



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

SECOND SECTION

DECISION

Application no. 7692/20
R.I.
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. 7692/20) 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 24 January 2020 by a Norwegian national, Ms R.I. (“the applicant”), who was born in 1993 and lives in Eidsvoll and was represented before the Court by Ms T. Holth, 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 replacement of foster care with adoption.
2. X is a boy who was born in May 2014. The applicant is X’s mother; B is X’s father.
3. In July 2014, during a regular health examination of X when he was six weeks old, the medical staff noticed severe bruising. Further examinations revealed that the child had several broken ribs in addition to the bruises. On 10 July 2014 an emergency care order was issued.

4. On 16 October 2014 the County Social Welfare Board issued a care order and X was placed in a foster home. Contact for the applicant and B was set at one hour once per year.

5. On 25 February 2015 the City Court found that the applicant and B should not be granted any right to contact with X. The decision was upheld by the High Court on 23 January 2017.

6. In a judgment of 23 October 2017 the Supreme Court set contact for the applicant and B in respect of X at one hour once per year.

7. On 24 April 2018 the Board decided to withdraw the applicant's and B's parental responsibilities and to allow the adoption of X. The decision was upheld by the City Court. The applicant sought leave to appeal against the City Court's judgment but leave was refused by the High Court. On 25 July 2019 the Supreme Court dismissed an appeal by the parents against the High Court's decision.

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

THE COURT'S ASSESSMENT

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

10. 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 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).

11. In the light of the fact that the proceedings at issue concerning parental responsibility and adoption were preceded by proceedings concerning X's care order and his parents' contact rights, the Court emphasises that it follows from its relevant case-law that it must have regard to such former proceedings in order to put the proceedings complained of in context (*Strand Lobben and Others*, cited above, § 148). On several occasions the Court has taken into account whether decisions to replace foster home arrangements with adoptions have been taken in situations where, following a placement in care, only very limited parent-child contact had been allowed (see, for example, *Strand Lobben and Others*, cited above, § 221; *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). Furthermore, the Court's case-law on cases such as the present may be read in conjunction with its case-law relating to complaints about limitations on parent-child contact imposed during foster care arrangements (see, for example, *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).

12. In determining whether 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, the Court notes that, indeed, very limited parent-child contact had been allowed prior to the authorisation of X's adoption. However, it also notes that there were extensive proceedings specifically concerning the issue of contact. That issue was examined at several levels of jurisdiction, including by the Supreme Court, and those proceedings involved an expert who had been appointed by the High Court in 2015 in order to determine contact rights which would be feasible and in the child's best interests. In the Supreme Court's judgment of 23 October 2017 relating to contact rights, which as such falls outside the scope of the Court's jurisdiction in the instant case, it was stated that any future return of X to his parents was "unrealistic" and unlikely. It is apparent from the material submitted to the Court that serious physical injuries had been inflicted on X during the first six weeks of his life and that following his placement in care, at first in emergency care and then in foster care, contact had been limited to the extent that, at the time of the courts' examination of the question of whether the parents should be granted contact rights, there was, according to those courts, no attachment between X and his parents.

13. Furthermore, the Court notes that in 2018 the City Court, in the final judgment on the merits relating to the adoption, examined the parents' caregiving skills and again concluded that it was unlikely that they would be able to give X proper care in the future. That had, again, in part to do with X's having been the victim of serious violence under his parents' care. In that

connection, the City Court took into account a judgment in respect of criminal charges brought against the parents in which it had been found, *inter alia*, that X had suffered a total of nineteen rib fractures caused by a blunt object and held that it was “out of the question” that X be returned to his parents. It appears from the County Social Welfare Board’s previous decision that the matter concerned a child who had been exposed to abuse that caused serious and long-lasting injuries. It is apparent from the case file that the abuse of which X was a victim when he lived with his parents was so extensive and severe that there was a risk of lung collapse and death.

14. Having regard to the above, the Court does not find that the facts of the case bear resemblance to circumstances in which 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). The Court also finds that the case differs in other respects from cases such as *Strand Lobben and Others*, *Pedersen and Others*, *M.L. v. Norway* and *Abdi Ibrahim* (all cited above; contrast, for example, *Mohamed Hasan v. Norway*, no. 27496/15, §§ 159-63, 26 April 2018).

15. Moreover, the Court notes that in 2018 the parents agreed before the City Court that if X were not adopted, he would grow up in the foster home. It also notes that the City Court, after an extensive examination, concluded that in the circumstances, X’s best interests required that his foster care arrangement be replaced with adoption. It had regard to, *inter alia*, X’s vulnerability owing to his having been a victim of violence and neglect while living with his parents, which had in turn already led to several changes of caregivers; X’s lack of any attachment to his parents – a matter which the parents did not contest; and his need for the security that an adoption could give beyond what could be offered in a foster care arrangement. The Court also notes that at the time of the City Court’s decision on replacing foster care with adoption, X was four and a half years old and he had been living in foster care, on an emergency basis at first, ever since he was six or seven weeks old.

16. The Court’s task in a case such as the present 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). In view of the above elements, the Court considers that the domestic courts gave relevant and sufficient reasons showing that there were “exceptional circumstances” in which the decision to replace foster care with adoption was justified by an overriding requirement pertaining to the child’s best interests.

17. In cases such as the present, the Court’s focus, moreover, will not principally lie in attempting to untangle the opposed considerations as to whether long-term foster care or adoption was best for X’s welfare, but rather,

on account of the complexity of the matter that had to be decided by the domestic authorities, in placing particular emphasis on the need to respect the procedural requirements inherent in Article 8 of the Convention (see, *mutatis mutandis*, *P., C. and S. v. the United Kingdom*, no. 56547/00, §§ 135-36, ECHR 2002-VI). In the instant case the Court does not find any indications that the decision-making process did not provide the applicant with the requisite protection of her interests. The applicant and B were notably given sufficient opportunity to participate and present their case.

18. 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.

19. The Court concludes that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to 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