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

FIFTH SECTION

DECISION

Application no 15633/15
T.S. and J.J.
against Norway

The European Court of Human Rights (Fifth Section), sitting on 11 October 2016 as a Chamber composed of:

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
André Potocki,
Faris Vehabović,
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 March 2015,

Having regard to the decision to grant the applicants anonymity under Rule 47 § 4 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, T.S., is a Polish national who was born in 1949 and lives in Warsaw. The second applicant, J.J., is a Polish national who was born in 1971 and lives in Sandnes. The applicants were represented before the Court by Ms M. Gąsiorowska, a lawyer practising in Warsaw.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background

3. The first applicant is the maternal grandmother of X, a boy born in 2003 and who lives in Norway. The second applicant is X's father. The second applicant moved to Norway in 2006 and X and his mother, also Polish, followed in September 2007. The parents separated in 2010, after which X stayed with his mother. In April 2011, X's mother died. The second applicant was given custody of X.

4. On 23 June 2011 X was taken into public care on an interim basis by decision of Sandnes Child Care Protection Services (*barneverntjenesten*), because the second applicant could not take care of him. The measure became permanent on 8 December 2011 by decision of Sandnes County Social Affairs Board (*fylkesnemnda for barnevern og sosiale saker*) and as the second applicant lacked ability to care for X, he was placed with a foster family. The second applicant kept parental responsibility for X and had contact rights for four hours per month with him.

5. X was born prematurely and has special needs. He was born with periventricular bleedings, his motor skills are delayed and he has complex visual impairments. His condition is characterised by early traumas tied to domestic violence and alcohol abuse.

6. The first applicant had good contact with X until he was four years old and moved to Norway. After that they talked on the telephone once or twice per week. Up until the death of his mother, X visited the first applicant in Poland regularly. After the public care decision, the first applicant visited X in Norway three times between 2011 and 2013.

7. X's foster family is not Polish-speaking and X is fluent in Norwegian, although he has received Polish lessons at his school as part of his native language education. X has not wished to take any extra-curricular Polish lessons. According to a report issued by the Child Care Protection Services on 30 November 2012, X's foster parents proposed to X that he might participate in activities at a Catholic church, as his mother was a Catholic. However, X showed no interest in such activities.

2. The contact rights proceedings

8. In September 2012 the first applicant requested regulated contact rights from the Norwegian authorities. By decision of 4 April 2013, Rogaland County Social Affairs Board (henceforth "the Board") granted the first applicant contact rights with X during two periods per year. Each period consisted of three visits, with every visit being up to three hours long. The visits were to be supervised if needed. X was heard through a contact person, who gave testimony at the oral hearing. X expressed his desire to meet the first applicant twice per year, although not in Poland, and with the presence of another adult. The Board stressed the importance of contact between X and the first applicant while, at the same time, observing

that X had negative reactions, consisting of stomach pain and diarrhoea, before and after visits by the first applicant. X had also objected to further visits by the first applicant at his foster home. With regard to visits in Poland, the Board considered that it was a long journey and that X had special needs. He had also objected to going there for visits. Finally, the Board stressed that the Child Care Protection Services could allow more extended visits if such measures were in the best interests of the child. The Board held an oral hearing and the first applicant was represented by a lawyer.

9. The first applicant appealed against the Board's decision and demanded extended contact rights in order to avoid X reacting negatively during visits.

10. By judgment of 8 September 2014, Jæren City Court (*tingrett*) limited the first applicant's contact rights to four hours, twice per year. The first applicant was heard at the oral hearing, along with five witnesses. One of the witnesses had been representing X before the Board and she had talked to X before the oral hearing so that he could have his say. X stated that he did not want to have a lot of contact with the first applicant, but agreed to meet once per year.

11. The court found it established that the relationship between the first applicant and X had been harmed because the first applicant had criticised and discredited X's foster family. She had also criticised X for being too thin, for not speaking better Polish and for religious matters. Finally, she wanted to forbid X to do physical exercise such as playing football, although X liked this and was fit for it, according to medical certificates. The court noted that the contact rights could increase in the future if the relationship between the first applicant and X improved. Also, the Child Care Protection Services had offered the first applicant advice on how visits should be carried out. Despite the advice offered, the first applicant had not adapted her behaviour so that the visits would become positive experiences for X. Moreover, the first applicant had been given special counseling twice during two hours. Although the results had improved, the Court had the impression of the first applicant that she was not that easily guided.

12. Regarding X's Polish identity, the court agreed with the first applicant that she could play an important part in preserving that identity. However, X's right to identity, language and culture did not, in the court's opinion, override the consideration for the best interests of the child. The court agreed with the Board that it was necessary to allow the Child Care Protection Services to supervise the visits in order to prevent the first applicant from saying harmful things to X.

13. Upon appeal by the first applicant, on 20 November 2014, Gulating High Court (*lagmannsrett*) refused leave to appeal on the ground that the City Court's judgment was well-reasoned and that nothing in the appeal

indicated that the High Court would make a different assessment from that of the lower court.

14. On 23 January 2015 the Supreme Court (*Høyesterett*) refused leave to appeal.

B. Relevant domestic law

15. According to Section 4-1(1) of the 1992 Child Welfare Act (*lov om barneverntjenester*) decisive weight shall be given to the best interests of the child while deciding on measures under the Act.

16. Section 4-19(4) of the Act provides as follows:

> "The child's relatives, or other persons to whom the child is closely attached, may demand that the county social welfare board determine whether they shall be entitled to access to the child and the extent of such right of access when
>
> a) one or both of the parents is/are dead, or
>
> b) the county social welfare board has decided that one or both parents shall not be entitled to access to the child or that the parents' right of access shall be very limited."

17. It follows from Section 6-3(1) of the Act that a child who has obtained the age of seven shall be informed and be given the opportunity to have his or her say in the matter before any decision is taken. The views of the child shall be given due weight in accordance with the age and maturity of the child.

C. Relevant international law

18. The Convention on the Rights of the Child contains, in so far as relevant, the following provisions:

> Article 3
>
> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. "
>
> Article 8
>
> "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

COMPLAINTS

19. The applicants complained under Article 8 of the Convention that the Norwegian authorities had violated the first applicant's right to respect for her family life by excessively limiting her contact rights with X and thereby also failing duly to consider the need to preserve X's Polish identity. The applicants also complained that the Norwegian authorities did not pay for the first applicant's litigation costs, that the foster family was not Catholic and did not speak Polish and that the authorities did not reply to the first applicant's questions concerning X's education and health.

THE LAW

A. The second applicant

20. The Court notes that the second applicant was a "private party" to the domestic proceedings. However, he did not bring forward any complaint of his own before the Court and the present application concerns only contact rights between the first applicant and X. The Court therefore considers that the second applicant has failed to show that he was directly affected by the measure of which he complained.

21. That being so, the Court considers that the second applicant cannot claim to be a victim within the meaning of Article 34 of the Convention and that the application, in so far as it concerns him, must be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The first applicant's complaint under Article 8 of the Convention

22. The first applicant submitted that her contact rights with X had been excessively restricted and that the authorities thereby had also failed duly to

consider the need to preserve X's Polish identity, contrary to Article 8 of the Convention, which, in so far as relevant, reads 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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

23. The Court notes from the outset that it has accepted that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between them (see, for example, *Kruskic and others v. Croatia* (dec.), no. 10140/13, 25 November 2014). While cohabitation is not a prerequisite, as close relationships created by frequent contact also suffice, relations between a child and its grandparents with whom it had lived for a time will normally be considered to fall within that category (see *Bronda v. Italy*, 9 June 1998, § 51, Reports of Judgments and Decisions 1998-IV). In the present case, X had good contact with the first applicant until he was four years old and moved to Norway in 2007. He regularly visited her in Poland while his mother was alive. After the death of X's mother, this contact, even if less frequent because of geographical distance, became more significant. The Court is thus satisfied that there is family life within the meaning of Article 8.

24. Turning to the question of whether there was an interference with the first applicant's right to respect for her family life, it should be noted that, when a parent is denied access to a child taken into public care, this would constitute in most cases an interference with the parent's right to respect for family life as protected by Article 8 of the Convention. However, this would not necessarily be the case where grandparents are concerned. In the latter situation, there may be an interference with the grandparents' right to respect for their family life only if the public authority reduces access below what is normal, that is, diminishes contacts by refusing to grandparents the reasonable access necessary to preserve a normal grandparent-grandchild relationship (see *Price v. the United Kingdom*, no. 12402/86, Commission decision of 9 March 1988, DR 55, p. 224; *Lawlor v. the United Kingdom*, no. 12763/87, Commission decision of 14 July 1988, Decisions and Reports (DR) 57, p. 216; and *Kruskic*, cited above, § 110).

25. In the instant case, the first applicant was granted contact rights for four hours, twice per year. Having regard to the fact that the first applicant lives in Poland and X in Norway, and that the first applicant thus needs to travel for each visit, the Court considers that the very limited number of hours granted per visit amounts to an interference with the first applicant's right to respect for her family life.

26. Moreover, it is clear that the measure to restrict contact between the first applicant and X was in accordance with the law, namely the 1992 Child

Welfare Act (see paragraphs 15-17 above), and the Court finds no reason to doubt that these measures were intended to protect "health and morals" and the "rights and freedoms" of X.

27. In determining whether the impugned measure was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purpose of paragraph 2 of Article 8. In so doing, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII).

28. With regard to the proportionality of the measure, the Court has emphasised that the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection (see *Mitovi v. the former Yugoslav Republic of Macedonia*, no. 53565/13, § 58, 16 April 2015).

29. In the present case, the Court notes that one of the reasons why the contact rights were restricted to four hours per visit was X's own views on the extent of contact with the first applicant, as well as the observations that the first applicant's visits had had harmful effects on X (see paragraphs 8 and 11 above). Given his age (12 years at the time of the Supreme Court's decision), and taking into account the fact that there will be nothing to prevent him from taking the initiative to increase contact at any time in the future if he so desires, the Court is satisfied that the domestic authorities were justified in giving weight to X's own views as to whether increased contact would be in his best interests (see *G.H.B. v. the United Kingdom* (dec.), no. 42455/98, 4 May 2000).

30. Moreover, with regard to X's cultural heritage, the Court recognises that the first applicant represents an important part of X's linguistic and cultural ties to Poland. Such consideration does not necessarily lead to a conclusion that the Norwegian authorities were under an obligation to grant

the first applicant extended contact rights, however. The Court notes that the second applicant is also Polish, that he lives in Norway, and that he has regulated visits with X. It further appears from the facts that efforts were made by X's foster parents to facilitate his need to maintain his cultural heritage (see paragraph 7 above) but that X had showed a rather limited interest in Polish linguistic and cultural activities. The interest in maintaining X's Polish identity was expressly considered by the City Court, but did not, in its view, override the consideration of the best interests of the child. The Court accepts this conclusion.

31. In the light of the above considerations, the Court concludes that the national authorities acted within their margin of appreciation and that the impugned decision was proportionate and justified in the circumstances of the case.

32. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The first applicant's other complaints

33. The first applicant also complained that the Norwegian authorities did not pay for her litigation costs, that the foster family was not Catholic and did not speak Polish, and that the authorities did not reply to her questions concerning X's education and health.

34. However, the Court notes that the first applicant did not raise these complaints before the domestic authorities. She has therefore failed to exhaust available domestic remedies.

35. It follows that these complaints must be declared inadmissible for failure to exhaust domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 November 2016.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President