The Registrar

European Court of Human Rights

Council of Europe

67075 STRASBOURG CEDEX

FRANCE

By post and by fax

29 June 2018

Application no. 62803/16 and 62363/16

I.F. & I.F.F. v Norway

Decision of 28 June 2018

Dear Registrar,

We request, pursuant to Rule 81, that the Court rectifies the errors in the decision by the three member committee in its decision of 28 June 2018 ('the Decision'). What may at some stage have been a clerical error has had consequences for the determination made in the Decision. It has resulted in obvious mistakes.

As the Decision correctly observes, the applications were lodged on 26 October 2016. Furthermore, the Decision correctly observes, in paragraph 8, that the detention ended on 11 June 2016, and, in paragraph 9, that the family '*had been deported*' on that date, i.e. 11 June 2016.

Under the part entitled '*THE LAW*', however, the Decision proceeds in paragraph 24 on the erroneous ground that the family had been deported in the summer of 2017:

> *Turning to the instant cases, the Court notes that the applicants could appeal against the decision to keep them at the detention centre in question – Trandum – while they were there, as they did (see paragraph 9 above). Since the left the centre on 11 June 2017, what remains relevant is whether they had an enforceable right to compensation for violations that had allegedly occurred.*

Then the Decision turns to a landmark judgment of the Oslo High Court of 31 May 2017, a landmark judgment which was handed down approximately a year after the family had been deported on 11 June 2016.

That historic judgment, which unusually was not appealed by the government, marked a watershed in Norwegian law. It was a real *revirement de jurisprudence*, a completely new departure from the

constant case-law of the Norwegian courts. Before the 31 May 2017 judgment, no family had ever before attained a declaratory judgment and monetary compensation owing to detention at Trandum. The importance of the judgment is attested to by the fact that it is due to be published in Cambridge University Press' *International Law Reports* Vol. 181.

We emphasise that the judgment of the Oslo High Court of 31 May 2017 was the first time ever that a Norwegian court held that a declaratory judgment and monetary compensation could be given in relation to detention of a family detained at Trandum. The shift in the approach of the Norwegian courts to the question is obvious in the judgment; it takes a completely different approach, for example, than all of the national judgments and decisions rendered in relation to I.F. and I.F.F.

It is clear from paragraphs 24–27 of the Decision of 28 June 2018 that the three member committee considered that the applicants has a possibility of access to an effective remedy for violations and to obtain compensation on the basis of the judgment of the High Court of 31 May 2017, on the (erroneous) basis that the family's deportation happened a few weeks after the 31 May 2017 judgment of the High Court.

In reality, however, the family was deported on 11 June 2016, almost a year before the 31 May 2017 decision of the High Court was handed down. At the time of their removal, therefore, the members of the family had no possibility effectively to challenge the detention practice. Although the applicants did continue to pursue the remedies left at their disposal after their deportation in June 2016, they could not obtain any compensation or declaratory relief since the Supreme Court refused the applicant's request to leave for appeal on the basis that the Supreme Court Appeals Leave Committee (*Høyesteretts ankeutvalg*) found that they had no prospect of success. For obvious reasons the Committee reached that conclusion on the basis that there was (then) an established jurisprudence and a settled practice which allowed for detention of families with children – an established jurisprudence and a settled practice that would only change a year later with the 31 May 2017 judgment of the High Court.

The three member committee's error as regards the date of removal played a major role in the incorrect determination to which the error led, as the Decision states in paragraph 27 that: '*Furthermore, there is no information to the extent that practical reasons have hindered the applicants in making use of the possibility of bringing any such proceedings in respect of their complaints.*'

This, too, is plainly based on the erroneous understanding that the family were deported after the 31 May 2017 judgment, as at the time of their actual removal, on 11 June 2016, there was, according to the jurisprudence and settled practice of the courts, no possibility whatever that a court would hold that detention at Trandum was illegal and would merit a declaratory judgment to that effect as well as monetary compensation, which as we have emphasised above no one had ever in the history of the Trandum detention scheme ever been awarded.

The factual error has consequences for the main legal issue. If one takes account of the correct date, it could seem as if the three member committee was in obvious error on the law; the Decision then reads as if the committee has departed from the jurisprudence of the Court. If this is allowed

to stand uncorrected, which it must not, it would by necessity require the Court to reopen and revise the Decision (or plainly disregard it as being in error).

It is obvious that the committee has not intended to take such radical steps, acting as a three member committee in a decision. That would have been wrong, an obvious heresy, and clearly overstep the limits of the competence of the committee.

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If were to be allowed to stand, the Committee's decision would be used, however wrong this would be, as a basis on which to continue child detention by the immigration authorities in violation of obligations under the Convention and the jurisprudence of the ECHR. It would also be used by the State party against the High Court decision of 2017.

Yours sincerely,

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