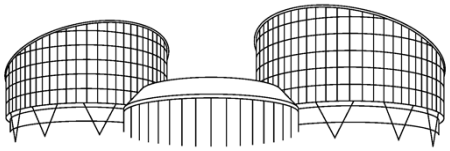

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 36825/21
M.R. and K.G.
against Norway

The European Court of Human Rights (Second Section), sitting on 12 March 2024 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. 36825/21) 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 June 2021 by two Norwegian nationals, Mr M.R. ("the first applicant") and Ms K.G. ("the second applicant"; together "the applicants"), who were born in 1971 and 1970 respectively and live in Bodø, and were represented before the Court by Mr K. Sørensen, a lawyer practising in Oslo;

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, in particular proceedings in which it was decided not to lift a care order that had been issued in respect of the applicants' child and in which the applicants' contact rights were determined.

2. The first applicant is the father, and the second applicant is the mother of X, born in 2011. Starting in 2014, the child welfare services received several notifications of concern relating to X's care situation, which had been prompted by, *inter alia*, statements he had made in his kindergarten indicating that he was subjected to violence at home. In 2017, the second applicant and X lived at an emergency centre for a shorter period. Later that same year, the

child welfare services received notices of concern related to the second applicant's use of narcotic substances. A care order was issued with respect to X on 1 February 2018. During judicial review proceedings, the High Court noted that it could not be considered a long-term placement. X moved in with his foster parents, who were the second applicant's brother and his partner, in 2018.

3. On 9 October 2019 the second applicant applied for the care order to be lifted. As the applicants did not live together, there was an agreement that if the care order were lifted, X would stay with the second applicant.

4. On 9 March 2020 the County Social Welfare Board dismissed the application. It examined X's care needs, and his opinion was heard. The Board noted, *inter alia*, that X had been assessed by the Child and Adolescent Psychiatry Outpatient Clinic, who described him as a vulnerable boy who was often frightened and with traumas from previous neglect. It was, however, noted that he had developed well without any functional impairments. X stated that he wanted to have contact with the applicants but had specifically requested them not to talk about him moving back home. He was described as having adverse reactions after contact sessions, such as problems with sleep, nervousness and fear. He stated before the Board that he was happy in the foster home, and that he wished to stay there. The Board further assessed the second applicant's caregiving abilities in addition to the role that the first applicant would have in the family. It was noted that the second applicant, at the time, could not provide X with sufficient emotional care; she trivialised X's experiences and needs and dismissed his statements of frightening experiences while living with the applicants. It was noted that the second applicant struggled to control her emotions, which, according to the Board, could make it challenging to follow up on X. It further transpired that the second applicant had told X that the foster parents did not really care about him, and that both applicants often talked to X about him soon returning to the applicants who were living in another city, which had stressed X. The Board also examined the measures that had been attempted by the child welfare services. It noted that steps had been taken in order to improve cooperation between the second applicant and the foster family and that certain guidance measures had been put into place, albeit too late, and it also noted that the second applicant had refused those measures. Overall, the assistance measures had not helped and the second applicant was considered not to have developed her caregiving skills. The first applicant's contact with X was set at two times per year and that of the second applicant at three times per year. In addition, they were granted two joint contact sessions twice per year. All of the contact sessions were to last for four hours.

5. The applicants brought the case before the courts for judicial review and the City Court appointed an expert psychologist, who spoke with X on two occasions and submitted a report. The City Court's professional judge also met with X and spoke with him during the proceedings. In a judgment of

1 December 2020, the City Court upheld the decision not to lift the care order. The City Court examined X's care needs, his opinions and the second applicant's caregiving abilities, as had the Board, in addition to the role which the first applicant would have in the family. X was described as having adverse reactions when it was a question of his returning to the second applicant, who lived in another town; he became restless, had heart palpitations, was sweating and visited friends in order to keep his "head busy". He described several frightening events during his childhood, including domestic violence against the second applicant. In connection with these traumas, he described seeing "visions" and having "ugly and strange voices in his head". The City Court considered these statements to be worrisome. The expert described X as a vulnerable child who should not be "experimented with" by subjecting him to further stress or hardship. The City Court further examined the measures that the child welfare services had attempted, which were considered to have been extensive, in order to assist the second applicant in improving her caregiving skills, and the question whether she could provide X with adequate care if further assistance measures were offered, in respect of which it concluded in the negative. In this connection it noted that the child welfare services had done what could be expected of them and that the second applicant had not made use of the measures offered. The City Court altered the contact between X and the second applicant to include five six-hour sessions per year. The first applicant's contact rights were set at six hours two times per year. They were also granted two additional six-hour contact sessions with X per year, during part of which they would be together and partly each alone with X.

6. On 2 February 2021 the High Court refused the applicants leave to appeal against the City Court's judgment and on 3 March 2021 the Supreme Court dismissed an appeal lodged by them against the High Court's decision.

7. In their application to the Court, the applicants relied on Articles 8, 17 and 18 of the Convention, arguing that the domestic authorities had not only taken insufficient measures to reunite the family following the issuance of the care order, but that they had furthered aims that had not been intended to achieve reunification of the family.

THE COURT'S ASSESSMENT

8. The Court notes that the main submission underpinning the applicants' complaints is that the domestic authorities had not facilitated any reunification of the family. The applicants argued that, on the contrary, the authorities had abused the provisions in domestic law which allowed for interference with the applicants' right to respect for their family life in order to further aims which were not legitimate under the Convention.

9. The Court considers that these complaints fall to be examined under Article 8 of the Convention alone. It finds that the domestic courts' decision

not to lift the care order and to limit the applicants' contact rights with their son entailed an interference with the applicants' right to respect for their 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 was applicable at the material time. It pursued the legitimate aim of protecting X's "rights" and his "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

10. The Court notes that the proceedings at issue in the instant case are only those related to the question of whether the care order should have been lifted and not the previous proceedings concerning the decision to issue the care order, including the decisions on the applicants' contact rights that were taken at that time. Those previous proceedings may nonetheless be relevant as context (see, for example, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 148, 10 September 2019). As regards the applicants' complaints relating to the alleged absence of measures to facilitate family reunification during the period after the termination of the initial care order proceedings, the Court notes that these matters were examined in the course of the proceedings in issue in the present case. The level of contact that was actually facilitated in the period following the placement decision will also be relevant in that connection.

11. The general principles relevant to the necessity test were extensively set out in *Strand Lobben and Others* (cited above, §§ 202-13) and have since been restated in a number of cases, including *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021). From those principles, it follows that the Court must determine whether, in the light of the entirety of the case, the reasons adduced to justify the measures in question were relevant and sufficient for the purposes of Article 8 § 2 and whether the applicants have been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

12. In the instant case, the Court notes that the question whether the care order in respect of X could be lifted and the granting of contact rights to the applicants were thoroughly examined both by the County Social Welfare Board and by the City Court on review (see paragraphs 4 and 5 above). In both sets of proceedings, the examination of evidence was extensive and detailed reasons were provided. In particular, the Court notes that the City Court, which gave what became the final decision on the merits, closely examined X's care needs, the parents' caregiving skills and also the amount of contact which would address both X's best interests at that time and his long-term interests in being reunited with the second applicant. As concerns the amount of contact, the City Court referred to statements given by the expert psychologist and gave a concrete explanation relating, *inter alia*, to the need to limit X's adverse reactions after contact sessions, which included his statements about experiencing hallucinations and X being impacted by the

second applicant's negative attitude and mistrust of the foster home. As part of the examination, the Board and the City Court scrutinised the assistance measures which had been offered to the second applicant and whether she could provide X with adequate care if further assistance measures were offered. X's own opinions were obtained during the proceedings and the Court finds no grounds for calling into question that the decisions were taken in order to further his best interests.

13. In so far as the applicants' complaint under Article 8 of the Convention also encompasses the contact arrangements that had been decided, the Court bears in mind that it has recently given judgments in several cases involving the respondent State in which it found a violation of Article 8 of the Convention relating to the justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes (see, for cases where shortcomings in relation to decisions on contact rights in themselves led to the finding of a violation, *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; see also, for cases where similar shortcomings formed important parts of the context in which violations had occurred, *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).

14. The Court considers, however, that there are important differences in the facts of this case compared to those cited in the previous paragraph. In particular, it is apparent from the domestic decisions that numerous assistance measures were offered, several of which were refused. Furthermore, the City Court's detailed reasons extended to the question of contact rights and were based on a concrete assessment of X's wishes and the effects of the contact sessions on him.

15. As regards the decision-making process, the Court observes that throughout the domestic proceedings, the first and second applicants were represented by individual legal aid lawyers, they had the opportunity to be present, give statements and present evidence. In addition to receiving statements from the first and second applicants, the City Court heard the child, ten witnesses and a court-appointed expert psychologist. The City Court made a concrete assessment of the evidence presented, and there is no appearance of any procedural shortcomings in this respect. The reasons provided for upholding the care order and the contact rights granted were detailed and thorough. In the Court's assessment, the applicants' interests were thus sufficiently protected in that process. The Court therefore considers that the reasons given by the domestic courts for their decisions were relevant and sufficient.

16. The Court also bears in mind overall that, unlike, for instance, in *A.S. v. Norway* (no. 60371/15, §§ 58 ss., 17 December 2019), which concerned a situation where the applicant mother and the child were refused any contact with each other, in the instant case the applicants continued to enjoy their right to respect for their family life through the contact regime that had been established and was extended by the City Court, expressly in order to facilitate reunification of the family in the future. The Court further finds it relevant in the instant case that under domestic law, a parent may re-apply to have the care order lifted or the contact rights changed again (see, for example, *E.M. and Others v. Norway*, no. 53471/17, § 59, 20 January 2022).

17. In view of the above, the Court considers that the interference with the applicants' right to respect for their family life was proportionate to the legitimate aims pursued and was thus "necessary in a democratic society" for the purposes of Article 8 § 2.

18. On the basis of the findings above, the Court concludes that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It follows that it 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 11 April 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President