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

SECOND SECTION

DECISION

Application no. 29789/21
I.O. and R.A.
against Norway

The European Court of Human Rights (Second Section), sitting on 16 April 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. 29789/21) 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 3 June 2021 by two Sudanese nationals, Mr I.O. and Ms R.A. ("the applicants"), who were born in 1986 and 1992 respectively, live in Oslo and were represented before the Court by Ms C. Schjatvet and Mr A. Humlen, lawyers practising in Oslo;

the decision not to disclose the applicants' names;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The first applicant is the father and the second applicant is the mother of twin boys, X and Y (born in 2017), and a girl, Z (born in 2018). The application concerns care order proceedings, including care orders issued in respect of the applicants' three children and decisions on contact rights during the placement.

2. On 31 October 2017, when the twins were almost six months old, the family went to a hospital emergency department because X was in pain. On closer examination it was discovered that the child had a broken arm and rib. In addition, bruises were observed on Y. The findings were reported to the police and the parents were arrested on 1 November 2017. On the same day,

the children were placed in emergency care. No contact was granted at the time, and it was decided not to disclose the children's address to the applicants. The first and second applicants were later convicted of violent maltreatment of the boys and sentenced to two years' imprisonment and one year and eight months' imprisonment respectively.

3. While the applicants were serving the sentence, their third child, Z, was born. She was placed in an emergency care home shortly after birth.

4. On 3 July 2019, on a request from the municipality, the County Social Welfare Board issued care orders in respect of all three children. The applicants were granted supervised contact with Z for one hour four times per year and no contact rights in respect of X and Y. The Board also decided that the children's addresses should not be disclosed to the applicants. The decision was taken after the Board had heard the applicants and thirteen witnesses.

5. The applicants brought the Board's decision before the District Court, which heard the applicants and twenty witnesses, including medical experts. On 8 June 2020 the District Court decided to uphold the care orders and the contact rights as decided by the Board.

6. The applicants appealed against the District Court's judgment. On 17 September 2020 the High Court granted them leave to appeal against the part of the decision concerning their contact rights in respect of Z.

7. On 10 May 2021 the High Court set the applicants' contact rights in respect of Z at one and a half hours four times per year, under supervision.

8. On 11 December 2020 the Supreme Court's Appeals Committee dismissed an appeal by the first applicant against the High Court's decision of 17 September 2020. The appeal concerned the High Court's decision to refuse leave to appeal against the care order decision in respect of all three children, in addition to the question of contact rights in respect of the twins, X and Y, and the decision not to disclose the twins' new address.

9. On 14 July 2021 the Supreme Court's Appeals Committee refused the applicants leave to appeal against the High Court's decision of 10 May 2021.

10. Under Article 8 of the Convention, the applicants complained about the issuance of the care orders and about their contact rights, including the decision on supervision, and about the decision not to disclose the children's addresses. Under Article 6, the applicants argued that the trial had been unfair; the complaint concerns, in particular, the taking of evidence, the right to adversarial proceedings and the reasoning given by the national courts.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 8 of the Convention

11. The Court notes that, in their complaint under Article 8 of the Convention, the applicants essentially argued that the decisions to issue care

orders, in particular the care order in respect of Z, were harsh measures in breach of the State's obligation to facilitate family reunification. The Court notes, in particular, that, according to the material submitted to it, only the first applicant appealed against the High Court's decision of 17 September 2020 (see paragraph 8 above), which concerned the care orders, and contact rights in respect of X and Y. Nevertheless, the Court does not find it necessary to examine further whether the second applicant has exhausted domestic remedies in all respects, for the following reasons.

12. The Court finds that the domestic decisions to issue care orders and to grant the applicants no or very limited contact rights in respect of their children while keeping their addresses secret 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, and pursued the legitimate aims of protecting the 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.

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

14. In determining whether the domestic authorities gave relevant and sufficient reasons for the impugned decisions, the Court firstly notes that the care orders were issued because X and Y had been subjected to severe abuse while in their parents' custody when they were only a few months old. Criminal proceedings established that the second applicant had committed the abuse and that the first applicant had been aware of it. The District Court, relying on medical expert reports, described the violence against the children as incomprehensible and considered that there was a risk of further abuse if the children were returned to their parents. Both the Board and the District Court made a concrete assessment in respect of Z and considered that a care order was necessary in order to protect her from an untenable care situation which also entailed a risk of her being abused.

15. Turning to the applicants' specific submission that the limited contact granted did not facilitate family reunification, 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).

16. The Court considers that there are important differences in the facts of the instant case compared to those cited in the previous paragraph. In the instant case, the applicants' contact rights in respect of all the children were assessed in detail by the County Social Welfare Board and the District Court. In addition, the High Court made a fresh assessment of the applicants' contact rights in respect of Z. The domestic authorities referred to a clinical forensic examination in which it transpired that X and Y had been exposed to extensive and repeated physical abuse. They had several fractures on different parts of their bodies, including a total of thirteen rib fractures, in addition to damaged skin and head injuries. The expert stated that it was uncertain to what extent the injuries inflicted would affect the children physically and psychologically. The District Court further noted that the parents had denied inflicting the abuse, which made it difficult to guide them, and that the second applicant had refused offers of psychological consultations. According to the expert report, X and Y had developed positively after the placement, but were still vulnerable. The expert also noted that the children had difficulties regulating their emotions and that reliving the trauma during meetings with the parents might pose a risk to their healthy development. Following a balancing of the various interests at stake, the District Court concluded that, at that time the most important aim was to protect X and Y so that they could develop in a safe environment and that contact with the parents could be reassessed when the children had become more mature.

17. Furthermore, the Court observes that the District Court and the High Court made a concrete assessment in respect of Z in order to decide on an appropriate amount of contact between her and the applicants. The High Court considered that the goal of reunification could not be abandoned. In view of, *inter alia*, the Court's case-law and following a balancing of the various interests at stake, the High Court found that contact meetings of one and a half hours four times a year would be in Z's best interests. In the assessment, emphasis was placed on Z's strong reactions after contact meetings and the fact that the adverse reactions had increased when the meetings had been more frequent. The reactions consisted in, among other things, Z having problems sleeping and getting stomach aches after the meetings. Furthermore, she showed an increased need for attention and

contact after the meetings. In its judgment, the High Court proposed specific measures to improve the quality of the contact sessions and noted that a gradual increase in the amount of contact might be considered in time.

18. As to the decision not to disclose the children's addresses, it was justified by the domestic authorities notably by reference to the risk that the parents or someone else might take the children out of the country, particularly in the light of the second applicant's unclear residence status in Norway and the risk of her being deported.

19. In determining whether the parents 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, the Court observes that the applicants were heard notably in the proceedings before the County Social Welfare Board and the District Court. In so far as they complained, by reference to Article 6 of the Convention, that a research article submitted before the High Court by the representative of the municipal child welfare services should have been presented earlier, the Court notes that it was included in the material presented to the High Court and was made known to the applicants. The applicants were represented before the High Court by counsel, who could have raised any issues relating to its admissibility during the hearing. They were thus sufficiently involved in the decision-making process at issue.

20. Having reviewed all the domestic decisions against the applicants' complaints, the Court is satisfied that the reasons summarised above (see paragraphs 14 and 16-18) were relevant and sufficient in respect of all the aspects complained of, including the complaint that the contact rights granted in the decisions were overly restrictive.

21. The Court considers that, in the light of all the material in its possession, the interference with the applicants' right to respect for their family life 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 complaint under Article 8 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

B. Alleged violation of Article 6 of the Convention

22. The applicants' complaint under Article 6 of the Convention in essence concerned alleged shortcomings in the domestic authorities' compliance with the adversarial principle in relation to a research article. Having reviewed the proceedings as a whole and having regard to the findings under Article 8 of the Convention regarding the decision-making process (see paragraph 19 above), the Court finds nothing to indicate that there was not a "fair balance" between the parties or that the handling of the case in any other respects was contrary to Article 6 of the Convention.

23. Accordingly, the Court considers that this part of the application is also 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 23 May 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President