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

SECOND SECTION

DECISION

Application no. 59747/19
H.L.
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. 59747/19) 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 5 November 2019 by a Portuguese national, Ms H.L. ("the applicant"), who was born in 1984 and lives in Oslo and was represented before the Court by Mr E.B. Tvedt, a lawyer practising in Sandefjord;

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 observations submitted by the Government;

the interest expressed by the applicant in pursuing the application;

the decision by the Government of Portugal not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application relates to a decision not to lift a care order in respect of the applicant's child, X, who had been in public care since 2013, after having first been placed there on an emergency basis.

2. In October 2013 the applicant's daughter, X, told her teachers that she had been beaten by her parents. An emergency care order was issued and the allegations were reported to the police at that time. A care order in respect of X was issued in 2014. X's parents were then granted the right to contact with X only under supervision.

3. On 21 January 2015 the City Court convicted the applicant and X's father of committing domestic violence against X. The conviction was upheld on appeal to the High Court. That court found that X had been beaten by her father on several occasions with a belt and at least once with a spatula on her hands and by the applicant on several occasions with a belt and once with a stick and on another occasion was slapped on the face.

4. In the proceedings at issue, on 7 September 2016 the applicant and X's father requested that an application be lodged with the County Social Welfare Board to have the care order lifted. Following the preparation of the relevant application by the municipal child welfare services, it was lodged with the Board on 13 January 2017. The application was dismissed by the Board on 13 March 2017. The Board's decision was upheld by the City Court on 6 December 2017 and on 13 March 2019 by the High Court.

5. In that judgment, the High Court noted that the child's parents had been convicted of extensive use of violence against X. It further noted that according to the judgment in the criminal case, X had lived with regular violence and in a state of uncertainty and fear of further violence during the period before she had been placed in public care. The High Court considered it problematic that X's parents maintained that X was lying. It also noted that the court-appointed expert had recommended that the care order not be lifted and that it was uncertain to what degree the parents would accept any assistance measures because, among other reasons, they had decided to discontinue contact sessions with X because they did not want the sessions to be supervised. X herself had given varying statements about where she wanted to live, but in a conversation with her spokesperson one week before the appeal hearing she had stated that she would prefer to live with her parents. Nonetheless, the High Court found that the conditions for lifting the care order had clearly not been met.

6. On 7 May 2019 the Supreme Court refused the applicant and X's father leave to appeal, whereby the decision against which the instant application before the Court is directed became final.

7. The applicant complained under Articles 5, 6 and 8 of the Convention that the decision not to lift the care order issued in respect of her daughter X had breached her right to respect for her family life and that the proceedings in question had lasted unreasonably long.

THE COURT'S ASSESSMENT

8. As regards her complaint about the decision not to lift the care order, the applicant relied on Articles 6 and 8 of the Convention and submitted that allegations made by X of violence were false. She also complained of a lack of procedural safeguards, in particular as to X's right not to incriminate her biological parents. Furthermore, the applicant submitted that X had not been sufficiently heard.

9. The Government contested the applicant's complaints and arguments.

10. The Court finds that the applicant's complaints in this regard fall to be examined under Article 8 of the Convention alone. The decision not to lift the care order entailed an interference with the applicant's right to respect for her family life for the purposes of Article 8 § 1. 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 her "rights". The remaining question is whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2.

11. The general principles relevant to the necessity test under 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).

12. The Court reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. In the instant case, the Court, having regard to the High Court's judgment of 13 March 2019, upheld on appeal, finds no basis for considering that the facts were established by the domestic authorities in any manifestly deficient manner or that there are other reasons for the Court to depart from their findings of fact. The Court finds that the High Court's reasons (see paragraph 5 above) were both relevant and sufficient to justify its decision not to lift the care order at the relevant time.

13. Turning to the applicant's various arguments relating to the decision-making process, the Court does not find any grounds for considering that the child was not sufficiently heard in the course of the proceedings at issue. It observes that X, who was 11 years old at the time, had been heard by various professionals on several occasions. Nor does it find in that connection that the applicant adduced anything specific which indicates any errors in the manner in which X's views were obtained or that the High Court did not

completely comprehend what her wishes were, the latter point being closely related to matters of evidence which are, as indicted above, not normally for the Court to reassess. Nor does the Court, noting that the subject of the present application is not the criminal proceedings against X's parents but rather those relating to the care order in respect of X, find a basis for considering that there were any other issues with regard to how X's views were obtained, notwithstanding the applicant's references to the rules of domestic law relating to the taking of evidence from children in cases involving criminal charges against their parents.

14. Lastly, the applicant, relying on Article 5 § 4, complained about the length of the proceedings. The Court finds that the complaint in the instant case equally falls to be examined under Article 8 (see, *mutatis mutandis*, *Ribić v. Croatia*, no. 27148/12, § 92, 2 April 2015). The Court does not find the overall length of the proceedings excessive, particularly in the light of the complexity of the case. With regard in particular to the period of six months from when the applicant requested that the care order be lifted until the County Social Welfare Board considered that request, which the applicant contested specifically, the Court, assuming that this period already falls within the ambit of Article 8, notes that during this period, the information needed to present the case to the Board was being gathered and the delay was not a result of passivity.

15. In the light of the above, 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. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention 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