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

SECOND SECTION

DECISION

Application no. 51860/19
F.K.
against Norway

The European Court of Human Rights (Second Section), sitting on 11 July 2023 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. 51860/19) 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 26 September 2019 by a Turkish national, Mr F.K. ("the applicant"), who was born in 1976 and lives in Gaziantep and was represented before the Court by Mr H. Noraas, a lawyer practising in Stavanger;

the decision not to disclose the applicant's name;

the decision to give notice of part of the complaint under Article 8 of the Convention to the Norwegian Government ("the Government"), represented by their Agent, Mr M. Emberland, of the Attorney General's Office (Civil Matters), and to declare the remainder of the application inadmissible;

the parties' observations;

the submissions by the Government of Türkiye, who exercised their right to intervene in accordance with Article 36 § 1 of the Convention;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns regulation of contact rights during a foster care arrangement.

2. The applicant is married to B, a Norwegian woman. In 2013 the applicant's expulsion from Norway was ordered and he was issued with a

five-year re-entry ban. In March 2014 the applicant and B had a child, X, in Türkiye. In 2015 B and X moved to Norway, where X was taken into public care and placed in a foster home. The applicant and B were granted contact four times per year with X.

3. On 12 January 2017 the applicant and B initiated proceedings for a review of their contact rights.

4. On 22 March 2017 the County Social Welfare Board set the applicant's contact rights in respect of X at two times per year, specifying that the contact sessions were to be carried out when the applicant was present in Norway. The Board refused the applicant permission to have contact with X by telephone or other electronic communication services.

5. On 29 August 2017 the District Court upheld the Board's decision.

6. On 9 February 2018, while the case was pending on appeal before the High Court, the ban on the applicant's re-entering Norway was lifted.

7. On 4 January 2019 the High Court increased the applicant's contact rights in respect of X to six times per year and upheld the prohibition on contact by telephone or other electronic communication services. At the time of the High Court's judgment, the applicant was allowed to travel to Norway on tourist visas in order to participate in contact sessions, which he had done after the re-entry ban had been lifted.

8. After the High Court's judgment, while the applicant was in Türkiye, he applied for family reunification in Norway. He also applied for a visa to go to Norway while his application for family reunification was being examined. He informed the Supreme Court of these matters on an appeal against the High Court's judgment.

9. On 26 March 2019 the Supreme Court refused the applicant leave to appeal against the High Court's judgment.

10. In the course of the proceedings before the Court, the parties informed the Court that the applicant had been granted a temporary residence permit in Norway in November 2020 and that he had moved there at the beginning of 2021.

11. The applicant complained under Article 8 of the Convention of the decision to refuse to allow him to have contact with his child, X, who had been placed in foster care, by telephone or other electronic communication services.

THE COURT'S ASSESSMENT

12. The Court notes that the complaint concerns the decision to refuse the applicant authorisation to have contact with X through electronic means and that the Government objected to the admissibility of that complaint on the grounds that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. The Court does not find it necessary to decide on the issue of exhaustion for the following reasons.

13. The Court finds that the domestic proceedings relating to the applicant's contact rights in respect of X, including the prohibition on contact by telephone or other electronic means, entailed an interference with his right to respect for his 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 applied at the time. It pursued the legitimate aim of protecting X's "rights" and her "health". The main question is accordingly whether the interference was "necessary" within the meaning of Article 8 § 2.

14. In that connection, the relevant general principles applicable to cases involving child welfare measures, including measures such as those at issue in the present case, 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). For the purposes of the present analysis, the Court particularly reiterates from those principles that the margin of appreciation to be accorded to the competent national authorities will vary in light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim of reuniting the family as soon as circumstances permit. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. A "stricter scrutiny" is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between the parents and a young child may be effectively curtailed (see *Strand Lobben and Others*, cited above, § 211).

15. In the instant case, the applicant's complaint to the Court relies largely on the fact that the decisions taken to refuse him the right to have contact with X by electronic means had repercussions on him, in particular because of his immigration status at various times. The Court observes that the applicant argued in the domestic courts that he should be granted the right to contact X by electronic means specifically because of the ban on his re-entering Norway, which had been in force at the first stages of the proceedings, later because he had only been able to go to Norway on tourist visas, and ultimately on the basis of the fact that he had had to remain in Türkiye while his application for family reunification was being examined. The essential question relevant to the instant case is accordingly whether the domestic authorities gave relevant and sufficient reasons for their decisions to refuse the applicant the right to have contact with X through electronic means in the light of his immigration status, which made the question of that type of contact particularly important.

16. In that connection, the Court notes, firstly, that prior to the County Social Welfare Board's decision of 22 March 2017 at a time when he was banned from entering Norway, the applicant had participated via Skype in several of B's contact sessions with X. It appears from the Board's decision that it prohibited further contact by electronic means on the basis of experiences stemming from those contact sessions via Skype: X had shown negative reactions and feelings of insecurity; B's contact with X had been disturbed; and there had been issues with the applicant's behaviour towards the child welfare services and X's foster parents, notably that he had had a confrontational attitude and had threatened them several times. The Board noted that the applicant's hostility and threatening attitude towards others had also been apparent during the Skype calls, which had resulted in X fearing the applicant. X had hidden under a table and been unwilling to talk when the applicant had called.

17. The District Court, for its part, while upholding the ban on electronic communication, referred to the risk that such communication, which had led to negative reactions on X's part, would affect X's relationship with the applicant and make it more difficult to re-establish contact with him once the circumstances allowed for ordinary contact sessions. The court assumed that the applicant would show himself from a more collected side during ordinary contact sessions, hopefully creating a more positive experience for X.

18. Thereafter, while the case was pending on appeal before the High Court, the ban on the applicant's re-entering Norway was lifted and he was able to travel to Norway, which he did in 2018 on tourist visas. Several contact sessions between the applicant and X were then carried out. When examining the issue of the applicant's contact rights with X in its judgment of 4 January 2019, the High Court had regard to the recent developments in the applicant's situation and to X's interest in learning about her Turkish roots. The High Court therefore increased the frequency of contact sessions. As to the reasons provided for the consecutive bans on electronic contact, the High Court took into account, similarly to the lower courts, the past experiences with such contact; the challenges for X to benefit from that type of contact in view of her age and the difficulties she experienced in concentrating. The High Court noted in this context that the Skype meetings had been full of conflict, that the applicant had made offensive statements to people who had participated in the meetings and that this, in addition to his comments to X that he would come and pick her up, had contributed to X's unease. The High Court also observed that X's mother had stated that the contact between X and the applicant via Skype was not in the best interests of the child. Furthermore, in response to his arguments that refusing him contact with X at times when he was not in Norway would violate his right to respect for his family life as guaranteed by the Norwegian Constitution, the High Court noted that the applicant had been granted the right to contact six times per year and that, at the time of the High Court's judgment, he was not prevented from entering Norway. A future situation in which he might

again be so prevented was at the time "hypothetical" and could not be factored in.

19. The Court has further given consideration to the applicant's arguments to the effect that the issue of contact through electronic services had not been sufficiently examined by the High Court and that such contact should have been reattempted in connection with the initiation of the ordinary contact sessions; instead, the High Court had based its decision on experiences from a long time previously. At the same time, the Court considers that the reasons provided by the High Court to justify its decision not to allow contact by electronic means must be viewed in the light of the fact that the High Court proceeded on the basis that ordinary contact sessions, which were being carried out at the time, would continue. The Court does not consider that it may be held against the High Court that it did not base its decision on the applicant's possible migration status in the future, given the uncertainty that actually existed about that matter at the time.

20. In the light of the above, the Court finds that that the reasons provided by the domestic courts for the prohibition imposed on the applicant as concerned his contact with X through electronic communication services were relevant and sufficient in the circumstances of the case. The courts found, in sum, that contacts in that manner were neither in X's best interests as she felt insecure also in view of her young age, nor did they serve the aim of family reunification as they had in fact proven to negatively influence the applicant's relationship with X. The Court further cannot discern any procedural shortcomings. Having also regard to the fact that the applicant's contact with X was not fully excluded as at least limited contact sessions were still authorised and possible in practice, the Court considers that the interference was necessary in a democratic society.

21. Having regard to the foregoing, the Court considers that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 14 September 2023.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President