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

SECOND SECTION

DECISION

Application no. 42796/20
T.H.
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. 42796/20) 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 14 September 2020 by a Norwegian national, Mr T.H. ("the applicant"), who was born in 1975 and lives in S., and who was represented by Mr F. Gundersen, a lawyer practising in Oslo;

the decision not to disclose the applicant's name;

the decision to give notice of the complaint concerning 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;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns contact rights during foster care arrangements.

2. On 20 March 2019 the applicant's two children (X, born in 2014, and Y, born in 2015) were placed in foster care on an emergency basis. On 14 June 2019 a care order was issued by the County Social Welfare Board. On 31 October 2019, during subsequent court proceedings, the City Court set

aside the Board's decision. On 17 June 2020, on appeal against the City Court's judgment, the High Court upheld the decision to issue the care orders and granted the applicant and the children's mother contact six times per year in respect of X and three times per year in respect of Y. The High Court carried out an examination in which it, *inter alia*, took note of a report by a court-appointed psychologist and extensively evaluated the parents' caring skills. The High Court also pointed out that the child welfare services had tried from early on to give relevant guidance and to facilitate the return of the children to the parents' care in the future. On 13 August 2020 the Supreme Court refused the parents leave to appeal against the High Court's judgment.

3. The applicant complained under Article 8 of the Convention about the restrictions on his right to contact with his two children (X and Y) after they had been taken into public care.

THE COURT'S ASSESSMENT

4. In the instant case the Court finds that the domestic courts' decisions on contact rights entailed an interference with the applicant's 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 and Y's "rights" and their "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

5. The general principles relevant to the necessity test under Article 8 § 2 of the Convention 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).

6. The Court notes that the applicant's complaint does not concern the care orders as such. As to the decisions on contact rights, the Court observes that severe limitations on the applicant's right to contact with his children in foster care were imposed by the High Court in its judgment of 17 June 2020.

7. The Court bears in mind that it has recently given judgments in several cases involving the respondent State in which it has found a violation of Article 8 of the Convention and in which it has identified various shortcomings relating to justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes based on conclusions already reached when children have been taken into care, to the effect that the care orders are likely to be long term. Those shortcomings have either in themselves led to the finding of a violation (see *K.O. and V.M. v. Norway*, no. 64808/16, §§ 67-71, 19 November 2019) or formed important parts of the context in which violations have occurred (see *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others v. Norway*,

no. 39710/15, §§ 67-69, 10 March 2020; *Hernehult v. Norway*, no. 14652/16, §§ 73-74, 10 March 2020; and *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020). In cases with facts similar to those in the above-mentioned cases with regard to the justifications given for decisions to severely limit the right to contact between the parents and their children, the Court may find that a decision on contact rights does not stand up to the "stricter scrutiny" that is required by the Court in cases where such far-reaching measures as those adopted in the instant case have been imposed (see, for example, *A.L. and Others v. Norway*, no. 45889/18, § 51, 20 January 2022).

8. In determining whether the reasons provided by the domestic authorities with regard to the limitations on the applicant's right to contact with X and Y in the instant case were relevant and sufficient, the Court notes that the children were originally placed in care, at first on an emergency basis, when they were three and four years old, and it is apparent from the Board's decision that the care orders were issued on the basis of how the children had actually developed until then. After the City Court set aside the County Social Welfare Board's decision of 14 June 2019, the children remained in foster care on a voluntary basis. A plan for their return was proposed on 12 November 2019 and increased contact and other measures to facilitate their return were then put in place. The High Court's judgment states that regular contact on an almost weekly basis was ensured in the period subsequent to the City Court's judgment and it appears from that judgment that its decision to restrict contact was based on experiences gained during that period. In addition to expressing fear before meetings with their parents, the children had had significant adverse reactions several days following each contact session, such as difficulties with sleeping, bodily pain and anxiety. The High Court further described that the children had appeared to find more peace when some time had passed between each contact session.

9. The Court further notes that the High Court considered it uncertain at the time of its judgment whether the measures that had been and would be implemented to facilitate the children's return to their parents would lead to a rapid reunification of the family. At the same time, the High Court took into account the parents' behaviour during the contact sessions and the children's vulnerabilities and reactions to contact with their parents. It concluded that any greater level of contact would harm the children. In its assessment on that point, the High Court referred to a report made by a court-appointed expert, stating that both children had behaviour compatible with trauma, such as restless behaviour, being easily anxious and afraid of loud voices. Y had also reported about violence from his parents in such a way that the expert had perceived it as self-experienced, and it was noted that the applicant on one occasion had scotched Y to a chair.

10. The Court perceives in connection with its examination of the measures adopted in respect of post-placement contact rights that the High

Court sought to strike a balance between the long-term benefits of contact and the short-term disadvantages in the concrete circumstances of the case. The Court finds that the reasons provided were relevant and sufficient to justify the decisions taken by the High Court on that point. In the light of the above factors, the Court considers that there are relevant differences in the facts of this case compared to the facts in the cases cited above (see paragraph 7).

11. The Court has also considered the various measures overall and examined the applicant's arguments relating to earlier stages of the child welfare case but it has been unable to identify any shortcomings that would indicate a violation of Article 8 of the Convention on that basis. In the light of the above elements, the Court finds that the interference with the applicant's right to respect for his family life was proportionate to the legitimate aims pursued and thus "necessary in a democratic society", for the purposes of Article 8 § 2.

12. The Court concludes that the application 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