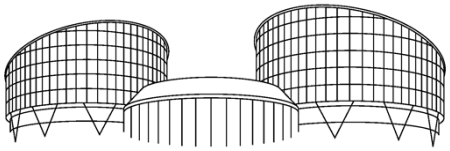

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF D.R. AND OTHERS v. NORWAY

(Applications nos. 63307/17 and 38105/19)

JUDGMENT

STRASBOURG

12 September 2023

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of D.R. and Others v. Norway,

The European Court of Human Rights (Second Section), sitting 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 applications 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") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

the decisions not to disclose the applicants' names;

the decision to give notice of the complaints concerning Article 8 of the Convention in both applications to the Norwegian Government ("the Government"), represented by their Agent, Mr M. Emberland, of the Attorney General's Office (Civil Matters) and, with regard to application no. 38105/19, to declare the remainder of the application inadmissible;

the observations submitted by the Government in respect of both applications and the observations in reply submitted by the applicants in application no. 38105/19;

the interest expressed by the applicant in pursuing application no. 63307/17;

the comments submitted in respect of application no. 63307/17 by the Government of Bosnia and Herzegovina, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court);

the comments submitted in respect of application no. 63307/17 by the Government of the Czech Republic and the Ordo Iuris Institute for Legal Culture, who, in addition to the Government of the Slovak Republic, were granted leave to intervene by the President of the Section under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court;

the decision to reject the respondent Government's objections to the examination of the applications by a Committee;

Having deliberated in private on 11 July 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASES

1. The applications concern complaints under Article 8 of the Convention relating to withdrawals of and limitations on the applicants' right to contact with their children who had been taken into public care. The complete list of applicants and the relevant details of the applications are set out in the appended table.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

2. Having regard to the similar subject matter of the two applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

3. The applicants in both cases complained that contact rights in respect of their children who were in foster care had been refused or that limitations had been imposed on those rights. They relied on Article 8 of the Convention.

4. The Government contested those complaints.

5. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

6. The Court finds that it cannot be called into question that the disputed decisions relating to contact rights entailed interferences with the applicants' right to respect for their family life, as guaranteed by Article 8 of the Convention. The measures complained of had a basis in national law, namely the 1992 Child Welfare Act, which applied at the relevant times. They pursued legitimate aims within the meaning of Article 8 § 2 of the Convention, that is to say, protection of the "health" and "rights" of the children involved. It follows that the issue in both applications is whether the impugned measures were "necessary in a democratic society", within the meaning of that provision.

7. In that context, the Court recalls that it set out the principles relevant to the proportionality analysis in cases such as the instant ones in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019). It has since reiterated and applied those principles in, *inter alia*, *K.O. and V.M. v. Norway* (no. 64808/16, §§ 59-60, 19 November 2019); *A.S. v Norway* (no. 60371/15, §§ 59-61, 17 December 2019); *Pedersen and Others v. Norway* (no. 39710/15, §§ 60-62, 10 March 2020); *Hernehult v. Norway* (no. 14652/16, §§ 61-63, 10 March 2020); *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020); *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 145, 10 December 2021); and *A.L. and Others v. Norway* (no. 45889/18, §§ 43-44, 20 January 2022), in each of which the Court found a violation in respect of issues similar to those complained of in the present cases.

8. For the purposes of the present cases, the Court particularly recalls that family reunification in the event of separation of the natural parents and the child is an inherent consideration in the right to respect for family life under Article 8 of the Convention. Thus, a positive duty lies on the competent authorities to take measures to facilitate family reunification as soon as reasonably feasible. That duty will begin to weigh on the authorities with

progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see, for instance, *K.O. and V.M. v. Norway*, cited above, § 60).

9. The Court further reiterates that it is crucial that a contact regime which was decided after the child had been placed into care effectively supports the goal of reunification without exposing the child to any undue hardship, until – after careful consideration and taking account of the authorities' positive duty to facilitate family reunification – the authorities are justified in concluding that the ultimate aim of reunification is no longer compatible with the best interests of the child (see, for example, *M.L. v. Norway*, cited above, § 79).

10. In both of the instant cases, except in respect of one child in application no. 63307/17, no contact rights were granted to the applicants (see the appended table). In respect of one of the children in application no. 63307/17, the contact rights granted were very limited (three hours twice per year). The Court notes that these limitations on contact rights were so far-reaching that they effectively deprived the applicants and their children of all or almost all their family life. It is thus incumbent on the Court to carry out a "stricter scrutiny" of whether the circumstances were so exceptional that such measures were justified (see *Strand Lobben and Others*, cited above, § 211).

11. The Court acknowledges that the domestic authorities adjusted the number and duration of visits in the light of the evidence available to them at the different stages of the proceedings. It also notes that the children involved had various views on the issue of contact with the applicants. In that connection, the Court is mindful that in cases such as the present ones, there will inevitably be particular circumstances that need to be accommodated and the Court takes into account that it falls to the domestic authorities to make the proper assessment to that end (see, for example, *K.O. and V.M. v. Norway*, cited above, § 70, and *A.L. and Others v. Norway*, cited above, § 49).

12. However, having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of these complaints than those reached in *K.O. and V.M. v. Norway*, *A.S. v. Norway* and *A.L. and Others v. Norway* (all cited above). The Court notes the similarities with the above-mentioned cases, in particular as concerns the justifications provided by the domestic authorities for establishing restrictive contact regimes at early stages of the child welfare process in connection with considerations in respect of the long-term nature of a placement in care.

13. Against that background, the Court does not find that the decisions on contact rights in the instant cases stand up to the "stricter scrutiny" that it requires in cases where such far-reaching measures as those adopted in these cases have been imposed (see paragraph 10 above). Accordingly, the Court

finds that there has been a violation of Article 8 of the Convention due to the limitations on or refusals of contact rights.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

I. DAMAGE

14. The Court notes that the applicants in application no. 63307/17 did not submit any claim in respect of damage. Accordingly, the Court considers that there is no call to award them any sum on that account.

15. The applicants in application no. 38105/19 claimed 30,000 euros (EUR) each in respect of non-pecuniary damage. The Court considers that the first applicant in that case (the mother, D.J.) must have experienced anguish and distress on account of the violation found. It accordingly awards her EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. In respect of the second applicant (the child, P.J.) in the same case, the Court considers that, in view of her age at the time and the fact that she did not experience the proceedings in question in the same way as her mother, the finding of a violation can be regarded as sufficient just satisfaction (see, for a similar approach, *Strand Lobben and Others*, cited above, § 230, and *A.L. and Others v. Norway*, cited above, § 62).

II. COSTS AND EXPENSES

16. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-71, 28 November 2017).

17. The Court notes that the applicant in application no. 63307/17 did not submit a claim in respect of costs and expenses. Consequently, the Court does not make an award in this regard.

18. The applicants in application no. 38105/19 claimed EUR 12,116.40 in respect of costs and expenses, apparently relating to lawyer's fees. However, they did not submit documents showing that they had paid or were under a legal obligation to pay fees charged by their representative. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have been incurred by them (see, for an example of a similar approach, *Merabishvili*, cited above, §§ 371-72). Consequently, the Court does not make an award in respect of these applicants either.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that the applications disclose a violation of Article 8 of the Convention;

4. *Holds*
   (a) that, in respect of application no. 38105/19, the respondent State is to pay to the first applicant, within three months, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the claim for just satisfaction in application no. 38105/19.

Done in English, and notified in writing on 12 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President

APPENDIX

List of applications raising complaints under Article 8 of the Convention
(Parents' contact rights following the children's placement in foster care)

No.	Application no. Date of introduction	Applicants' names and nationalities	Background to the case and domestic proceedings	Contact rights	Amount awarded in respect of non-pecuniary damage (plus any tax that may be chargeable)
1.	63307/17 20/08/2017	**D.R.** (Bosnia and Herzegovina)	The applicant is the mother of three children (who were born in 2002, 2005 and 2008). On 12/01/2010 the applicant's children were taken into emergency foster care on account of concerns of violent behaviour on the part of their father. The emergency placement was followed by a care order on 07/05/2010 and the applicant was granted supervised contact of four hours four times per year. Between 2010 and 2014 questions relating to care orders and contact rights were examined at different levels of jurisdiction. The care order was upheld in a judgment of 16/12/2014 by the District Court in which the applicant was granted contact rights only in respect of the oldest child (three hours twice per year). In the course of the proceedings, the applicant remarried and had two children. In 2016 the applicant initiated proceedings for contact rights. On 25/08/2016 the Board refused the applicant's request for contact rights in respect of the two youngest children and granted contact (three hours twice per year under supervision) in respect of the oldest child. The District Court upheld that decision on 09/12/2016, emphasising that – despite two of the children's wishes for contact – the contact sessions had triggered trauma from the previous neglect that they had experienced and that they had had adverse reactions related to the sessions. On 27/02/2017 the High Court refused the applicant leave to appeal. The Supreme Court dismissed an appeal by the applicant on 03/04/2017.	None in respect of two children and three hours twice per year in respect of one child	EUR 0 (no amount claimed)
2.	38105/19 08/07/2019	**D.J.** (Norway) **P.J.** (Norway)	On 09/03/2012 the first applicant's child (a girl who was born in 2009) was placed in emergency care after the child welfare services had received several notifications of concern. On 22/10/2012 the Board issued a care order and granted the first applicant contact of two hours two times per month under supervision. In 2013 the child was abducted from her foster home and kept for ten days by the first applicant and the child's father, an incident for which the parents were later convicted. On 04/10/2013 the Board decided that there should be no contact rights between the parents and the child. On 31/01/2018 the Board made a new assessment of the first applicant's contact rights and granted her contact of one hour per year. The first applicant's contact rights were withdrawn by the District Court in its judgment of 29/06/18, as that court found that the placement in foster care was likely to be long term and that contact between the child and the first applicant might trigger traumatic memories of the abduction. The High Court dismissed an appeal against that judgment on 29/04/2019, stating that, despite the child's somewhat ambivalent wish for contact with the first applicant, the placement in foster care was long term, the child was vulnerable and there was a clear risk of trauma related to the abduction. On 02/07/2019 the Supreme Court refused the first applicant leave to appeal against the High Court's decision.	None	EUR 25,000 to the first applicant (the mother); in respect of the child, the finding of a violation constitutes sufficient just satisfaction.