



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

SECOND SECTION

DECISION

Application no. 16998/20
I.M.
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. 16998/20) 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 27 March 2020 by a Norwegian national, Ms I.M. (“the applicant”), who was born in 1987 and lives in Fredrikstad, and was represented before the Court by Mr P. Danielsen, a lawyer practising in Oslo;

the decision not to disclose the applicant’s name;

the decision to give notice of the complaint concerning Article 8 of the Convention to the Norwegian Government (“the Government”), represented by their Agent, Ms H. Busch, of the Attorney General’s Office (Civil Matters), and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns replacement of foster care with adoption.
2. The applicant is the mother of X, a boy who was born in September 2016. The applicant has never been in a relationship with X’s father and she had sole parental responsibility when X was born.
3. Emergency placement of X was decided immediately after his birth and he was placed in a foster home. Contact rights were, on appeal, set at one hour

once per week with supervision. A care order was issued on 22 December 2016 and contact rights were set at one hour twice per year with supervision.

4. On 2 November 2018 the County Social Welfare Board decided to withdraw the applicant's parental responsibilities in respect of X and authorise his foster parents to adopt him. The decision was upheld by the City Court on 16 May 2019. The applicant sought leave to appeal against the City Court's judgment, but such leave was refused by the High Court on 13 August 2019. The Supreme Court dismissed an appeal by the applicant against the High Court's decision on 27 December 2019.

5. Relying on Article 8 of the Convention, the applicant submitted that her right to respect for her family life was violated by the decision to withdraw her parental responsibilities in respect of her son and to allow his foster parents to adopt him.

THE COURT'S ASSESSMENT

6. The Court notes that the applicant's complaint under Article 8 of the Convention concerns the decision to replace the foster care arrangement, established in respect of her child, X, with adoption.

7. The Court finds that that decision 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 child's "rights" and his "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

8. The general principles relevant to that question 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). The Court reiterates in particular from those general principles that measures such as those complained of in the instant case which result in the parents' legal ties with their 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 measures were justified (see *Strand Lobben and Others*, cited above, §§ 207-09).

9. In determining whether the domestic authorities provided relevant and sufficient reasons for their impugned decision, the Court notes that, from their decisions, it is apparent that the Board and the City Court found that the applicant was permanently unable to provide X with the daily care that he

needed and that, if he were not adopted, X would accordingly have to grow up in foster care. The Court observes from the information contained in the decisions that the applicant, whose cognitive functioning was considered near the limit of mild intellectual disability, lived in shared housing with staff present twenty-four hours per day, had a legal guardian and had significant problems performing daily tasks without follow-up and assistance. The Court also notes that the domestic authorities examined X's situation and found that he suffered from delayed language development and challenges in eating solid foods and that contact between the applicant and X during his foster care had not been in the child's best interests. In this connection, the Court observes that the national courts emphasised that it had been burdensome for X to attend the contact sessions, and he had appeared uncomfortable and confused. Furthermore, the supervisor that had participated in the contact sessions had reported that the applicant was very intense in her approach to the child and that the applicant's problematic relationship with the child's foster mother was prominent throughout the meetings.

10. The Court is 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 v. Norway*, no. 39710/15, §§ 67-69, 10 March 2020; *M.L. v. Norway*, no. 64639/16, § 92, 22 December 2020; and *Abdi Ibrahim*, cited above, § 152).

11. In the instant case, however, the Court observes that more extensive contact had in fact been attempted at earlier stages of the child welfare case. Nonetheless, following a decision by the Board on 19 September 2016 to grant more frequent contact, the applicant appeared at only six out of ten contact sessions. The applicant was offered help with transportation to the sessions. The Board's decision of 22 December 2016 stated that at that time she asked for less contact and she ultimately withdrew her appeal against that decision.

12. In the light of the above the Court does not find that the facts of the case bear any resemblance to circumstances in which the authorities may be considered responsible for a situation of family breakdown because they have failed in their positive duty to take measures to facilitate family reunification as soon as reasonably feasible (see, for example, *Strand Lobben and Others*, cited above, § 208).

13. In view of these elements, notably the fact that the applicant was found to be permanently unable to provide X with the daily care that he needed, the Court considers that the domestic courts gave relevant and sufficient reasons showing that there were "exceptional circumstances" in the present case, in

which the decision to replace foster care with adoption was justified by an overriding requirement pertaining to the child's best interests.

14. Furthermore, in assessing whether the decision-making process provided the applicant with the requisite protection of her interests, the Court notes that the municipal child welfare services' application to have X's foster care replaced with adoption was carefully considered by the County Social Welfare Board and the City Court and it does not find any indication that the applicant was not given every opportunity to participate in the proceedings and present her case. Throughout the proceedings, the applicant was represented by a legal aid lawyer and she and a number of witnesses appeared and gave evidence at the hearings. In the Court's assessment, the thorough domestic proceedings thus afforded due respect to the applicant's rights under Article 8 of the Convention.

15. 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 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