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

SECOND SECTION

DECISION

Application no. 45413/20
R.K. 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. 45413/20) 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 25 September 2020 by three Norwegian nationals, Mr R.K. and Ms C.G. ("the first and second applicants"), who were born in 1994 and 1996 respectively, and their child ("the third applicant"), who was born in 2017, and who were represented by Ms A.R. Lykken, a lawyer practising in Melhus;

the decision not to disclose the applicants' names;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application relates to proceedings in which a care order in respect of the third applicant was issued, and the first and second applicants' contact rights during the placement in care.

2. Shortly after the birth of the first and second applicants' daughter in 2017, the family moved into a family centre. After notifications of concern had been submitted by the family centre to the municipal child welfare services, the child was placed in public care on an emergency basis on 12 February 2018. The parents were granted contact of one hour per week. On 9 July 2018 the County Social Welfare Board issued a care order setting

the parents' contact at two hours four times per year. The parents applied to the courts for a review of the Board's decision.

3. On 8 February 2019 the District Court set aside the Board's decision.

4. On 24 June 2019, on an appeal by the municipality against the District Court's judgment, the High Court concurred with the Board and accordingly upheld the care order. The High Court set the parents' contact at two hours four times per year.

5. The Supreme Court's Appeals Committee granted the parents leave to appeal against the High Court's judgment and decided to examine the case in a grand chamber formation composed of eleven judges.

6. On 27 March 2020, after conducting a hearing, the Supreme Court upheld the High Court's judgment in so far as it concerned the care order. Supervised contact was set at two hours eight times per year. Shortly before the Supreme Court's hearing, which was conducted on 5 and 6 March 2020, the applicants' counsel had been replaced by a lawyer who had the right to plead cases before the Supreme Court. Furthermore, the Supreme Court appointed an expert in psychology to assist it in its decision-making process.

7. With reference to Article 8 of the Convention, the applicants complained about various aspects of the above proceedings. In particular, they asserted that the domestic authorities had insufficiently availed themselves of expertise. They further argued that insufficient assistance measures had been attempted in order to help the parents improve their caring skills. Furthermore, the Supreme Court's processing of the case had been inadequate.

THE COURT'S ASSESSMENT

8. The Court observes that the application was lodged by two parents on behalf of themselves and their daughter, a minor. As to the parents' standing to apply on behalf of their daughter, the Court does not find it necessary in the instant case to examine that issue for the following reasons.

9. The Court notes that the application concerns proceedings which took place between 2018 and 2020 in which a care order was issued and the first and second applicants' contact rights in respect of the child were decided. The applicants relied on Article 8 of the Convention and submitted that their right to respect for their family life had been violated, basing their complaint on three grounds. Firstly, there had been insufficient expert involvement at the time when the child was first placed in emergency care. Secondly, the authorities had not sufficiently strived for family reunification. Thirdly, the Supreme Court had not conducted the proceedings before it with the requisite diligence; it had, among other things, relied too heavily on the assessments of its appointed expert and should have allowed the persons involved to give evidence directly before it.

10. The Court notes that the applicants did not as such maintain that the substantive decisions taken in the course of the impugned proceedings in and of themselves entailed a violation of Article 8 of the Convention; rather they submitted specific complaints relating to the decision-making process and also argued that, overall, the domestic authorities had not, throughout the proceedings, sufficiently attended to the ultimate aim that the family be reunited. It finds it nonetheless established that the proceedings in question entailed an interference with the applicants' right to respect for their family life under Article 8. 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 child's "health" and "rights". The remaining question is thus whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

11. The general principles relevant to the Court's assessment of that issue were 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).

12. In determining whether the applicants have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case, which they contested, the Court notes that the Supreme Court upheld the High Court's judgment in so far as it concerned the care order. In this context, the Supreme Court stressed that such a measure could only be decided, when deemed necessary, based on the child's situation and that the measure must be in the child's best interest. Turning to the case's specific circumstances, the Supreme Court relied on the expert's report. It made a concrete assessment of the first and second applicants' ability to care for the child individually and jointly. In this respect, the Supreme Court noted that the first applicant had a learning disability and reduced ability to transfer knowledge into new situations. Based on the expert's report, there were also significant deficiencies in the second applicant's ability to care for the child, which entailed that he would not be able to compensate for the shortages on the first applicant's hand.

13. Proceeding to the specific complaints of the applicants regarding the decision-making process, the Court notes at the outset that the decision to issue a care order in respect of the third applicant and the subsequent decision in respect of the first and second applicants' contact rights were assessed at all levels of jurisdiction. The Board, the District Court, the High Court and the Supreme Court each gave detailed reasons for their decisions and judgments. Throughout the proceedings the first and second applicants were represented by legal aid lawyers and attended and gave evidence at hearings before the District Court and the High Court. They also appeared before the Board. Moreover, court-appointed expert psychologists conducted meetings

with the applicants and observed contact sessions. They gave written reports and presented their findings during the hearings. A large number of witnesses also participated at various stages.

14. In the light of the foregoing, the Court does not find any indication that the first two applicants were not allowed to fully participate in the decision-making process or that for other reasons the proceedings as a whole suffered from any shortcomings. As to the Supreme Court's reliance on the expert's assessment and the fact that the persons involved did not give evidence directly before it, the Court takes into account that the Supreme Court was, after the case had already been examined by the Board, the third level of jurisdiction at which the case was examined, and that it amended the judgment under appeal to the applicants' benefit by increasing their contact rights. The Court is unable to identify any shortcomings in the Supreme Court's establishment of the facts, or in its processing of the case owing to the fact that the applicants were instructed to be represented by a lawyer who had the licence to plead cases before the Supreme Court.

15. As to the applicants' argument that there had been insufficient expert involvement at the time when the child was first placed in emergency care, the Court takes note of the Supreme Court's examination, in the proceedings here at issue, of the situation at the time when the emergency care order was implemented and its justification. While the parents did not appeal against the emergency care order, it suffices for the Court to note that in the instant case it, in any event, finds no grounds for questioning the Supreme Court's assessment to the effect that the emergency placement had been well-founded. As to the specific issue of expert involvement, the Court bears in mind that the necessity of involving an expert always depends on the individual circumstances of each case (see, for example, *Strand Lobben and Others*, cited above, § 213, and *Sommerfeld v. Germany* [GC], no. 31871/96, § 71, ECHR 2003-VIII (extracts)) and that the instant case involved an emergency situation. The Court is not persuaded that the failure to obtain an expert opinion prior to the emergency placement constituted a flaw in the proceedings.

16. With regard to the applicants' general argument that the authorities had not sufficiently strived for family reunification, the Court takes note of the Supreme Court's reasons to the effect that the expert, who had been appointed by the District Court and the High Court, explained that a "significant number" of assistance measures had been attempted in order to facilitate the parents' provision of care to the child and that it was highly uncertain whether further extensive measures could remedy the shortcomings. In this connection, the Court observes that the domestic authorities had attempted less intrusive measures before resorting to the issuing of a care order, *inter alia*, by offering the family a stay at a family centre immediately after the birth, where they had received guidance from a team that included a psychologist. During the stay, it had become clear that

the parents could not provide the child with adequate care, and there had been particular concerns relating to the child's primary needs, such as in respect of food intake and proper care. In addition, observations of the parents' harsh handling of the child had caused concern for the child's health and safety.

17. Before the Court, the applicants have pointed to specific measures that were not attempted, such as guidance with the use of video recordings. As to the exact measures which were or should have been attempted, the Court must however bear in mind that it is the national authorities that have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic 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, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *Strand Lobben and Others*, cited above, § 210). Furthermore, as to the specific issue of what information had been given to the child about her biological origins, it suffices for the Court to note in the instant case that no complaint concerning that matter was made in the domestic proceedings at issue.

18. In the light of the above circumstances, the Court considers that the instant case does not disclose any shortcomings relating to the domestic decision-making process and finds that the interference with the applicants' right to respect for their family life was "necessary in a democratic society", for the purposes of Article 8 § 2.

19. It follows that the application is, in any event, 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