



Johansen v. Norway

Case No. 24/1995/530/616, August 7, 1996

Country: Norway

Region: Europe

Year: 1996

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Child and adolescent health, Controlled substances, Mental health, Violence

Human Rights: Right to due process/fair trial, Right to family life

Facts

Johansen (J) gave birth to a son, C, in 1977 when she was seventeen years old and they became dependent on social assistance. From 1980 onwards she cohabited with a man who was sentenced to two years' imprisonment for drug offences in 1983 and who mistreated her and C. The welfare authorities assisted J on many occasions with C's upbringing but considerable problems and friction arose between them. In 1988 C began to receive psychiatric treatment and the following year was admitted to a school adapted to his needs. C was provisionally taken into care in November 1989 because the circumstances of his care disclosed a danger to his health and development and he was placed in a children's home two months later.

In the meantime J, who was pregnant, left Bergen for Oslo and was given accommodation in a centre for victims of domestic ill-treatment. At an antenatal check-up the doctors considered her physical and mental state of health to be very poor but refrained from contacting the child welfare authorities, fearing that this would lead her to injure herself. J gave birth to a daughter, S, in December 1989 and she was taken provisionally into care because of J's poor health and inability to take care of her. Account was taken of what had been decided with respect to C. J did not lodge an appeal against this second care decision and did not challenge an access arrangement allowing her to visit S twice a week in a foster home. An expert reported to the client and patient committee that he was not hopeful about her ability to take care of the children and J engaged a psychologist when her request for the appointment of a second expert was refused. The psychologist reported that she could find no sufficient reasons to deprive J of the care of her children. A separate report for the welfare authorities recommended in March 1990 that S be taken into compulsory care and placed in a foster home with a view to adoption in order to create security and stability for him. It also recommended that access be refused and the address be kept secret.

J was assisted by a lawyer at a hearing before the committee in May 1990. She called three witnesses, the welfare authorities called one and the appointed expert was also heard but J's psychologist was not as her costs were not covered by the State. The committee rejected a request by J's lawyer to be assisted by a psychiatrist as she was already represented. The psychiatrist did appear as a witness but had no right to address the committee. The latter decided (4-2) to take S into care, deprive her of parental responsibilities, place S in a foster home, refuse J access from the moment of the placement and to keep the address of the home secret.

During the spring of 1990 C twice ran away from the children's home to join J in Oslo. On the second occasion she allowed him to stay, had him admitted to a school and contacted a psychiatrist for support. In April 1990 it was decided to take C permanently into care but that decision was lifted two months later as its implementation would have been even more detrimental. C has lived with J since May 1990. J then appealed against the committee's decision regarding the taking of S into public care and depriving her of parental responsibilities, as well as seeking a suspension of the decision on access. The suspension was refused by the county governor as against S's best interests. S was placed with foster parents later that month and J had not had access to or seen her since. She was told that her appeal would take four or five months and the city court refused as premature her request to set aside the committee's decision in October 1990. The county governor, after a meeting with J and her lawyer, upheld the committee's decision in November 1990 and as a consequence her appeal against the city court's ruling was dismissed in January 1991.

In the meantime J brought proceedings against the child and family affairs ministry seeking the care decision to be lifted or parental responsibilities to be restored. The ministry submitted its observations in December 1990 and, after consulting the parties, appointed two experts to evaluate J's ability to take care of S and the consequences of restoring her parental responsibilities. They submitted their deadlines by the March 1991

deadline and there was a hearing two weeks later, at which J (represented by a lawyer), eleven witnesses and the two experts were heard. Eleven days later the court upheld the taking of S into care and the deprivation of J's parental responsibilities. It found that there had been an improvement in the situation since S had been taken into care as J appeared to be permanently settled with C's father and it also found that she had great concern for S but that she was now a stranger to her. It took into account the agreement of the experts that S would be in a critical situation if returned, that her development would be adversely affected if taken from secure and stimulating conditions and that J would not be able to give S proper care on a permanent basis. One expert had also emphasised the harm that would flow from J's negative attitude to welfare authorities. It concluded that a reunion would cause permanent harm and that access to the home, which was the aim of allowing J to keep her parental responsibilities, would destroy the security of the foster home. In the court's view there were strong and real factors militating in favour of adoption.

s father. She gave birth to a second daughter in December 1991 whom the Danish authorities considered to have developed well. A second son was born in 1993. S was still living with her foster parents and no decision about her adoption had been taken. In January 1994 a psychologist made a favorable report about both J and the foster parents, but emphasizing the importance of stability in any decision about access. J complained about the taking of S into public care, the deprivation of her parental rights, the termination of her access to S, the excessive length of the proceedings, their lack of fairness and the absence of an effective remedy.

The Commission found no breach of Art 8 as regards the taking of S into care and the maintenance in force of the care decision concerned, (11-2) a breach of Art 8 (guaranteeing respect for family life) as regards the deprivation of parental rights and access to S and that no separate issue arose under either (12-1) Art 6 (guaranteeing a hearing before a tribunal) within a reasonable amount of time) or (unanimously) Art 13 (guaranteeing effective remedy).

[Adapted from INTERIGHTS summary, with permission.]

Decision and Reasoning

The Court held:

- (1) that the impugned measures evidently interfered with J's right to respect for her family life and it was undisputed that all, except the provisional taking into care had a basis in national law;
- (2) that there was no reason to doubt that that provisional taking had such a basis and J had not pursued her submission that the relevant domestic law was not foreseeable;
- (3) that the contested measures pursued legitimate aims within the meaning of Art 8(2) as they were aimed at protecting the health and rights and freedoms of S;
- (4) that, having regard to the fact that (a) the committee took its decision after hearing the views of J and her lawyer, (b) that it was only after R, who had been appointed with J's agreement, had presented his opinion that J requested the appointment of V and (c) V's report was submitted to the committee even though she was not heard directly by it, there was nothing to suggest that the decision-making process leading to the adoption of the impugned measures was unfair or failed to involve J to a degree sufficient to provide her with the requisite protection of her interests;
- (5) that, before hearing J's appeals, the governor and the city court heard J and her lawyer;
- (6) that the procedure did not, therefore, violate Art 8;
- (7) that the taking of S into care and the maintenance in force of the care decision concerned were based on reasons which were not only relevant but also sufficient for the purposes of Art 8(2);
- (8) that the measures were supported by painstaking and detailed assessments by experts appointed by the committee and the city court and it would not substitute its views for that of the national authorities as to the relative weight to be given to the expert evidence adduced by each party;
- (9) that the measures did not violate Art 8 as the national authorities in taking them acted within the wide margin of appreciation afforded to them in such matters;

(10) that, although taking a child into care should normally be a temporary measure and its implementation should be consistent with the ultimate aim of reuniting the natural parent and the child, the latter's interests might (depending on their nature and seriousness) override those of the parent and a parent was not entitled under Art 8 to have such measures taken as would harm the child's health and development;

(11) that, although the question of whether the deprivation of J's parental rights and access was justified must be assessed in the light of the circumstances obtaining at the time and not with the benefit of hindsight, it must be considered in the light of the reasons for taking S into care and maintaining that decision;

(12) that it was also in the child's interests to ensure that the process of establishing bonds with foster parents was not disrupted and there was no reason to doubt that care in the foster home had better prospects of success if the placement was made with a view to adoption;

(13) that the child welfare authorities found J not to be particularly motivated to accept treatment and even feared that she might take S away;

(14) that the foregoing considerations were relevant to the issue of necessity under Art 8(2);

(15) that, although the access which J had to S between her birth and the committee's decision did not appear open to criticism and J's lifestyle by then had already changed for the better, it was the difficulties experienced in the implementation of the care decision concerning C which provided the reason for the authorities' view that she was unlikely to cooperate and that there was a risk of her disturbing S's care if given access to the foster home;

(16) that these difficulties and that risk were not of such a nature and degree as to dispense the authorities altogether from their normal obligation under Art 8 to take measures with a view to reuniting them if J were to become able to provide S with a satisfactory upbringing;

(17) that the May 1980 decision, insofar as it deprived J of her access and parental rights was not sufficiently justified for the purposes of Art 8(2) since it did not correspond to any overriding requirement in the child's best interests;

(18) that the national authorities had, therefore, overstepped the narrower margin of appreciation and there was a violation of Art 8;

(19) that J's allegations about the excessive length of the care proceedings did not, however, give rise to any issue under Art 8;(20) that, given what was at stake for J and the irreversible and definitive character of the measures concerned, the national authorities were required to act with exceptional diligence in ensuring the progress of the proceedings;

(21) that the issues to be determined were of a certain complexity and involved three administrative and two judicial levels but none of these separately failed to act with the diligence required and the duration of the proceedings as a whole did not exceed a reasonable time;

(22) that there was, therefore, no violation of Art 6;

(23) that it was not necessary to consider the Art 13 complaint as it was not pursued by J; and

(24) that it was not necessary to make an award for costs and expenses as J had waived her Art 50 claim because they had been reimbursed by way of legal aid from the Norwegian authorities.

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Decision Excerpts

"The Court is satisfied that the contested measures were aimed at protecting the "health" and "rights and freedoms" of the applicant's daughter and thus pursued legitimate aims within the meaning of paragraph 2 of Article 8 (art. 8-2)." Paragraph 61.

"[T]here is nothing to suggest that the decision-making process leading to the adoption of the impugned measures by the Committee was unfair or failed to involve the applicant to a degree sufficient to provide her with the requisite protection of her interests." Paragraph 66.

"In the light of the foregoing, the Court is satisfied that the taking of the applicant's daughter S. into care and the maintenance in force of the care decision concerned were based on reasons which were not only relevant but also sufficient for the purposes of paragraph 2 of Article 8 (art. 8-2). The measures were supported by painstaking and detailed assessments by the experts appointed by the Committee and the City Court. The finding of fact being primarily a matter for the national authorities, the Court will not substitute its views for theirs as to the relative weight to be given to the expert evidence." Paragraph 72.

"However, it cannot be said that those difficulties and that risk were of such a nature and degree as to dispense the authorities altogether from their normal obligation under Article 8 of the Convention (art. 8) to take measures with a view to reuniting them if the mother were to become able to provide the daughter with a satisfactory upbringing.

84. Against this background, the Court does not consider that the decision of 3 May 1990, in so far as it deprived the applicant of her access and parental rights in respect of her daughter, was sufficiently justified for the purposes of Article 8 para. 2 (art. 8-2), it not having been shown that the measure corresponded to any overriding requirement in the child's best interests (see paragraph 78 above).

Therefore the Court reaches the conclusion that the national authorities overstepped their margin of appreciation, thereby violating the applicant's rights under Article 8 of the Convention (art. 8)." Paragraphs 83-83.

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