons given by those authorities to justify the care order in this case were both relevant and sufficient.

30. With regard to the applicant's argument that the domestic case had started with an emergency placement decision that was, in her view, unnecessary, the Court observes that that decision was taken on the basis of concerns relating to mental health and drug abuse issues (see paragraph 5 above). In general the Court must take into account that it is the domestic authorities which have the benefit of direct contact with the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation (see, for example, *Strand Lobben and Others,* cited above, § 210), and, moreover, that those authorities have duties to protect children (see, among other authorities, *R. and H. v. the United Kingdom*, no. 35348/06, § 81, 31 May 2011). Notwithstanding that it was implemented shortly after the child's birth (see paragraph 5 above), the Court does not consider that it has been proved that any matters relating to the emergency placement indicated shortcomings in the proceedings that led to the care order. It notes in that context, also, that the child was placed with his paternal grandmother and that the applicant was given access to him at two days per week (ibid.).

31. The Court accordingly finds that there has been no violation of Article 8 of the Convention on account of the placement in public care of the applicant's child.

(b) Limitations on the applicant's contact rights

32. Turning to the limitations on contact rights, which under the Court's case-law are to be subjected to a stricter scrutiny, the Court notes that the District Court agreed with the child welfare services that the care order would probably be long-term, but also stated that it was too early to conclude on whether the applicant would ever sufficiently change to be able to take care for a child, noting that it would in any event take a long time (see paragraph 10 above).

33. Nonetheless, while according to the Court's case-law the domestic authorities are obliged to facilitate contact to the extent possible without exposing the child to undue hardship, in order to guard, strengthen and develop family ties, thus enhancing the prospect of being able to reunify the family in the future, the decision on contact rights in this case aimed instead only at upholding the applicant's son's need to know about his biological origin (see paragraph 10 above). Furthermore, under the contact regime actually decided by the District Court – six times yearly, each time for two

hours – months could pass between each visit, which is in itself at variance with the Court's case-law in cases where the authorities have not after careful consideration, and taking account of the authorities' positive duty to take measures to facilitate family reunification been justified in concluding that the ultimate aim of reunification was no longer compatible with the best interests of the child (see, for example, *K.O. and V.M. v. Norway*, cited above, § 69; and *M.L. v. Norway*, cited above, § 94).

34. In the light of the above, the Court does not find that the reasons advanced by the District Court with regard to the limitations on the applicant's contact rights demonstrate that the domestic authorities proceeded on the basis that they have a positive duty to take measures to reunite the family as soon as reasonably feasible. In the circumstances of the case, that consideration is sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention on that count.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

36. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government pointed in response in particular to the just satisfaction-award made by the Court in the case of *K.O. and V.M. v. Norway* (cited above, § 75).

38. The Court considers that the applicant must have sustained non-pecuniary damage through distress, in view of the violation found above, and awards her EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant claimed EUR 10,272.02 in respect of costs and expenses.

40. The Government pointed out that the work sheet submitted by counsel included references to work before the application to the Court as well as later work unrelated to the application, and that the applicant had a pending application for legal aid from the Norwegian State.

41. The Court observes that it has not been informed of any legal aid having been granted from the Norwegian State and that it must therefore decide on the applicant's claim for recovery made before it. According to

the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,500, covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

42. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint that there has been a violation of Article 8 of the Convention on account of the emergency placement decision taken in respect of the applicant's child inadmissible, and the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention in relation to the care order issued in respect of the applicant's child;

3. *Holds* that there has been a violation of Article 8 of the Convention in relation to the limitations imposed on the applicant's right to contact with her child;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Martina Keller
Deputy Registrar

Ganna Yudkivska
President