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

SECOND SECTION

DECISION

Application no. 39771/19
A.H.
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. 39771/19) 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 10 July 2019 by a Norwegian national, Ms A.H. ("the applicant"), who was born in 1993 and lives in Oslo, and was represented by Mr O. Hagen, 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 Government's observations;

the interest expressed by the applicant in pursuing the application;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a decision not to lift a care order.

2. A care order had been issued in respect of the applicant's daughter in 2015. A request to lift the care order was refused by the County Social Welfare Board on 21 December 2017 and the refusal was upheld by the District Court on 22 June 2018. The High Court refused the applicant leave to appeal against the District Court's judgment and on 11 January 2019 the

Supreme Court dismissed an appeal which she had lodged against the High Court's decision.

3. The applicant complained that the decision not to lift the care order issued in respect of her daughter had entailed a violation of Article 8 of the Convention.

THE COURT'S ASSESSMENT

4. The applicant argued that not lifting the care order had entailed an unnecessary and disproportionate interference with her right to family life with the child, in violation of Article 8 of the Convention. She further argued that the Board and the District Court had not made appropriate assessments of the family's situation, either with regard to the child or with regard to the mother, the applicant. She argued that she would have cooperated with the child's father in the event that the child had been returned to her daily care and that the authorities had not sufficiently assessed whether she could have resumed care with further assistance measures.

5. The Court finds that the decision not to lift the care order issued in respect of the applicant's child 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 aims of protecting X's "health" and "rights", in keeping with Article 8 § 2 of the Convention. The main legal issue arising is whether the interference was "necessary in a democratic society" within the meaning of that provision.

6. The general principles relevant to the necessity test provided in Article 8 § 2 of the Convention 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). For the purposes of the present analysis, the Court reiterates in particular that it recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see *Strand Lobben and Others*, cited above, § 211).

7. The Court observes that in its judgment of 22 June 2018, which was confirmed without further reasoning on the merits on appeal, the District Court carried out a detailed examination of the child's situation. It noted, *inter alia*, that she lagged behind in the development of her skills in "all areas" – motor, social, linguistic and cognitive. That court based its decision on a

breadth of information, including an updated report from a court-appointed expert who had, among other things, studied the case file, gathered information from third parties, visited the foster home, spoken with the applicant and the child's father and observed parent-child interaction. The expert considered that the applicant was incapable at the time of providing her daughter with the care she needed. The judgment states that, after two days of hearings in the case, the District Court had not been assured that she could do so. The Court notes at this point that the child's father, who also participated in the proceedings, did not request that the care order be lifted.

8. The Court also notes that the District Court, after already concluding that the applicant was unable to care for the child, additionally found that lifting the care order would cause serious harm to the child owing to the attachment she had developed to her foster parents. While the Court has no basis for calling into question that finding, which is a finding of fact, it observes on that point that in the domestic proceedings in which the care order had originally been issued prior to the proceedings complained of before the Court, severe limitations had been imposed on the parents' right to have contact with their daughter, with reference made to the case-law of the Supreme Court indicating that contact could be limited to three to six times per year when the care orders might be long term.

9. Indeed, the Court's jurisdiction in the instant case is limited to the proceedings related to the question of whether the care order should have been lifted and does not extend to the previous proceedings concerning the decision to issue the care order or the applicant's contact rights that were decided at that time. Those previous proceedings may nonetheless be relevant as context (see, for example, *Strand Lobben and Others*, cited above, § 148). The Court is particularly mindful that in recent years it has given judgments in several cases involving the respondent State in which it has found a violation of Article 8 of the Convention and in which it has identified various shortcomings relating to justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes based on conclusions already reached when children have been taken into care, to the effect that the care orders are likely to be long term. Those shortcomings have either in themselves largely led to the finding of a violation (see *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) or formed important parts of the context in which violations have occurred (see *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others v. Norway*, no. 39710/15, §§ 67-69, 10 March 2020; *Hernehult v. Norway*, no. 14652/16, §§ 73-74, 10 March 2020; *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020; and *Abdi Ibrahim,* cited above, § 152).

10. However, the Court does not find that the facts of the instant case bear resemblance to the facts of the cases cited in the previous paragraph. In the instant case, the District Court's considerations relating to the child's

attachment to the applicant were not decisive for the outcome and, given the court's findings on the issue of whether the applicant could provide the child with the care she needed, the Court considers that the domestic authorities provided relevant and sufficient reasons falling within their wide margin of appreciation for their decision not to lift the care order. The Court notes in that connection that the application is largely directed at the domestic authorities' assessments of the facts, which are, however, not normally for the Court to reassess. In the instant case, the Court does not in any event find any manifest errors or signs of arbitrariness which would justify its doing so. The Court notes, lastly, that the applicant did not argue that she had not been allowed to fully participate in the decision-making process or complain of any other specific procedural shortcomings. 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.

11. 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