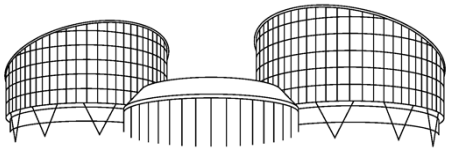

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 20102/19
Dan Mikael HERNEHULT
against Norway

The European Court of Human Rights (Second Section), sitting on 5 September 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. 20102/19) 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 24 March 2019 by a Swedish national, Mr Dan Mikael Hernehult ("the applicant"), who was born in 1961 and lives in Hällefors, Sweden, and who had been granted legal aid and was represented before the Court by Mr D. Tønseth, a lawyer practising in Oslo;

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 decision by the Government of Sweden not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a foster care arrangement and contact rights during that arrangement.

2. The applicant has two children who are in foster care since November 2013, B (born in 2005) and C (born in 2007) (see *Hernehult v. Norway*, no. 14652/16, §§ 6-41, 10 March 2020).

3. On 26 August 2016 the applicant, through counsel, applied to the child welfare authorities to have the care order in respect of both children lifted.

4. On 8 November 2016 the County Social Welfare Board, through its chairperson, dismissed the application.

5. The applicant brought the Board's decision before the District Court, which, on 21 April 2017, quashed it on grounds of erroneous application of the law and remitted the case to the Board.

6. On 13 December 2017 the Board, after holding a hearing, decided that the care order should be maintained. It also set the applicant's – and the children's mother's – contact at four hours three times per year. Moreover, it decided that the parents should not be allowed to contact the children by telephone, Skype or any other digital means. Lastly, it decided that parental responsibilities should be withdrawn from both parents in respect of both children.

7. On 16 March 2018 the District Court gave a judgment in which it changed the contact rights to four hours four times per year. It also decided not to withdraw parental responsibilities from the parents, while it upheld other aspects of the Board's decision.

8. On 20 July 2018 the High Court refused the parents leave to appeal against the District Court's judgment.

9. On 28 September 2018 the Supreme Court's Appeals Leave Committee dismissed an appeal by the parents against the High Court's decision.

10. The applicant complained of a violation of Article 8 of the Convention in the proceedings in which it was decided to continue the public care of two of his children and to limit the applicant's contact with the children to four hours four times per year.

THE COURT'S ASSESSMENT

11. The Court observes at the outset that the applicant lodged a previous application with it concerning proceedings which had ultimately ended with two of his three children (B and C) being kept in public care, while the oldest child (A) was returned to the parents' care on appeal.

12. In its judgment pertaining to that application, the Court concluded that the authorities had not shown that they had fulfilled their obligations under Article 8 of the Convention in connection with the proceedings at issue in that case (see *Hernehult v. Norway*, no. 14652/16, §§ 76-77, 10 March 2020). The proceedings in which care orders had been issued had been decided on the merits with final effect by a High Court, and while the Court was satisfied that the applicant had been sufficiently involved in the decision-making process and fully able to present his case at that stage and that the High Court had carried out an in-depth examination of the situation at that time, it was

not convinced that the same had been true as regards the initial steps of the placement proceedings (ibid., §§ 66-67 and 68-76; see also paragraph 24 below).

13. The instant application concerns a separate and subsequent set of proceedings relating to the parents' request to have the foster care arrangement in respect of B and C discontinued, or, in the alternative, to be given increased contact rights in respect of the children.

14. The Court observes that the applicant, in the relevant part of the application form, alleged a violation of Article 8 of the Convention, referring to "not having the kids back home". While his statement of facts in the application form included his statement that his "focus" was nonetheless on the limitations on contact rights and on procedural matters, the Court, contrary to the Government's submissions, does not consider that his complaint under Article 8 does not as such include the fact that the care order was upheld. The Court will accordingly examine as a whole the applicant's complaint concerning the disputed proceedings in which it was decided to continue the public care in respect of the applicant's children and the decision to give him contact with the children four times per year.

15. In that connection, the Court finds it established that the impugned decisions maintaining the care order and granting the applicant only limited contact rights entailed an interference with the applicant's right to respect for his family life as enshrined in Article 8 of the Convention. The Court finds it established, moreover, that the interference was in accordance with the law, namely the 1992 Child Welfare Act, which applied at the time, and that it pursued the legitimate aims of protecting the children's "health" and their "rights". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2.

16. The general principles relevant to the Court's assessment of that issue were 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).

17. Bearing in mind the wide margin of appreciation that is to be accorded to the domestic authorities in connection with care orders (see, *mutatis mutandis*, *Strand Lobben and Others*, cited above, § 211), the Court finds no basis on which to consider that the domestic authorities did not advance relevant and sufficient reasons for their decision to uphold the care order in respect of B and C. The Court notes that the District Court, which gave the last judgment on the merits regarding the care order, referred to assessments made by three psychologists who had met the children and who had emphasised that returning them to their parents at this stage would be harmful owing to their attachment to their foster homes. Two of the psychologists had even indicated that a return would be a "tragedy" for the children. The District Court emphasised that the children had special needs, but that their situations had improved after their placements in foster care. In its judgment, the

District Court further noted that the parents themselves had stated before the Board that the children's attachment to the foster home precluded their return. It also appears from the District Court's judgment that the children themselves, who were then aged almost 13 and almost 11 years respectively, had indicated that they wished to remain in foster care.

18. In the light of these elements, the Court accepts that in the proceedings here at issue, the domestic courts stroke a fair balance between the interests of the children and those of the applicant parent. They attached particular importance to the best interests of the children, which overrode those of the parents as it was established with the help of expert advice that lifting the care order, at the relevant time, would harm the children's well-being and development.

19. Regarding the specific issue of contact rights and the question whether the domestic authorities gave relevant and sufficient reasons for their decision in this regard, 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 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 *Hernehult*, cited above, §§ 73-74, concerning the applicant in the present case, and *Strand Lobben and Others*, cited above, §§ 221 and 225; *Pedersen and Others v. Norway*, no. 39710/15, §§ 67-69, 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 as regards 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 it requires 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).

20. The Court notes that the present application does not relate to decisions on contact rights taken when B and C were placed in public care. In the proceedings complained of in the instant case, the domestic authorities were to regulate contact rights in respect of children who had been in public care, at first on an emergency basis, since November 2013. On 16 March 2018, when the District Court made the last examination on the merits in respect of that matter in the course of the proceedings brought before the Court in the context of the present case, the children had been in public care for approximately four years and four months. B was then just under 13 years old and C was almost 10 years and 10 months old. Their opinions were obtained during the proceedings at issue and the District Court's judgment

stated that they had indicated to their spokesperson that the contact arrangements "could remain as they were", although the District Court raised the question as to what exactly that meant. It also appears that the District Court, when deciding on contact rights, took into account the children's own wishes, *inter alia*, that they did not want their parents to call them and that they did not wish to have more contact with their parents than they had at the time. In light of these particular circumstances, in particular the children's age and expressed wishes regarding contact, the Court finds that the instant case differs from the cases cited above (see paragraph 19).

21. The Court also observes that in their application to the District Court of 8 January 2018, the applicant argued that having three yearly contact sessions, as had been decided by the Board, was insufficient and that they should be given the right to six yearly sessions. The District Court's judgment also stated that the parents had maintained that six hours per session might be somewhat too long, but that two- or three-hour sessions would be far too short. In addition, the Court notes that, while the District Court indeed stated that six contact sessions per year would be too many having regard to the fact that the children were placed on a long-term basis, other concrete reasons were given as to why further contact would not be in the children's best interests at the time. Those reasons included their vulnerability and their reactions to the contact sessions that had already taken place. The Court observes in this regard that the Board made reference to an expert report, and described in detail how both children had language difficulties, struggled with tics and involuntary movements, and that they were in need for close follow-up by their care persons. In its reasons, the Board noted that there had been attempts to hold more frequent meetings with the parents but that this had had an adverse impact on the children. On one occasion, C had vomited before he was to meet his parents. The Board also described that the contact sessions were characterised by poor interaction between the parents and the children.

22. In assessing the reasons provided by the domestic courts, the Court emphasises that its task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *Strand Lobben and Others*, cited above, § 210). Although strict limitations on the applicant's contact rights in respect of B and C were imposed in the proceedings at issue, the Court considers that the reasons advanced by the domestic authorities were relevant and sufficient to justify that measure in the circumstances of the case as it had developed and stood at the time of the proceedings here at issue.

23. As to whether the decision-making process provided the applicant with the requisite protection of his interests, the Court notes that the applicant's case was first heard by the County Social Welfare Board and thereafter by the District Court. Both the Board and the District Court gave

detailed reasons for their respective decision and judgment. The High Court examined the District Court's judgment in its decision not to grant the parents leave to appeal, and the Supreme Court dismissed the parents' appeal against the High Court's decision. Moreover, it appears that an expert psychologist was appointed by the Board and the District Court and that she gave an extensive report. The applicant and his wife attended the hearings before the Board and the District Court, they had a legal aid lawyer and there is nothing to indicate that they were not fully involved in the decision-making process. The children also had a spokesperson through whom their views were obtained. Having examined all the material submitted to it by the parties, the Court is unable to identify any shortcomings such as those mentioned in its previous judgment (see paragraph 12 above) relating to the initial stages of the care order proceedings concerning B and C.

24. The Court observes, in particular, that the proceedings on the issuing of the care order which were examined in its previous *Hernehult* judgment had suffered from shortcomings in the form of initial failures to obtain information about the children; lack of assistance measures; and the authorities had proceeded on an erroneous basis as regards the medical circumstances of two of the family members (see *Hernehult*, cited above, §§ 68, 69 and 70, respectively). In contrast, the proceedings that have now been brought before the Court do not disclose any similar shortcomings.

25. The Court considers, in the light of these elements, 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.

26. It follows 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 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2023.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President