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

SECOND SECTION

DECISION

Application no. 2287/22
A.M.
against Norway

The European Court of Human Rights (Second Section), sitting on 4 June 2024 as a Committee composed of:

Jovan Ilievski*, President*,
Diana Sârcu,
Gediminas Sagatys*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 2287/22) 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 16 December 2021 by a Norwegian national, Ms A.M. ("the applicant"), who was born in 1977 and lives in Oslo, and was represented before the Court by Mr A. Nyheim Jenssen, a lawyer practising in Stavanger;

the decision not to disclose the applicant's name;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns proceedings in which care orders were issued in respect of the applicant's three children, X, Y and Z, who were born in 2013, 2016 and 2019 respectively.

2. In 2015 the child welfare services received a notification of concern in respect of X in connection with the applicant's mental health and her distrust of assistance from the community health centre. After contacting the applicant, the child welfare services considered that no measures were necessary at that time. In 2019, when X started school, several further notifications of concern in respect of both X and Z were submitted.

3. A meeting between the child welfare services and the applicant was held on 2 December 2019, during which the applicant was informed that the

children's situation would be examined by psychologists and that, owing to the complexity of the matter, the examination would be conducted over an extended period of six months. During the following period, further information was gathered and a number of further notifications were received. The two psychologists who had been appointed to examine the case also notified the child welfare services of serious concerns and uncertainties with regard to how the applicant would react to their report. On 15 June 2020 an emergency placement decision was made.

4. On 21 October 2020 the County Social Welfare Board issued care orders in respect of all three children. In its decision the Board, relying on the experts' report, found that there were serious concerns about the applicant's mental health. She appeared to have a deviant suspicion in respect of the health centre, neighbours, school and child welfare services. The applicant did not want to disclose where she worked or her address. It transpired that the applicant's anxiety was transferred to the children and this was likely to cause them direct psychological harm. It was also pointed out that, as a result of this, X had become convinced that he was a victim of sexual abuse. The Board emphasised that all three children were vulnerable and had an increased need for care. Among other things, the Board referred to the expert report in which the experts had expressed concern that the children were characterised by under-stimulation, lack of care and anxiety. X's opinion was also taken into account.

5. The applicant challenged the decision before the District Court, which, sitting as a bench consisting of one professional judge, one lay person and one psychologist, conducted a hearing over five days, starting on 5 February 2021. During the hearing the parties were informed that the psychologist sitting on the bench knew the two psychologists who had been appointed by the child welfare services to examine the case and, in that capacity, had been called on to give evidence, as she had worked with them until 2013 or 2014 and they had kept in contact since then. The District Court decided that those connections were not grounds for recusal, as their professional relations had been limited and had taken place several years before and the contact since then had not disclosed the existence of close friendships that might indicate bias. During the hearing, twenty witnesses gave evidence and three psychologists gave evidence as experts.

6. In a judgment of 19 March 2021 the District Court upheld the Board's decision, after making similar assessments to those of the Board.

7. On 27 May 2021 the High Court refused the applicant leave to appeal. That court considered that the professional relations and limited subsequent contact between the psychologist sitting on the District Court's bench and the two psychologists who had given evidence were too distant and too limited to indicate any bias. As regards other aspects of the case, the High Court noted that the case had been thoroughly examined by the psychologists who had been appointed by the child welfare services and by way of an extensive

hearing which had lasted five days and had involved, among other things, evidence given by twenty witnesses. The High Court accepted that the reasons given by the District Court were satisfactory.

8. On 12 July 2021 the Supreme Court refused the applicant leave to appeal against the High Court's decision.

9. Under Article 6 of the Convention the applicant complained that the District Court had not been impartial and under Article 8 of the Convention that the care orders had been issued by that court without a sufficiently broad basis for its decision.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 of the Convention

10. As concerns the applicant's complaint that the participation of the psychologist on the District Court's bench had constituted a violation of her right to a fair trial by an independent and impartial tribunal as required by Article 6 § 1 of the Convention, the Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say, by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009; and *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015).

11. In the instant case there is no indication of any subjective partiality. With a view to the objective test, the Court notes that the matter concerned a psychologist on the District Court's bench who, up until six or seven years before the District Court proceedings, had worked together with the two psychologists who were called as witnesses. They had since had some personal and telephone contact and given some reactions to each other's posts on social media before they became involved in the applicant's case. The allegations of bias were examined in detail both by the District Court itself as well as by the High Court on appeal (see paragraphs 5 and 7 above) and the Court is satisfied that, in view of the reasons given by those authorities and the level and nature of the connection between the three psychologists, there was no legitimate reason to fear any lack of impartiality in the applicant's case.

12. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 8 of the Convention

13. The Court finds that the care orders which were issued in respect of X, Y and Z 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 domestic law, namely the 1992 Child Welfare Act, which was applicable at the material time, and pursued the legitimate aim of protecting the three children's "rights" and their "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

14. In that connection, the general principles relevant to the necessity test 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). 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 applicant has been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212). With a view to the applicant's specific submissions, the Court also reiterates that it recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care and that it has observed that as a general rule it is for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (ibid., §§ 211 and 213).

15. In the instant case, the applicant submitted that the District Court had had an insufficiently broad basis for its decision to uphold the care orders. In particular, she argued that the two psychologists who had been appointed by the child welfare services to examine the case (see paragraph 3 above) had not spent sufficient time observing and engaging in conversations with the applicant, in particular in respect of her relationship with the children. They had observed her and conversed with her for fourteen and a half hours whereas the observation of her relationship with the children had only lasted for four and a half hours.

16. The Court notes, however, that the child welfare services also obtained large amounts of information from various other sources and that the applicant was herself given every opportunity to present her own evidence and arguments in the course of the proceedings before the District Court. The court conducted a hearing over five days; the hearing involved, among other things, evidence given by twenty witnesses and three expert witnesses,

including the two psychologists who had been appointed by the child welfare services. The District Court examined in detail the care needs of each of the children and the applicant's caregiving abilities before it concluded that care orders were necessary. In view of the proceedings overall, the Court finds no grounds for considering that the District Court, whose decision was upheld on appeal, had an insufficiently broad and updated basis for its decision (contrast, for example, *A.S. v. Norway*, no. 60371/15, § 68, 17 December 2019). Having regard to the specific grounds given by the domestic authorities for the care orders (see paragraphs 4, 6 and 7 above), it concludes that the domestic courts gave relevant and sufficient reasons for their decision to uphold the care orders and that this measure was therefore "necessary in a democratic society", for the purposes of Article 8 § 2 of the Convention.

17. In view of its findings above, the Court concludes that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 June 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President