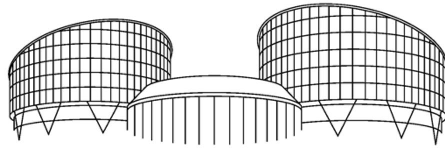

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Applications nos. 18004/21 and 54072/21
S.G. and S.O.
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 applications nos. 18004/21 and 54072/21 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 12 March 2021 and 13 October 2021 by two Norwegian nationals, Mr S.G. and Ms S.O. (jointly referred to as "the applicants"), who were born in 1972 and 1982 respectively;
The decision not to disclose the applicants' names;
Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applications concern decisions in which foster care in respect of the applicants' children, X and Y, was replaced with adoption.
2. X is a boy, who was born in 2011, and Y is a girl, who was born in 2012.
3. Following a report by the children's older brother of domestic violence, X and Y were placed in foster care, at first on an emergency basis, in 2014 and 2015. There were subsequent review proceedings and proceedings concerning whether the care orders could be lifted, as well as criminal proceedings in which the applicants, on 27 November 2017, were convicted of violent maltreatment of three of their children, including X, and were given conditional sentences of ten months' imprisonment.

4. On 26 June 2019 the County Social Welfare Board, on an application by the municipal child welfare services, decided not to withdraw the applicants' parental responsibilities in respect of X, but to withdraw their parental responsibilities in respect of Y and to authorise her adoption by her foster parents. The child welfare services brought the decision concerning X before the City Court for review and the applicants brought the decision concerning Y before the same court for review.

5. On 23 June 2020 the City Court gave judgment in which the applicants' parental responsibilities in respect of both children were withdrawn and the adoption of X and Y by their foster parents was authorised. The City Court had appointed a psychologist to examine the case, who had spoken with and observed the parents and the children and submitted a report.

6. On 22 September 2020 the High Court granted the parents leave to appeal against the part of the City Court's judgment concerning X but not the part concerning Y.

7. On 22 October 2020 the Supreme Court dismissed an appeal by the applicants against the High Court's decision, whereby the City Court's judgment in so far as it concerned Y became final.

8. On 25 June 2021 the High Court gave judgment in the case concerning X. The applicants' parental responsibilities in respect of him were withdrawn and his adoption was authorised.

9. On 9 September 2021 the Supreme Court refused the applicants leave to appeal against the High Court's judgment.

10. Application no. 54072/21 concerns the proceedings in which X's adoption was authorised and application no. 18004/21 concerns the proceedings in which Y's adoption was authorised. In both applications the applicants complained that the authorisations of the adoptions entailed a violation of their right to respect for their family life as guaranteed by Article 8 of the Convention and that there had been violations of Article 9 of the Convention in that the children had grown up in foster families who were not Muslim and they therefore could not preserve their connection to the family's Somali roots.

THE COURT'S ASSESSMENT

A. Joinder of the applications

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violations of Articles 8 and 9 of the Convention

12. The Court considers that, in the instant case, the submissions in respect of an alleged violation of Article 9 of the Convention which related

to the family's ties to Somali culture, religion and language while the children were in foster care may be examined as an integral part of the complaint concerning their right to respect for their family life as guaranteed by Article 8, interpreted and applied in the light of Article 9, rather than as a separate issue of alleged failures to comply with the rights protected by the latter provision (see, similarly, *Abdi Ibrahim v. Norway* [GC], no. 15379/16, § 141, 10 December 2021).

13. The Court finds that the decisions to withdraw the applicants' parental responsibilities in respect of their children X and Y and to authorise X's and Y's adoption entailed interferences with the applicants' right to respect for their family life for the purposes of Article 8 § 1 of the Convention. It finds that the interferences were in accordance with the law, namely the 1992 Child Welfare Act, which was applicable at the material time, and that they pursued the legitimate aims of protecting X's and Y's "health" and their "rights". The remaining question is whether the interferences were "necessary in a democratic society" within the meaning of Article 8 § 2.

14. 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, *inter alia*, *Abdi Ibrahim* (cited above, § 145). 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). As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the parents' legal ties with the child are definitively severed, the Court reiterates that such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests (ibid., § 209).

15. In determining whether the domestic authorities provided relevant and sufficient reasons for the decisions to replace the children's foster care with adoption, the Court observes, firstly, that the City Court, in its judgment of 23 June 2020, which became the final decision on the merits in the case pertaining to Y, largely accepted the reasons given by the Board in respect of the case involving her. It considered the parents particularly unfit to raise children and that the factors that favoured adoption weighed so heavily that the interest in maintaining the biological ties between the children and the applicants would have to yield. The children had been victims of and witnesses to violence in their home over a long period of time. Y had issues with "separation anxiety" and "anxiety attacks". The Court also notes that Y gave her opinions on the matter in so far as possible in view of her age and

level of maturity, which were taken into account. It transpires from the City Court's judgment that Y was considered cognitively strong and determined. To her spokesperson, she clearly expressed that she understood what an adoption entailed and that she wished to be adopted so that she could fully be a member of her foster family. In addition, the City Court appears to have placed some emphasis on the need to pre-empt the applicants from resorting at some future point to legal remedies to contest the care order or the arrangements for visiting rights.

16. Turning to X's case, the Court observes that the High Court, in its judgment of 25 June 2021, which became the final decision on the merits in the case pertaining to him, stated that it was common ground and was clearly the case that the removal of X from his foster home could cause him serious harm. It also stated that X had considerable difficulties owing to a combination of congenital conditions and the abuse and neglect of which he had been a victim in his home during the first three years of his life. As in its decision in respect of Y, the High Court expressed no reservations in finding that the applicants were permanently incapable of taking care of X. It reiterated in that connection some of the reasons given in the judgment against the parents in the criminal proceedings relating to the charges of violent maltreatment (see paragraph 3 above), in which it had been proved, among other things, that the applicants had repeatedly hit X with a belt on various places on his body. The High Court's majority found, moreover, that adoption pertained to X's best interests, in particular as there was a considerable risk that X's difficulties would lead to considerable challenges in the years to come and that, considering that situation, it would be better for him not to be in temporary foster care. In the light of his age at the time, the High Court, furthermore, did not find it justifiable to postpone a decision on adoption. The foster home had consented to contact after adoption and the High Court accepted the City Court's reasons and decision in which a yearly contact meeting had been fixed in that connection.

17. The Court's task is not limited to scrutinising solely the reasons advanced by the domestic authorities to justify the decisions to replace X's and Y's foster care with adoption. Whilst, in the absence of any complaint by the applicants regarding the initial placement orders, the Court cannot examine and rule on these issues separately, it must nevertheless assess the case and the proceedings as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212). In that context the Court is mindful that it has given a number of judgments in respect of applications where natural parents have complained about decisions to replace foster care with adoption in the respondent State, in several of which it found a violation of Article 8 of the Convention and in which it has taken into account whether such decisions have been taken in situations where, following a child's placement in care, only minimal parent-child contact had been allowed (see, in particular, *Strand Lobben and Others*, cited above§ 221; *Abdi Ibrahim*, cited above, § 152;

Pedersen and Others v. Norway, no. 39710/15, §§ 67-69, 10 March 2020; and *M.L. v. Norway*, no. 64639/16, § 92, 22 December 2020) and in some of which it concluded that the domestic authorities had sufficiently proved the necessity of the decision (see, in particular, *Aune v. Norway*, no. 52502/07, §§ 66-80, 28 October 2010, and *Mohamed Hasan v. Norway*, no. 27496/15, §§ 151-163, 26 April 2018).

18. In the instant case, the Court finds that the material submitted to it by the applicants does not disclose any appearance of shortcomings in the child welfare case overall. The Court understands that there was indeed limited contact between the applicants and X and Y after they had been placed in public care and that the authorities had previously concluded that the placements would be long term, although the applicants did not provide the Court with all the details about the situation as it stood in the period after 2014 to 2015. Nonetheless, it cannot overlook the fact that the child welfare proceedings in respect of X and Y involved children who had been subjected to serious neglect, as reflected in the judgment given in the criminal proceedings against the applicants. It also appears from the material submitted to the Court that the level of contact was reduced in 2016 following an incident in which the children's father had become angry and had frightened them. In view of the factual findings of the domestic authorities relating to the care situation as it stood when the children lived with the applicants, the Court does not consider that the applicants have adduced anything to demonstrate that the child welfare services did not, in so far as possible while attending to the children's best interests, attempt to maintain contact between the children and the parents or had an insufficient basis for their conclusion that a reunification of the family was unfeasible.

19. As concerns the interests protected by Article 9 of the Convention, the Court notes that those matters were also examined by the domestic authorities and, on the basis of the material submitted by the applicants, it does not find that there are indications that the domestic authorities failed to take due account of the applicants' interest in allowing X and Y to retain at least some ties to their cultural and religious origins (contrast *Abdi Ibrahim*, cited above, § 161), even though they ultimately concluded that adoptions were necessary. In that connection it also finds it important that the adoption decisions in the instant cases do not appear to have been a result of overly strict decisions on contact but were rather decided on the basis of the children's difficult situations, their past experiences of being neglected and the considerations which had led the domestic authorities to conclude that the parents were particularly unfit to raise children.

20. The Court has some reservations with regard to the emphasis placed by the City Court in its judgment, which became the final decision on Y's adoption, on the risk that the applicants might institute future proceedings relating to the public care of the children (see paragraph 15 above; see also *Abdi Ibrahim*, cited above, § 154, with further references). That was,

however, not a decisive argument in that court's judgment and the Court does not consider that it in and of itself may lead to the conclusion that the necessity of the adoption of Y was not proved, given the other particular features of Y's case.

21. In sum, the Court considers that the domestic authorities advanced reasons that were relevant and sufficient to demonstrate that, in the exceptional circumstances of X's and Y's cases, the decisions to replace their foster care with adoption were necessary. The Court finds that the applications do not disclose any appearance of a violation on the grounds that, in the specific circumstances of X's and Y's cases, insufficient regard was had to the fact that care orders are usually to be regarded as temporary in nature or to the obligation resting with the authorities to take measures to facilitate the reunification of the family. In the instant case the Court finds no indication that the domestic authorities were responsible for a situation of family breakdown because they had failed in any such obligations (see, for example, *Strand Lobben and Others*, cited above, § 208). The interference with the applicants' right to respect for their family life was therefore proportionate to the legitimate aims pursued and accordingly "necessary in a democratic society" for the purposes of Article 8 § 2.

22. The Court concludes that the applications are 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,

Decides to join the applications;

Declares the applications inadmissible.

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

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President