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

SECOND SECTION

DECISION

Application no. 41172/20
M.A. and Others
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. 41172/20) 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 1 September 2020 by a Polish national, Ms M.A., who was born in 1979 and lives in Gdansk ("the first applicant") and who lodged the application on behalf of herself, her two sons and her two daughters ("the applicants");

the decision not to disclose the applicants' names;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns child welfare-measures.

2. The first applicant's twin sons were born in 2003 and were placed in foster care in 2010. On 16 January 2019 the County Social Welfare Board decided to withdraw the first applicant's parental responsibilities in respect of her sons and not to grant her any contact rights. On appeal, the City Court altered the decision on contact rights and granted her two video calls and one contact session per year. The High Court refused the first applicant leave to appeal against the City Court's judgment and on 29 January 2020 the Supreme Court dismissed an appeal by the first applicant against the High Court's decision.

3. The applicants complained, with reference to Articles 6 and 8 of the Convention, of the proceedings that took place from 2018 to 2020 in which the first applicant's parental responsibilities in respect of her two sons were withdrawn and in which limitations were imposed on her right to contact with her twin sons. The first applicant further maintained by reference to Article 6 § 2 of the Convention that the County Social Welfare Board had based its decision on circumstances in respect of which she had been acquitted in criminal proceedings.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 and Article 8 of the Convention

4. The Court notes that the first applicant lodged the application on behalf of herself, her two sons and her two daughters. As to the first applicant's standing to apply to the Court on behalf of the children, it does not find it necessary in the instant case to examine that issue, for the following reasons.

5. The applicants relied on Articles 6 § 1 and 8 of the Convention and maintained, *inter alia*, that the authorities had removed the children from the first applicant's and the father's care without ever having intended to reunite them and had limited the first applicant's right to contact with her twin sons and that the trial was unfair as the domestic courts did not rely on a sufficient factual basis.

6. The Court finds, firstly, that the applicants' complaint under Article 6 § 1 of the Convention in the circumstances is closely linked to the complaint under Article 8 and may accordingly be examined as part of the latter complaint (see, for example, *J.M.N. and C.H. v. Norway* (dec.), no. 3415/16, § 22, 11 October 2016, for a similar approach). As to the complaint under Article 8, the Court finds that it cannot be called into question that the measures complained of entailed an interference with the applicants' right to respect for their family life. 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 the children's "rights" and "health". The remaining question is whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2.

7. The relevant general principles 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).

8. As to whether the domestic authorities gave relevant and sufficient reasons for their decisions and as to whether the decision-making process afforded the applicants with sufficient protection of their interests, the Court observes that the judgment of 1 July 2019 of the City Court, which was the highest court instance to make its own findings of fact, was taken after that court had held a hearing over three days, in which the first applicant was

represented by counsel and gave evidence via Skype. Interpreters translated the hearings simultaneously. The children's father was also represented by counsel and gave evidence. The children each had a lawyer who represented them. A psychologist appointed as an expert by the child welfare services was also present and gave evidence. The Court has no basis for presuming that it was incorrect that the psychologist had been unable to contact the first applicant. There is, in the Court's assessment, nothing to indicate that the hearing or other aspects of the proceedings were negatively affected by any procedural shortcomings or that the applicants were not allowed fully to participate in the decision-making process for any other reasons.

9. As to the reasons given by the City Court for its decision, the Court notes that, after stating at the outset that particularly weighty reasons had to be present in order to justify a decision not to give contact rights to a parent in respect of his or her child in foster care, that court carried out a detailed examination of the first applicant's situation and the situation of the children's father. It subsequently examined the situation of the children, who were almost 16 years old at the time, and took note of each child's opinion on the matter. Both children were parties to the proceedings and expressed, through their individual counsels, that they did not wish for more extensive contact with the first applicant. It also took into account the opinion of the psychologist, who stated that contact would be "catastrophic" for the children. Regardless of the psychologist's conclusion, the City Court held, by two votes to one, that the first applicant should be given the right to two video calls and one contact session per year. The children's father was also given contact rights.

10. The Court further observes that the City Court withdrew both parents' parental responsibilities in respect of the two children, principally for practical reasons: owing to a lack of cooperation, there had been problems getting documents such as passports and bank cards for the children, which had created difficulties. The first applicant had also refused to give contact information to the child welfare services and would only allow contact via an Internet messaging service, which had complicated the necessary communication.

11. In determining whether the domestic authorities gave relevant and sufficient reasons for their decisions regarding the first applicant's contact rights and parental responsibility in respect of her two sons in the light of these elements, the Court observes that the application is to a large extent directed at events and proceedings predating those which took place between 2018 and 2020, relating instead in part to the decision to issue care orders for the first applicant's two sons in 2010 and in part to the decisions on contact rights that were taken at that time. While those matters and proceedings as such do not fall within the Court's jurisdiction in the instant case, they form a relevant context for its examination of the proceedings which took place between 2018 and 2020 and the decisions adopted in the course of those proceedings (see *Strand Lobben and Others*, cited above, § 148).

12. At the same time, the Court also observes, and it has not been disputed by the parties, that the first applicant did not apply to have the care orders lifted and that it is stated in the domestic decisions that over long periods, she did not avail herself of the contact rights that she had actually been granted. These matters also form part of the context for the Court's assessment of the relevant domestic proceedings. Moreover, the Court takes note of the particular circumstances of the case, which concerned two children who were almost 16 years old and had lived in foster care for a very long time. Both children had supported the child welfare services' request that the first applicant not be given any contact rights and that her parental responsibilities in respect of them be withdrawn. Viewing the case as a whole, the Court concludes that the domestic authorities gave relevant and sufficient reasons for their decisions in the impugned proceedings and that the interference with the applicants' right to respect for their family life was proportionate to the legitimate aims pursued and thus necessary within the meaning of Article 8 of the Convention.

13. In the light of the above, the Court concludes that this part of the application is "manifestly ill-founded" within the meaning of Article 35 § 3 (a) and as such must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 6 § 2 of the Convention

14. In so far as the submissions referring to Article 6 § 2 of the Convention may be interpreted as a separate complaint of a violation committed by the Board of the first applicant's right to be presumed innocent, the Court observes that the first applicant did not either formally or in substance rely on Article 6 § 2 in her appeals either to the High Court or the Supreme Court. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of 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 14 September 2023.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President