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

SECOND SECTION

DECISION

Application no. 28160/22
I.L.
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. 28160/22) 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 1 June 2022 by a Russian national, Ms I.L. ("the applicant"), who was born in 1987 and lives in Harstad, and was represented by Mr O.G. Jensen, 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 case concerns proceedings in which it was decided not to lift a care order issued in respect of the applicant's child, X.

2. X was born in 2018 and a care order was issued in respect of him by the County Social Welfare Board on 30 January 2019. The care order was upheld on review by the courts and, in the course of those proceedings, the applicant and the child welfare services reached an agreement regarding contact rights.

3. On 17 September 2020 the applicant applied to have the care order lifted. That application was dismissed by the Board on 18 February 2021. On an appeal by the applicant, the District Court conducted a review of the proceedings and held a hearing from 25 to 27 August 2021, in the context of

which an expert psychologist was appointed and drew up a report. In a judgment of 17 September 2021 the District Court upheld the decision not to lift the care order and the applicant's contact in respect of X was set at one and a half hours six times per year.

4. On 22 December 2021 the High Court refused the applicant leave to appeal against the District Court's judgment and on 10 March 2022 the Supreme Court dismissed an appeal by the applicant against the High Court's decision.

5. Under Article 8, the applicant complained that there had been insufficient grounds for upholding the care order in respect of her child and that insufficient attempts had been made to facilitate the reunification of the family. Under Article 6 of the Convention, she complained that insufficient regard had been paid to the need for oral hearings and to the possibility of an appeal, since the case had only been examined on the merits at two levels of jurisdiction.

THE COURT'S ASSESSMENT

6. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case and that it has previously held that whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. It considers that the complaints raised by the applicant under Article 6 of the Convention are closely linked to her complaint under Article 8 and shall accordingly be examined as part of the latter complaint only (see, among other authorities, *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, § 111, 1 December 2009).

7. The Court finds that the decision to uphold the care order issued in respect of X 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 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.

8. 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 parents have been adequately

involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

9. As to the reasons provided for the decision to uphold the care order, the Court observes that both the Board and the District Court provided detailed explanations. The District Court examined both X's care needs and the applicant's competence as a caregiver. It noted that the material conditions of the applicant's home were limited and referred to, among other things, the court-appointed expert's report in which the expert described the home as "extremely dirty" and that he had found dried dog excrement and other filth on the floors and tables when he had visited her. Those material conditions were not, however, decisive; what was decisive for the decision by the District Court was that there had been repeated episodes where the applicant, when X was a newborn, had given him too little food and too little stimulation and that he was often left alone. The District Court specifically assessed whether the conditions had improved but concluded that the applicant could not provide X with the care he needed. In this context, it was noted that the applicant did not understand why the circumstances that had led to the care order had been problematic, which limited her willingness and ability to improve her caring skills. Reference was also made to the applicant's previous mental health problems, without this being given decisive weight, and that it had emerged that she was unable to regulate her behaviour and emotions, and unable to make good choices for herself and X. Among other things, it emerged that the applicant had displayed aggressive and harassing behaviour towards actors involved in the care order and that she had conspiracy theories about the basis for the care order decision. The court-appointed expert noted that she had been unable to identify any clear cause of the applicant's issues but concluded that her difficulties and behaviour were in any event incompatible with caring for a small child. Moreover, the District Court emphasised that X was a child with particular needs who needed a calm and stable caregiver who could understand his signals. The court-appointed expert had described X as sensitive and afraid of loud noises. The expert had also noted that there was a clear risk of development issues if he became exposed to a relational breakdown.

10. In determining whether the reasons for the impugned measures were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of an intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area (ibid., § 210). In the instant case, bearing in mind the wide margin of appreciation afforded to the domestic authorities in respect of care orders and taking into account the fact that the national authorities had the benefit of direct contact with all the persons concerned at the very stage when the

measures were envisaged and implemented, the Court finds that the reasons advanced in respect of the decision not to lift the care order were relevant.

11. As to the applicant's argument to the effect that insufficient measures had been taken in order to facilitate family reunification, in particular with regard to the manner in which the contact sessions had been carried out, the Court notes that she submitted that argument to the domestic authorities. In its judgment, the District Court examined the matter and noted that the child welfare services had made various attempts to improve the quality of the contact sessions, including by changing locations and personnel and by asking the foster mother to keep a distance during the sessions. It noted that improvements had not been noteworthy and stated that the main reason why the contact sessions had not been effective was on account of the applicant's behaviour. The High Court held that the aim of reunification persisted and that the child welfare services should continue to assess the measures which could be offered to the applicant in order to improve the quality of the contact sessions. If the applicant's ability to contribute to the contact sessions improved, the amount of contact would be increased. It was, however, difficult for the High Court, on appeal, to give any indication as to the type of concrete measures which should be attempted in this connection.

12. Taking particular note of the assessments and reasons provided by the District Court and the High Court in respect of the manner in which the contact sessions had been carried out and the need for the child welfare services to continue to monitor the matter, the Court does not find any basis for considering that the domestic authorities paid insufficient regard to the ultimate aim that the family be reunited because of any shortcomings in that connection.

13. As to the applicant's submissions relating to alleged procedural shortcomings, the Court first observes that, after the applicant had already been heard in person by the County Social Welfare Board, the District Court delivered a thoroughly reasoned judgment following proceedings during which an oral hearing had been conducted over three days and in which an expert psychologist had provided a report. Furthermore, the High Court and the Supreme Court decided upon the applicant's requests for leave to appeal and appeal respectively. Having regard to the material before it, the Court does not consider that there was a situation in which the authorities had too limited evidence from which to draw conclusions with respect to the applicant's caregiving skills and X's care needs when reaching their decision not to lift the care order.

14. In view of the considerations above, the Court concludes that the decision not to lift the care order was based on reasons that were both relevant and sufficient and was proportionate to the legitimate aims pursued and thus "necessary in a democratic society", for the purposes of Article 8 § 2 of the Convention. It follows that the application is 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