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

FIFTH SECTION

DECISION

Application no. 56271/17
E.M. and T.A.
against Norway

The European Court of Human Rights (Fifth Section), sitting on 9 September 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 31 July 2017;

the decision to give notice to the Norwegian Government ("the Government") of the application'

the decision not to have the applicants' names disclosed;

the submissions submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Governments of Armenia and Bulgaria, who had exercised their rights to intervene pursuant to Article 36 § 1 of the Convention;

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

having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms E.A. and Mr T.A., are Bulgarian and Armenian nationals, who were born in 1974 and 1972 respectively. They were represented before the Court by Ms A. Lutina, a lawyer practising in Oslo.

2. 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 T. Oulie-Hauge, attorney at the same office.

A. The circumstances of the case

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

1. Background

4. In 2012 the applicants arrived in Norway with their child, X, born in 2010, and applied for asylum. On 4 April 2012 the Immigration Agency (*Utlendingsdirektoratet*) declined the applicants' application for asylum.

5. The applicants appealed against the decisions and stayed at a refugee reception centre on 6 November 2012, when the child welfare services placed X in emergency foster care on the basis of information received from the police to the effect that other persons at the centre had testified that the applicants were physically violent against the child. The applicants were also prohibited from contact with X. On 21 November 2012 the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*), noting that the allegations relating to the applicants being violent towards X were at the time under investigation, upheld the emergency placement. The applicants applied to have the emergency decision reviewed by the District Court (*tingrett*), but later withdrew the application insofar as concerned anything but contact rights during the emergency placement. On 9 January 2013 the District Court upheld the decision as concerned refusal of contact rights.

6. On 21 February 2013 the Board decided on the child welfare services' application for a care order for X. The Board found that X had been victim of mental and physical violence over such a period and to such a degree that it had to be considered as serious neglect. A care order was issued and it was decided that the applicants were not to be informed of X's whereabouts or given any contact rights. During the same month, the first applicant's appeal against the refusal to grant her refugee status was declined by the Immigration Appeals Board (*Utlendingsnemnda*), while the second applicant withdrew his application. In April 2013 the applicants appealed against the County Social Welfare Board's issuing of a care order for X.

7. On 3 September 2013 an indictment was lodged against the applicants on counts of violence against X, threats against other persons, providing false information in order to obtain asylum, and thefts.

8. On 23 September 2013 the District Court upheld X's care order. It found that X had been subjected to physical and mental violence and that there were serious deficiencies in his care. Furthermore, it found that assistance measures could not remedy those deficiencies.

9. On 24 March 2014 the District Court sentenced the first applicant to twenty-four days' imprisonment, and the second applicant to twenty-one days' imprisonment. The second applicant's sentence was made conditional. Neither was convicted on all counts and both were acquitted in respect of

the alleged violence against X. On 1 November 2013 the second applicant was ordered expelled and a five year ban from re-entry was issued. The applicants moved to Bulgaria and later to Germany.

2. The applicants' claim to have X's care order lifted

10. On 10 February 2016 the applicants applied to the Board to have X's care order lifted and X returned to them. In its decision of 17 June 2016 the Board declined to do so. The Board found that the District Court's acquittal of the applicants with regard to their alleged violence against X was not decisive. The applicants still lacked capacity to reflect on X's needs and what it would require of them to have care for him. They were incapable of giving priority to X's needs against their own and there had not been changes that showed that their caring skills were any better at the time of the Board's decision than they had been when X was placed in care.

11. Upon the applicants' appeal, the District Court, whose bench comprised a professional judge, a psychologist and a lay person, heard the case from 8 to 10 November 2016. The first applicant attended with her legal aid counsel and gave evidence. The second applicant gave evidence by telephone from Bulgaria. Eight witnesses were heard and video recordings of contact sessions between the applicants and X were played.

12. In its judgment of 1 December 2016 the District Court, based on, *inter alia*, a number of witness statements, found that X had special care needs, a matter which had an impact on which care would be appropriate for him. In respect of domestic violence, the District Court did not find reasons to draw any conclusions different from those drawn by the Board. According to a witness the applicants had no understanding of X's special needs; they acknowledged however that it would be challenging for X to move to Germany, as he did not speak German, in order to live with the applicants, whose languages he did not speak, either. The District Court also noted that the applicants had not for example examined whether X could start school in Germany if he were returned at the time. Furthermore, the District Court took into account that X had moved from the applicants when he was two and a half years old, and had become six and a half years when it was to take its decision. He had grown attached to his foster family, including a sibling there. The supporting services had explained that it was necessary for him to remain in stable and familiar conditions, and the District Court found that it would clearly lead to serious problems for him if he were to be removed from his foster home at the time. Based on the above, the District Court declined the applicants' claim to have X's care order lifted. Contact rights were fixed at three times yearly, each time for four hours.

13. On 27 January 2017 the High Court (*lagmannsrett*) refused leave to appeal against the District Court's judgment. It stated that it was not necessary in every child welfare case to appoint an expert to examine the

child's possible special needs and his or her parents' caring skills and in this case the applicants had not asked for an expert to be appointed. Furthermore, the High Court observed among other things that the District Court had based its conclusion on X's care needs on assessments of X made by the Educational and Psychological Counselling Service (*PPT*), his school, his kindergarten and his foster parents. As to the applicants' caring skills, the District Court had relied on their evidence given before it, on prior judgments, on evidence given by one of their friends, and on information from the child welfare services. The proceedings appeared adequate. It had not been necessary to appoint an expert to examine the applicants' caring skills and they had not so required before the District Court, either.

14. On 28 April 2017 the Supreme Court's Appeals Committee (*Høyesteretts ankeutvalg*) rejected the applicants' appeal against the High Court's decision.

B. Relevant domestic law

15. 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 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. According to section 4-21 the parties may request the County Social Welfare Board to discontinue the 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. By virtue of the same provision, the private parties can demand that contact rights also be reconsidered by the Board, as long as at least twelve months have passed.

COMPLAINT

16. The applicants' maintained that not lifting the care order in respect of X entailed a breach of 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."

THE LAW

A. The parties' and third-parties' submissions

17. The applicants submitted that the decision not to lift the care order had not been proportionate. The domestic authorities had not considered the long-term negative consequences of the applicants' not being awarded any contact with their child at a crucial time of the child's life, nor had they done enough to preserve their family ties.

18. Furthermore, the applicants submitted that the domestic authorities had not stricken a fair balance between the applicants' rights and the best interests of the child. They also complained that an expert had not been appointed to assess their caring abilities in the context of the proceedings complained of.

19. The applicants submitted that the Court had also to examine the extent of contact that had been allowed between the applicants and the child, as this had a direct bearing on the question of the placement of the child in public care.

20. The respondent Government submitted that the reasons adduced to justify the decision not to lift the care order had been both relevant and sufficient.

21. Moreover, the respondent Government maintained that the decision-making process had been fair and had afforded due respect to the applicants' rights. In particular, they highlighted that various specialists had been involved in the case at various stages.

22. The respondent Government maintained that though the application did not comprise a claim of a separate violation of Article 8 of the Convention with regard to contact rights, the proceedings complained of had to be put in their context.

23. The Government of Armenia, who had exercised their right to intervene in the proceedings according to Article 36 § 1 of the Convention, supported the applicants' complaint. They further reiterated general principles from the Court's case-law relating to childcare measures.

24. Moreover, upon having emphasised different aspects of the facts of the case, the Government of Armenia submitted that it was obvious that the domestic authorities had had no intention to establish a relationship between the applicants and the child with a view to the child's future return to them. They also emphasised, among other things, that there had been no updated expert reports since those that had been commissioned during the proceedings on the issuing of the care order in 2012 and 2013 and submitted that there had been a violation of Article 8 of the Convention in respect of both applicants.

25. The Government of Bulgaria, who had exercised their right to intervene in the proceedings according to Article 36 § 1 of the Convention,

submitted that the decision on contact rights was so closely linked to the decision not to lift the care order that the latter could not be examined without also taking account of the former. They further reiterated general principles from the Court's case-law relating to childcare measures.

26. Furthermore, the Government of Bulgaria emphasised that the applicants and their child had been aliens in Norway and spent limited time there. They also emphasised, among other things, that the applicants had first been granted rights to contact with their child with the District Court's judgment of 23 September 2013 and that they until then had been effectively deprived of the possibility to develop bonds with the child and to expose him to their languages and cultures for nearly a year.

27. The other third-parties – the Governments of the Czech and Slovak Republics and Ordo Iuris Institute of Legal Culture – who had been granted leave to intervene according to Article 36 § 2 of the Convention, 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.

B. The Court's assessment

28. 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).

29. Turning to the facts of the instant case, the Court considers that it cannot be called into question that the impugned decision not to lift the care order in respect of X, which was first taken by the County Social Welfare Board on 17 June 2016 and became final with the Supreme Court's Appeals Committee's decision of 28 April 2017 (see paragraphs 10 and 14 above), entailed an interference with the applicants right to respect for their family life as guaranteed by Article 8 of the Convention. Moreover, the Court considers that it cannot be called into question that that interference was in accordance with the law, notably the 1992 Child Welfare Act (see paragraph 15 above) and pursued the legitimate aims of protecting X's "health and morals" and his "rights" under the second paragraph of Article 8. The remaining question is whether the interference was also

proportionate and "necessary in a democratic society" as those terms are employed in that paragraph.

30. In that connection, the Court observes that the impugned decision not to lift the care order in respect of X was taken by the County Social Welfare Board and examined on review by the District Court (see paragraphs 10-12 above). The applicants were refused leave to appeal against the District Court's judgment (see paragraphs 13-14 above) and as that judgment became the final decision on the merits of their claim to have the care order lifted, the Court will centre its examination on that judgment.

31. The Court observes in that context that the District Court gave its judgment after having conducted a hearing over several days where a number of witnesses were heard (see paragraph 11 above). It notes that both applicants were represented by legal aid counsel and that the first applicant also appeared in person, while the second applicant attended via telephone from abroad.

32. As to the applicants' argument concerning the domestic courts' not having appointed an expert to assess their caring skills, the Court notes that, according to its case-law, the question of whether involvement of psychological expertise is necessary depends on the specific circumstances of each case (see *Strand Lobben and Others*, cited above, § 213, and the references therein). In the instant case the question of court-appointing an expert was examined by the domestic authorities and the Court does not find any grounds for setting aside the High Court's assessment which concluded that it was not necessary to court-appoint an expert in the light of the evidentiary picture as a whole (see paragraph 13 above).

33. Furthermore, in its judgment of 1 December 2016, the District Court advanced a number of reasons to justify its conclusion that the care order in respect of X could not be lifted at the time. It found, among other things, that X had special care needs of which the applicants had no understanding (see paragraph 12 above).

34. The Court bears in mind that domestic authorities are afforded a wide margin of appreciation in assessing the necessity of taking a child into care and that, owing *inter alia* to those authorities' having had the benefit of direct contact with all the persons involved, it is not the Court's task to substitute itself for those 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 (see, among other authorities, *Strand Lobben and Others*, cited above, § 210-11).

35. In the instant case, the Court has no basis for setting aside the District Court's conclusions to the effect that the applicants were unable to provide X with the requisite care according to his situation or that it would be harmful to move him from his foster parents at the time. As to the applicants' arguments relating to the limitations that had been imposed on their right to contact with X since he was first taken into care, the Court

notes that the proceedings concerning the care order that predate those that were instituted in 2016 and ended with the Supreme Court's Appeals Committee's decision of 28 April 2017 (see paragraphs 10-14 above) fall outside the scope of the Court's jurisdiction in the instant case, but may provide relevant context to the Court's assessment of the proceedings complained of (see, similarly, *Strand Lobben and Others*, cited above, §§ 145-148). In the instant case, the Court finds no indications of shortcomings in the impugned decision-making process due to alleged failures to grant more extensive contact rights at earlier stages of the child welfare case. The Court accordingly considers that the District Court gave relevant and sufficient reasons as to why X's public care had to continue and does not discern any shortcomings in the decision-making process.

36. On the basis of the above considerations, the Court finds that the application discloses no appearance of a violation of Article 8 of the Convention and that it must accordingly be declared inadmissible for being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 September 2021.

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Martina Keller
Deputy Registrar

Ganna Yudkivska
President