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

FIFTH SECTION

DECISION

Application no. 54419/19
S.P.
against Norway

The European Court of Human Rights (Fifth Section), sitting on 10 June 2021 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 4 October 2019,
Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

1. The applicant, Mr S.P., is an Indian national, who was born in 1975 and lives in Punjab. He was represented before the Court by Mr K. Sørensen, a lawyer practising in Oslo. The Committee decided of its own motion to grant the applicant anonymity pursuant to Rule 47 § 4 of the Rules of Court.

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

3. Together with B, a Norwegian national, the applicant has twin girls, born in Norway in January 2014. There has not been any established relationship between the applicant and B, upon them having met when the applicant visited his sister residing in Norway. B has in all five children with four different men. All of B's children have been taken into public care, although B's oldest child now is in the custody of his father. B does not have contact rights in respect of any of her children.

4. On 29 January 2014 the child welfare services issued an emergency care order which was implemented immediately after the birth of the twins, and the children were placed in a foster home. At the time of the decision it was unknown who was the father. B appealed against the emergency decision. It was upheld by the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) on 4 February 2014, and, upon further appeal, by the District Court (*tingrett*) in its judgment of 5 June 2014. Due to the lack of knowledge of who the father was, the applicant was not a party to the proceedings. Contact rights between B and the twins were set at one hour, twice per year.

5. On 30 June 2014 the Board issued a care order in respect of the twins. The applicant was not a party to those proceedings, either, as it had not yet been established that he was the father of the children. B appealed against the Board's decision, but following an agreement between her and the child welfare services – setting her contact rights in respect of the twins at one hour, three times per year – she withdrew her appeal. On 6 November 2014 the District Court confirmed that agreement.

6. In January 2015 the applicant informed the child welfare services that he considered himself to be the father of the twins, and that he intended to seek the care order in respect of them lifted and custody for them transferred to him. The applicant did not initiate any formal proceedings. He was at the time residing in India with his wife and one young child, did not speak Norwegian, and had never met the children.

7. In February 2016 the child welfare services contacted the sister of the applicant, who was residing in Norway, to inquire about when the applicant could be expected to come to Norway. Approximately six months later, in the autumn of 2017, the applicant visited Norway. During his stay, the child welfare services facilitated for the applicant to meet his two children, for the first time. In addition, the child welfare services contributed to the applicant taking a DNA test to establish paternity.

8. In letters of 1 October 2016 and 21 March 2017 B applied for the care orders in respect of the twins, and three other of her children, to be lifted and for the children to be returned to her.

9. On 25 October 2017 the child welfare services applied to the County Social Welfare Board for withdrawal of the applicant's and B's parental responsibilities in respect of the twins, and authorisation of their adoption by their foster parents. One other of B's children, X, was also included in the application.

10. A hearing before the Board was held on 15 and 16 January 2018. The applicant and B opposed the application for withdrawal of their parental responsibilities and approval of adoption of the children in question. The applicant and B, both of whom had legal aid counsel, attended the hearing and gave testimony. X's father had first come from Afghanistan to Norway as a minor asylum-seeker and in the course of later proceedings been

expelled with a ban on re-entry. He did not attend the hearing, but was represented by legal aid counsel. In addition, six witnesses were heard, and the documents of the case were reviewed by the Board.

11. On 28 February 2018 the Board decided to withdraw the applicant's and B's parental responsibilities in respect of the twins and to authorise their adoption by their foster parents. The Board found, regarding the applicant in particular, that he held no place in the children's life: he had only met them once, they did not speak a shared language, and he was living in India without a permit to stay in Norway. Although the Board considered him not to lack ability to care for children in general, the lack of any attachment between him and the children at their stage of development at the time entailed, in the Board's view, that he was permanently unfit to care for the twins, even in the light of any possible measure taken to improve his ability to care for them. Regarding the assessment of the best interests of the children, the Board concluded that an adoption would have only positive effects for them. It would confirm their belonging to, and facilitate a normal upbringing with, the adults whom the children held as their parents. While the Board found that adoption would have negative effects for B, it considered that it would have little practical impact on the applicant's relation to the twins, him never having played a role in their life. Thus, the interest that the children had in adoption outweighed the interest of the applicant. The Board considered the question of adoption specifically in the light of the relevant case-law of the Supreme Court (*Høyesterett*) and this Court. In addition to the assessment of withdrawal of the applicant's parental responsibilities in respect of the twins, the Board assessed B's caring skills, and found that the criteria for authorising the adoption of the twins were met also in relation to her. Against this background, the Board granted the child welfare services' application. The applicant and B appealed against the decision.

12. In its judgment of 21 August 2018 the District Court upheld the Board's decision. The bench of the District Court was composed of one professional judge, one psychologist, and one lay person, who had held a meeting to hear the case over two days. The applicant did not attend the hearing, but gave evidence by telephone. He was represented by a lawyer, and through him had the opportunity to present evidence, question witnesses and argue his case. Altogether nine witnesses were heard.

13. In respect of the applicant in particular, the District Court noted that he resided in India without a permit to stay in Norway and had a limited connection to Norway; he had only met the children once during the contact session in the autumn of 2017 (see paragraph 7 above), and, although he had started learning the language, did not speak Norwegian. As to the best interests of the children, the District Court found that adoption would ensure stability for them, and that adoption would have only negligible negative effects. As had the Board, the District Court considered the question of

adoption in the light of the case-law of the Supreme Court and this Court. In the circumstances of the case, it found that the advantages of adoption outweighed the interest in maintaining the biological attachment between the applicant as biological father and the children. Furthermore, the District Court concluded that the criteria for withdrawal of parental responsibilities in respect of the twins and approval of adoption were met also in respect of B. The applicant and B appealed against the judgment. So did X's father with regard to the measures adopted in respect of X.

14. On 6 November 2018 the High Court (*lagmannsrett*) granted the three biological parents leave to appeal against the District Court's judgment in so far concerned the decisions relating to parental responsibilities and adoption. They were all refused leave to appeal against the decisions not to lift the care order and return the children to B, and there is no information about any appeals having been lodged against that decision.

15. In its judgment of 12 April 2019 the High Court upheld the District Court's judgment. The High Court had conducted a hearing over three days, where the applicant had attended with counsel, had given testimony, been given the opportunity to present evidence, question witnesses and argue his case. Altogether seven witnesses had been heard.

16. The High Court noted, among other things, that the contact sessions that had been carried out by B had not functioned and that there had been no good cooperation between B and the child welfare services. It also mentioned several difficulties concerning the relationship between B and the foster parents. As to the applicant, it took note of the lack of attachment between him and the children, concretely his having only met the children two times in contact sessions, and the strong attachment that the children had formed with their foster parents, which entailed that a removal of the children from their foster parents to the applicant was considered to be completely unobtainable both in the short and in the long term.

17. Furthermore, the High Court considered that the negative aspect of adoption – that the children's ties to their biological parents were severed – carried limited importance in the case, as none of the children knew about any of their biological parents and it was not a matter of severing any social ties, as no such existed. The foster parents had been positive to attempting to facilitate contact with B and the applicant and there were grounds to assume that they would continue in the same manner.

18. On 24 June 2019 the Supreme Court, in a summary decision, refused the applicant and B leave to appeal against the High Court's judgment.

B. Relevant domestic law and practice

19. Under section 4-12 of the 1992 Child Welfare Act (*barnevernloven*) a child may be taken into public care if there are serious deficiencies in

daily care or in relation to the personal contact and security needed by the child according to his or her age and development. Under section 4-21 the parties may request the County Social Welfare Board to discontinue public care, as long as at least twelve months have passed since the Board or the courts last considered the matter. Contact rights between a child in public care and his or her parents are regulated in section 4-19, according to which the extent of contact rights is decided by the Board. Pursuant to the same provision, the private parties can demand that also contact rights be reconsidered by the Board, as long as at least twelve months have passed. Under section 4-20 the Board may withdraw parental responsibilities and consent to adoption if the parents will be permanently unable to provide the child with proper care, or the child has become so attached to persons and the environment where he or she is living that removing the child may lead to serious problems for him or her.

COMPLAINTS

20. The applicant complained under Articles 8, 17 and 18 of the Convention that his right to respect for his family life was violated by the decision to deprive him of his parental responsibilities in respect of his daughters and allow the children's foster parents to adopt them.

THE LAW

A. Alleged violation of Article 8 of the Convention

21. The applicant maintained that the decision to withdraw his parental responsibilities for his twin daughters, and allowing for their foster parents to adopt them, had violated his right to respect for his family life as enshrined in Article 8 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to respect for his private and 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."

22. The applicant contended in particular that removing his parental responsibilities in respect of the girls and authorising their adoption had not been necessary in order to safeguard the children's health.

23. 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* (no. 64808/16, §§ 59-60, 19 November 2019); *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).

24. The Court finds that, in the instant case, there are no grounds for calling into question that the decision to withdraw the applicant's parental responsibilities in respect of his twin daughters and authorise their adoption by their foster parents, constituted an interference with the applicant's right to respect for his family life. Based on the material presented to it, the Court is satisfied that that interference was in accordance with the 1992 Child Welfare Act (see paragraph 19 above) and pursued the protection of "health or morals" and "rights and freedoms" of the children in accordance with Article 8 § 2 of the Convention. Accordingly, the issue before the Court is whether the measures were proportionate.

25. In that connection the Court notes at the outset that the facts of the instant case differ fundamentally from those that were at issue in the cases cited above (see paragraph 23), in so far as the instant case concerns an applicant who had not taken any advantage of his right to respect for family life with the children in question before they were already placed in foster care and had established family life with their foster family. In fact, the applicant had hardly met the children and only after a long time (see paragraphs 7 and 16 above). In that sense, there was not, either, in this case a question of a family "reunion" at stake in the same manner as in the cases cited above.

26. Furthermore, bearing the above in mind, the Court observes that the domestic proceedings concerning the question of whether the children's foster care should be replaced by adoption were comprehensive.

27. In particular, the Court notes that the applications from all the parties to the domestic proceedings were made subject to substantial scrutiny at three levels of adjudication. The applicant was represented by legal aid counsel throughout the entire set of proceedings, in which hearings took place over several days at all levels, where the applicant had ample opportunity to put forward his arguments and adduce evidence in support of these (see paragraphs 10, 12 and 15 above).

28. The Court does not find any indications of the domestic courts having failed to adequately assess relevant evidence or arguments put forward by the applicant (contrast, for example, *A.S. v. Norway*, cited above, § 67) and, in the light of the facts of the case, the Court does not consider that the domestic authorities' not having availed themselves of court-appointed expertise rendered their examination of the case flawed (contrast, for example, *Strand Lobben and Others*, cited above,

§ 223). Accordingly, the Court is of the view that the domestic proceedings were conducted in such a manner that the views and interests of the applicant as natural parent were known and duly taken into account, and considers that they afforded the applicant with the requisite protection of his interests.

29. Furthermore, the Court observes that the domestic courts in taking the impugned decisions relied largely on the lack of any relationship between the applicant and the children. As the proceedings stood before the Board he had only met them once, and at the time of the High Court proceedings, when the children were at the age of five, he had only met them twice (see paragraphs 7 and 16 above). He lived in a different part of the world and did not share their language, either (see, *inter alia*, paragraph 13 above). As to the children's best interests, the High Court took note that they had a strongly developed attachment to their foster parents, who had been caring for them since immediately after their birth, and the risk of harm done to them if that relation was severed (see paragraph 16 above). It concluded that no real possibility of uniting them with the applicant existed either in the short or the long term (ibid.).

30. The Court has held that where social ties between a parent and his or her children have been very limited, "[t]his must have implications for the degree of protection that ought to be afforded to [the parent's] right to respect for family life under paragraph 1 of Article 8 when assessing the necessity of the interference under paragraph 2" (see, for example, *Mohamed Hasan v. Norway*, no. 27496/15, § 161, 26 April 2018; *Aune v. Norway*, no. 52502/07, § 69, 28 October 2010; and, *mutatis mutandis*, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 118, ECHR 2002-VI and *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011). In the instant case, the applicant had not had any social ties to the children, and that circumstance had no connection to any acts or omissions by the domestic authorities (contrast, for example, *K.O. and V.M. v. Norway*, cited above, §§ 67-69). Furthermore, in the circumstances of the case, the Court has no basis for calling into question the domestic authorities' consideration to the effect that lifting the care order for the purpose of removing the children from their joint foster home in which they had lived for many years and transferring them to the applicant's daily care was not, either, a realistic prospect.

31. On the basis of the above, the Court considers that the application does not disclose any appearance of the domestic authorities' not having carefully examined the facts, applied the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the children's – and the more general public – interests in the case. From the application it appears instead that the domestic authorities adduced relevant and sufficient reasons to justify the decision that allowed the foster parents to adopt the children and

that they were motivated by an overriding requirement pertaining to the latter's best interests.

32. The foregoing considerations enable the Court to conclude that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

B. Alleged violations of Articles 17 and 18 of the Convention

33. Relying on Article 17 of the Convention, the applicant submitted that the decisions of the domestic authorities were intended to destroy his right to respect for his family life. Under Article 18 he maintained that the restriction clause in Article 8 § 2 had been utilised to serve the interest of the foster parents before the interests of the applicant and the children.

34. The Court considers that the complaints formally lodged under Articles 17 and 18 of the Convention, in the view of its above findings in respect of the complaint under Article 8, from which they are not readily separable, disclose no appearance of any violations and are likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 July 2021.

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Martina Keller
Deputy Registrar

Ganna Yudkivska
President