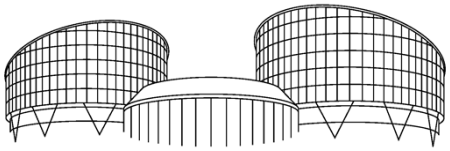

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF K.F. AND OTHERS v. NORWAY

(Applications nos. 39769/17 and 5 others – see appended list)

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 K.F. 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 grant legal aid to the applicant in application no. 45985/19;

the decisions to give notice of the complaints concerning Article 8 of the Convention in all applications, of the complaint concerning Article 9 of the Convention in application no. 48372/18 and of the complaint concerning Article 6 of the Convention in application no. 38097/19 to the Norwegian Government ("the Government") represented by their Agent, Mr M. Emberland, of the Attorney General's Office (Civil Matters) and to declare inadmissible the remainder of the application no. 45985/19;

the observations submitted by the Government and the observations in reply submitted by the applicants in respect of all applications except application no. 58880/19;

the interest expressed by the applicant in pursuing application no. 58880/19;

the comments submitted in respect of applications nos. 39769/17, 9167/18 and 48372/18 by the Government of the Czech Republic, the Government of the Slovak Republic and the Ordo Iuris Institute for Legal Culture, who 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 or reservations 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 all concern complaints under Article 8 of the Convention relating to decisions to withdraw the applicant parents' parental responsibilities in respect of the children and to authorise their adoption, against the parents' wishes. 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 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 applicant parents complained about decisions to withdraw their parental responsibilities in respect of their children. Responsibility had then been transferred to the authorities, which, by virtue of those responsibilities, authorised the adoption of the children against the parents' wishes. The applicant parents relied on Article 8 of the Convention. In application no. 48372/18 the applicants additionally maintained that the replacement of foster care with adoption had violated their rights under Article 9 of the Convention.

4. The Government contested those complaints.

5. The Court considers that the complaint under Article 9 of the applicants in application no. 48372/18 is an integral part of their complaints under Article 8, interpreted and applied in the light of Article 9 (see, for a similar approach, *Abdi Ibrahim v. Norway* [GC], no. 15379/16, §§ 141-42, 10 December 2021). Accordingly, it examines the applicants' complaints about the withdrawal of their parental responsibilities in respect of their children and the authorisation of their children's adoption from the standpoint of Article 8.

6. The Court notes that the complaint under Article 8 in all applications 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.

7. The Court finds it established that the measures decided in the proceedings complained of, namely the withdrawal of the applicant parents' parental responsibilities in respect of their children and the authorisation of the adoption of those children, entailed an interference with the applicants' right to respect for their family life as guaranteed by Article 8 of the Convention. That interference had a basis in national law, namely the 1992 Child Welfare Act, which applied at the relevant times. It pursued legitimate aims within the meaning of Article 8 § 2 of the Convention, that is to say, the protection of the "health" and "rights" of the children involved. It follows that the legal issue arising in all the applications is whether the impugned measures were "necessary in a democratic society", within the meaning of that provision.

8. In that context, the Court recalls that the general principles relevant to the proportionality analysis in cases involving child welfare measures

(including measures such as those at issue in the present cases) are well established in the Court's case-law and were extensively set out in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019) to which reference is made. The Court 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), *Hernehult v. Norway* (no. 14652/16, §§ 61-63, 10 March 2020), *Pedersen and Others v. Norway* (no. 39710/15, §§ 60-62, 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), *A.L. and Others v. Norway* (no. 45889/18, §§ 43-44, 20 January 2022), *E.M. and Others v. Norway* (no. 53471/17, §§ 52 and 54, 20 January 2022) and *Roengkasettakorn Eriksson v. Sweden* (no. 21574/16, § 70, 19 May 2022).

9. Since all the instant cases concern adoption without parental consent, and most concern adoptions as replacements for foster home arrangements, the Court particularly reiterates from the above-mentioned general principles that such measures – which result in the legal ties between the parents and the children being definitively severed – should only be applied in "exceptional circumstances" and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests. It is incumbent on the Court to carry out a "stricter scrutiny" of whether the circumstances in the instant cases were so exceptional that such measures were justified (see *Strand Lobben and Others*, cited above, §§ 207-09).

10. The Court also emphasises that, in light of the fact that the proceedings at issue concerning parental responsibilities and adoption were preceded by proceedings concerning care orders and contact rights, it follows from its relevant case-law that the Court must to some degree have regard to such previous proceedings in order to put the proceedings complained of in context (ibid., § 148). On several occasions the Court has taken into account whether decisions to replace foster home arrangements with adoptions were taken in situations where, following a placement in care, only very limited parent-child contact had been allowed (ibid., § 221; see also, for example, *Pedersen and Others*, cited above, §§ 67-69; *M.L. v. Norway*, cited above, § 92; and *Abdi Ibrahim*, cited above, § 152). Furthermore, the Court's case-law on such issues may be read in conjunction with its case-law relating to complaints about limitations on parent-child contact imposed during foster care arrangements (see, for example, *K.O. and V.M. v. Norway*, cited above, §§ 67-71, and *A.L. and Others v. Norway*, cited above, §§ 47-51).

11. The Court further recalls 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 their natural parents, 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).

12. It goes without saying that there will always be differences between cases such as the instant ones with regard to the facts that were relevant to the authorities' decision-making processes in the domestic proceedings. As concerns the measures complained of, the Court, having examined all the material submitted to it in the instant cases, has, however, found no facts or arguments capable of persuading it to reach a different conclusion on the necessity in a democratic society of the interferences with the applicants' right to respect for their family life than those reached in *Strand Lobben and Others*, *Pedersen and Others*, *M.L. v. Norway* and *Abdi Ibrahim* (all cited above).

13. In particular, the proceedings through which the adoption of the applicants' children was ultimately authorised and the reasons advanced for the measures decided in those proceedings reflected the fact that (i) insufficient importance was attached to the aim that placement in care be temporary and an affected family be reunited, and (ii) insufficient regard was paid to the positive duty to take measures to preserve family bonds to the extent reasonably feasible (compare also *Strand Lobben and Others*, cited above, § 220; *Pedersen and Others*, cited above, § 71; and *M.L. v. Norway*, cited above, § 99). It follows that the Court is not persuaded that the procedures to which the instant applications relate were accompanied by safeguards proportionate to the gravity of the interferences and the seriousness of the interests that were at stake (see, for a similar approach, *Strand Lobben and Others*, cited above, § 225).

14. Accordingly, the Court finds that that there has been a violation of Article 8 of the Convention on account of the withdrawal of the applicant parents' parental responsibilities in respect of the children in question and the authorisation of the adoption of the children against the parents' wishes.

III. REMAINING COMPLAINT

15. The applicant in application no. 38097/19 additionally complained of a violation of Article 6 of the Convention on grounds that one of the judges (an expert lay judge) who had participated in the impugned proceedings in 2018 regarding the removal of parental responsibilities and adoption had been biased, as that judge had also sat on the bench of the same court (City Court) in 2015 when that court had reviewed the care order made in respect of the applicant's son.

16. The Court has examined the applicant's arguments in view of its relevant, well-established case-law on the requirement of an independent and impartial tribunal (see, for example, *Denisov v. Ukraine* [GC], no. 76639/11, §§ 60-65, 25 September 2018). Having scrutinised the judgments in question, thereby observing, *inter alia*, the limited analogy of the issues that were

examined on the two occasions in 2015 and 2018 (see, for example, *mutatis mutandis*, *Morel v. France,* no. 34130/96, § 45, ECHR 2000-VI), the Court does not find that the case discloses any indication that the decision to be made in 2018 by the judge in question was prejudged by the court's decision in 2015 or any other legitimate ground to doubt the court's impartiality. This part of application no. 38097/19 is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

I. DAMAGE

17. The Court notes that the applicants in applications nos. 38097/19 and 58880/19 did not submit any claims in respect of damage. Accordingly, the Court considers that there is no call to award them any sum on that account.

18. It observes that the applicants in the remaining applications have all submitted claims in respect of non-pecuniary damage. The Court considers that the applicant parents must have experienced anguish and distress on account of the violation found. The Court accordingly awards them 25,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable. Where both parents have applied to the Court (applications nos. 39769/17, 9167/18 and 48372/18), the award of that sum is made jointly (see the appended table).

19. In respect of the applicant child in application no. 9167/18, the Court considers that, in view of his age at the time and the fact that he did not experience the procedures in question in the same way as his parents, 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

20. The applicants in applications nos. 39769/17, 48372/18, 38097/19 and 58880/19 did not submit any claims in respect of costs and expenses. Consequently, the Court does not make an award in respect of these applicants.

21. The applicants in applications nos. 9167/18 and 45985/19 claimed EUR 30,378.30 and EUR 15,000 respectively for costs and expenses.

22. 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).

23. With regard to application no. 9167/18, the Court observes that the applicants were granted legal aid in the proceedings before the domestic courts and it does not find that they have demonstrated that they incurred any necessary and reasonable costs in addition to those already covered by the national legal aid scheme. As concerns any incurred costs and expenses in connection with their application before the Court, the Court finds that the claim has neither been sufficiently itemised nor supported by relevant documents. It accordingly finds no basis on which to award any sum in respect of costs and expenses.

24. In respect of application no. 45985/19, the applicant did not submit any documents showing that she paid or was under a legal obligation to pay fees charged by her representative. In the absence of such documents, the Court finds no basis on which to accept that she has incurred the costs and expenses claimed (see, similarly, for example, *Merabishvili* cited above, §§ 371-72) and therefore does not make an award in respect of this applicant either.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 8 of the Convention admissible and the remainder of application no. 38097/19 inadmissible;

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

4. *Holds*
   (a) that, in respect of applications nos. 39769/17, 9167/18, 48372/18 and 45985/19, the respondent State is to pay to the applicant parents, within three months, the amount indicated in the appended table (jointly to the parent applicants where so indicated), 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 applicants' claims for just satisfaction.

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 cases:

No.	Application no. Date of introduction	Applicants' names and nationalities	Background to the case and domestic proceedings	Amount awarded in respect of non-pecuniary damage (plus any tax that may be chargeable)
1.	39769/17 26/05/2017	K.F. (Norwegian) and A.F. (Moroccan)	The first and the second applicants are parents of a girl, X, who was born in 2010. The second applicant did not live in Norway when X was born. The first applicant also has an older daughter, who was born in 1999 and lives in foster care. On 31/08/10, on account of concerns related to the first applicant's mental capacity and care abilities, X, who was approximately three months old at the time, was placed in emergency care with the foster parents of her older sister. The District Court (hereinafter "the DC") repealed the decision and X was returned to the first applicant. On 29/12/10 the County Social Welfare Board issued a care order in respect of X and the first applicant was granted contact of three hours four times per year. The DC upheld the decision and the High Court refused the first applicant leave to appeal. In 2012 the first and second applicants applied to have X returned, but the applications were dismissed and the first applicant's contact was reduced to three hours twice per year. In 2015 the first contact session between X and the second applicant took place. The applicants initiated proceedings to have X returned. On 23/10/15 the Board decided to withdraw the applicants' parental responsibilities in respect of X and to authorise her foster parents to adopt her. The DC concurred with the Board's decision on 15/06/16, finding that the child was vulnerable and had a particular need for stability, and noted that the risk of future proceedings being instituted by the applicants might create uncertainty for X and her foster parents. The lack of attachment between the parents and X was also emphasised. The High Court refused the applicants leave to appeal on 06/10/16. The Supreme Court dismissed an appeal by the applicants against the High Court's decision on 09/12/16.	jointly EUR 25,000
2.	9167/18 07/02/2018	S.E. (Norwegian), T.E. (Norwegian), child (Norwegian)	On 14/01/16 an emergency care order was issued in respect of the applicant parents' son (who was two months old at the time) and the child was placed into foster care. That decision was made after several notifications of concern had been issued in relation to the parents' care abilities. The Board upheld the emergency care order on 02/02/16 and the applicant parents' contact was set at one hour once per month. The decision was not appealed against. On 06/05/16 the Board rejected a request by the child welfare services (hereafter "the CWS") to have the applicant parents' parental responsibilities in respect of their son withdrawn and to authorise his adoption. On 22/11/16 the DC granted the request by the CWS and accordingly withdrew the applicant parents' parental responsibilities in respect of the child and allowed the foster parents to adopt him. The DC emphasised the child's vulnerability and the need for developmental support and considered that the applicant parents' lack of ability to provide him with care would be permanent. Alternative supportive measures were considered but it was found that they did not remedy the care deficiencies. Adoption was thus considered to be in the best interests of the child. On 04/07/17 the High Court upheld the decision, generally concurring with the reasons given by the DC. On 23/11/17 the Supreme Court refused the applicant parents leave to appeal against the High Court's judgment.	jointly EUR 25,000 to the first two applicants (the parents). The finding of a violation constitutes sufficient just satisfaction in respect of the child.

No.	Application no. Date of introduction	Applicants' names and nationalities	Background to the case and domestic proceedings	Amount awarded in respect of non-pecuniary damage (plus any tax that may be chargeable)
3.	48372/18 28/09/2018	M.A. (Norwegian) and M.A. (Norwegian)	The first and second applicants have three children (who were born in 2000, 2010 and 2014). On 21/02/12, after notices of concern had been issued, the middle child, X, was placed into emergency care and contact was set at six hours per week. On 21/05/12 the Board issued a care order in respect of X. The first applicant was granted contact of two hours once per month and the second applicant was granted contact of two hours three times per year. On 28/11/12 the DC upheld the Board's decision and the High Court refused the applicants leave to appeal on 25/02/13. On 29/11/13 the Board withdrew the applicants' contact rights, as the contact sessions had appeared to have a negative effect on X. The second applicant contested the Board's decision. The decision was upheld by the DC, which also refused the applicants leave to appeal. On 12/07/16 the Board decided to withdraw the applicants' parental responsibilities in respect of X and to authorise the foster parents to adopt him. The Board noted that X had not seen his parents since 2013, he was vulnerable and he was so attached to the foster parents that moving him from his foster home would be harmful. On 23/10/17 the DC concurred with the Board's decision, while emphasising X's vulnerability, his attachment to the foster home and the risk of further legal proceedings being initiated by the applicants. On 29/01/18 the High Court refused the applicants leave to appeal against the DC's judgment. On 22/03/18 the Supreme Court dismissed an appeal by the applicants against the High Court's decision. The Supreme Court's decision was served on the applicants on 28/03/18.	jointly EUR 25,000
4.	38097/19 09/07/2019	G.B. (Norwegian)	The applicant has a child, X (who was born in September 2014), with his former girlfriend, A. Following notices of concern regarding the parents' care abilities, an emergency care order was issued shortly after X's birth. The care order was later revoked by the Board on the condition that A agreed to live in a care facility with supervision and assistance. On 02/10/14, after the care facility had expressed concerns regarding X's care situation, the CWS made an emergency decision to place X in public care. The Board and the DC both upheld the decision. Contact for the parents was set at one hour per week. On 23/03/15 the Board issued a care order and the parents were granted contact of two hours three times per year under supervision. The Board noted that the attachment between X and his parents was weak and that the placement in public care would likely be long term. The parents brought the Board's decision before the DC for review but decided to withdraw the application in so far as it concerned the care order. In respect of contact rights, an agreement was reached according to which the parents were granted three sessions with both parents per year and one individual session with each parent per year, all sessions lasting two hours. On 02/02/18 the Board decided to withdraw the applicant's and A's parental responsibilities in respect of X and to authorise that he be adopted by his foster parents. The adoptive parents agreed to post-adoption contact visits, which were set at two hours two times per year. The adoptive parents would be able to attend the contact sessions. On 29/08/18 the DC upheld the Board's decision. The DC emphasised that X (almost four years old at the time) had been placed in public care shortly after his birth, that he had been living in his foster home since he was a few months old and that he had no close attachment to his parents. On 15/02/19 the High Court refused the applicant and A leave to appeal against the DC judgment. On 30/04/19 the Supreme Court dismissed and appeal by the applicant and A against the High Court's decision.	EUR 0 (no amount claimed)
5.	45985/19 23/08/2019	G.G. (Norwegian)	The applicant is the mother of five children, of which the three eldest have been placed in foster care. Her third child, X (who was born in February 2013), was placed in emergency care on 12/12/13. From 17/03/14 the family stayed at a parent and child centre but a new emergency decision was made after reports of concern had been issued. On 19/09/14 a care order was issued	EUR 25,000

No.	Application no. Date of introduction	Applicants' names and nationalities	Background to the case and domestic proceedings	Amount awarded in respect of non-pecuniary damage (plus any tax that may be chargeable)
			in respect of X and he was moved to a foster home. The applicant was not granted any contact rights. On 05/10/18 the Board decided that parental responsibilities would be withdrawn from the applicant in respect of X and X's foster parents were given permission to adopt him. The Board noted that the applicant at the time was responsible for her two younger children and that there were no apparent shortcomings concerning the care of these children. Nevertheless, in its assessment, the Board emphasised X's attachment to the foster home and that he was a vulnerable child in need of stability. The DC upheld the decision on 08/02/19, also emphasising X's vulnerability, his limited ties to the applicant and that adoption would ensure stability for X, *inter alia,* as it would prevent the applicant from initiating legal proceedings regarding contact rights in the future. The High Court refused the applicant leave to appeal against the DC's judgment on 10/05/19. The Supreme Court dismissed an appeal by the applicant against the High Court's decision on 18/06/19.	
6.	58880/19 24/10/2019	L.S. (Norwegian) O.V. (Norwegian)	On 02/02/15 the applicants' child (six months old at the time) was placed in emergency care on account of concerns relating to the applicants' care abilities. On 30/06/15 the Board issued a care order. The Board, noting that the care order was to be long term, granted the applicants contact of two hours four times per year. The DC upheld the care order on 07/04/16 and the High Court refused the applicants leave to appeal against the DC's judgment on 29/07/16. In 2017 the foster parents applied for authorisation to adopt the child. On 24/03/17 the Board withdrew the applicants' parental responsibilities in respect of the child, which were then transferred to the authorities, and authorised the adoption as requested. That decision was upheld by the DC on 26/10/17. The High Court dismissed an appeal by the applicants on 10/09/18 but increased the applicants' contact rights to two hours twice per year. Both the DC and the High Court found that adoption would be in the child's best interests as, *inter alia*, it would prevent the applicants from initiating legal proceedings relating to the child in future. The Supreme Court refused the applicants leave to appeal against the High Court's decision on 26/04/19.	EUR 0 (no amount claimed)