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

FIFTH SECTION

CASE OF O.S. v. NORWAY

(Application no. 63295/17)

JUDGMENT

STRASBOURG

30 September 2021

This judgment is final but it may be subject to editorial revision.

In the case of O.S. v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Ganna Yudkivska, *President,*
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 63295/17) 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") by a Russian national, Ms O.S. ("the applicant"), on 18 August 2017;

the decision to give notice to the Norwegian Government ("the Government") of the complaint concerning Article 8 of the Convention;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Governments of the Czech Republic and the Slovak Republic and by Ordo Iuris Institute of Legal Culture, who were granted leave to intervene by the President of the Section;

the decision of the Russian Government not to exercise their right to intervene in the proceedings under Article 36 § 1 of the Convention;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 9 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a complaint under Article 8 of the Convention about proceedings in which the applicant's children were placed in public care and the applicant's contact rights limited.

THE FACTS

2. The applicant was born in 1984 and represented by Mr M. Engesbak, a lawyer practising in Oslo.

3. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms L. Tvedt, attorney at the same office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is the mother of X and Y, born in 2006 and 2011, respectively. In February 2015 X told her teacher about her parents being

violent against her and each other. In conversations she made, for example, descriptions of her step-father having held her head under water and stated that she was afraid and thought her parents would kill her if they found out that she had reported their violence to her school. The children were then placed in emergency foster care, a report to the police was made, and X participated in adapted questioning by a judge. The applicant appealed against the emergency placement decision, but withdrew the appeal when the case was heard by the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*). She made an agreement with the child welfare services concerning contact with the children. Upon the emergency placement, X also made allegations about sexual abuse, and she participated in another adapted questioning. On 31 March 2015 the child welfare services applied to the Board for care orders.

6. On 28 August 2015 the Board issued care orders in respect of both X and Y and granted the applicant contact rights four times yearly, each time for two hours. Before the Board, the child welfare services had submitted that they were of the opinion that it would be in the best interests of the children to grow up in a foster home, and the Board found that a long-term care order was most likely necessary. It pointed in that context out that the deficiencies in care had largely to be said to be related to the applicant's personality and that it would take a long time for her to be able to take the children's perspective to such an extent that they could be returned.

7. The applicant successfully appealed against the Board's decision to the District Court (*tingrett*), which set aside the Board's decision to issue care orders on 22 September 2015. The District Court found that the deficiencies that had been found in the family's home could be remedied by means of assistance measures.

8. The municipality (the child welfare services) appealed against the District Court's judgment to the High Court (*lagmannsrett*). A psychologist was appointed in order to carry out a conversation with X. The High Court, whose bench comprised three professional judges, one expert and one lay person, held a hearing on 19 to 21 September 2016. The applicant attended with her legal aid counsel. Ten witnesses and the psychologist appointed as an expert gave evidence. Subsequently, the High Court appointed a further psychologist as an expert to examine and give advice on the case. The hearing continued on 21 December 2016, when the applicant again attended with her legal counsel and gave further evidence. The second appointed expert also attended this day and gave evidence and developed on a written report that she had submitted.

9. The High Court gave judgment on 6 January 2017. It found proved that X had been subject to violence prior to moving to Norway and once when there. The High Court added, however, that the physical violence against her formed only one of the relevant factors when assessing her care situation. It found it clear that her step-father's violence against the

applicant and his destroying things in the home had created a completely unacceptable care situation for the children. Both the applicant and the children's step-father had acknowledged that the children had been exposed to their conflicts. The High Court also mentioned that X's consistent statements to the effect that she did not want to return to them indicated that the care situation had been unacceptable. As to X's statements relating to sexual abuse, the High Court did not find it proved that she had been victim of such.

10. The High Court stated that the applicant did not appear to have been involved in the proceedings at the time when the emergency care order was made and that it was unclear to what extent alternatives to an emergency placement could have been attempted and that contact sessions and possibly an expert assessment should have been put in place more rapidly upon that placement; it had taken around four months from when the emergency care order had been issued until the first contact session. This did not, however, impact on the High Court's decision on whether a care order was necessary at the time of its judgment.

11. Moreover, the High Court found that in respect of the applicant and the children's step-father there were positive developments; they had among other things started anger management treatment. X, who appeared intelligent and mature for her age, had repeatedly said that she did not want to move back. She had perceived that the District Court had not believed her. As to Y, she had less memories of the time in the applicant's home, due to her age and the High Court was divided with respect to what would be best for her. The majority attached importance to her having remained in care with the same care persons for almost two years, her having special needs, and it being harmful to remove her from her foster parents at the time. Assistance measures or a gradual return would not in its view be appropriate to remedy the harmful consequences. It thus concluded that returning Y to the applicant would entail serious deficiencies in respect of the personal contact and security that she needed.

12. In conclusion, the High Court found that it was necessary to issue care orders in respect of both children. Contact rights were fixed at four times yearly. In that context, the High Court stated that it had to be concluded that the children should live in the foster home for the foreseeable future.

13. The applicant appealed against the High Court's judgment to the Supreme Court (*Høyesterett*) on the grounds that the High Court had erred in its assessment of evidence and that the facts of case had not been sufficiently elucidated. The Supreme Court's Appeals Committee (*Høyesteretts ankeutvalg*) refused the applicant leave to appeal on 9 March 2017.

RELEVANT LEGAL FRAMEWORK

14. Under section 4-12 of the 1992 Child Welfare Act (*barnevernloven*) a child may be taken into public care if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security needed by the child according to his or her age and development. According to section 4-21 the parties may request the County Social Welfare Board to discontinue the public care as long as at least twelve months have passed since the Board or the courts last considered the matter. Contact rights between a child in public care and his or her parents are regulated in section 4-19, according to which the extent of contact rights is decided by the Board. By virtue of the same provision, the private parties can demand that contact rights also be reconsidered by the Board, as long as at least twelve months have passed.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

15. The applicant complained that the proceedings concerning the public care of her children had violated her right to respect for her family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

16. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

17. The applicant maintained that the different steps in the proceedings relating to the public care of her children were organically linked and had to be evaluated and scrutinised as a whole. The High Court had already criticised the early steps of the proceedings in its judgment. From those early phases of the case, no thorough investigation into the allegations relating to domestic violence had been conducted; no realistic attempts from

the authorities to try less intrusive measures had been made, and there had been, at first, a lack of expert assessments and, since, shortcomings in the expert assessments. Moreover, the applicant argued that there had been an insufficient factual basis for the impugned decisions and that she had not been sufficiently involved in the decision-making process. In addition, the applicant argued that the severe restrictions imposed on her right to contact with her children had been detrimental to the family ties and that there had not been sufficiently strong grounds for the authorities to give up the aim of reunification.

18. The Government stressed that it was the High Court's judgment that had restricted the applicant's right to respect for her family life under Article 8 of the Convention and submitted that this Court should take the same approach as had that court, namely to consider whether the measures were justified within the meaning of the Convention at the time when that judgment was issued.

19. The third party interveners – the Governments of the Czech and Slovak Republics and Ordo Iuris Institute of Legal Culture – primarily made submissions on the general principles within which to examine applications with complaints relating to proceedings that have concerned childcare-measures. Ordo Iuris also made a comparison of public childcare-practices in Norway and Poland.

20. The Court notes that the general principles applicable to cases involving child welfare measures (including measures such as those at issue in the present case) are well-established in the Court's case-law, and were extensively set out in the case of *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 202-13, 10 September 2019, to which reference is made. The principles have since been reiterated and applied in, inter alia, the cases of *K.O. and V.M. v. Norway*, no. 64808/16, §§ 59-60, 19 November 2019; *A.S. v. Norway*, no. 60371/15, §§ 59-61, 17 December 2019; *Pedersen and Others v. Norway*, no. 39710/15, § 60-62, 10 March 2020; *Hernehult v. Norway*, no. 14652/16, § 61-63, 10 March 2020; and *M.L. v. Norway*, no. 64639/16, §§ 77-81, 22 December 2020).

21. Turning to the facts of the instant case, the Court considers that it cannot be called into question that the impugned childcare-proceedings and the measures adopted therein entailed an interference with the applicant's right to respect for her family life as guaranteed by Article 8 of the Convention; that the measures were in accordance with the 1992 Child Welfare Act (see paragraph 14 above) and that they pursued the legitimate aims of protecting the children's "health and morals" and their "rights". Accordingly, the question is whether they were also "necessary in a democratic society" within the meaning of the second paragraph of Article 8.

22. In that context, the Court notes that the care order and the question of contact rights was examined by several levels of court. The High Court,

which gave the final decision on the merits, held a hearing over several days where a number of witnesses gave statements and two court-appointed experts participated. The applicant had legal aid counsel throughout the proceedings (see paragraph 8 above).

23. The Court observes that the High Court found that the applicant did not appear to have been involved in the decision-making process when childcare-measures had first been instituted in respect of her children and that it was unclear to what extent less intrusive measures had been considered at that early stage (see paragraph 10 above). The Court does not find grounds, however, for considering that the High Court for that reason had an insufficient basis on which to take its decisions. It also observes, in passing, that the applicant withdrew her appeal against the emergency placement decision and made an agreement with the child welfare services at that time (see paragraph 5 above).

24. In the light of the above, the Court considers that the applicant was adequately involved in the decision-making process in so far as concerns the proceedings before the High Court and that she was at that stage given every opportunity to plead her case as it stood at that time. Furthermore, viewing the reasons advanced by the High Court, which included that it found it clear that the children's step-father's violence against the applicant and his destroying things in the home had created a completely unacceptable care situation for the children and X's consistent statements to the effect that she did not want to return to them (see paragraph 9 above), the Court has no basis for considering that they were not relevant and sufficient to justify its conclusions, including that upholding the care orders was the best solution for the children at the time of its judgment. As to the contact rights set by the High Court, the Court also adds that it has taken note that the extent of those rights were not specifically targeted by the applicant's appeal to the Supreme Court (see paragraph 13 above).

25. For the above reasons, the Court concludes that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 30 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Ganna Yudkivska
Deputy Registrar	President