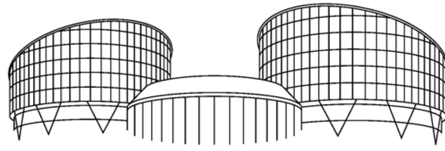

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 24148/22
M.T.
against Norway

The European Court of Human Rights (Second Section), sitting on 4 June 2024 as a Committee composed of:

Jovan Ilievski, *President*,
Diana Sârcu,
Gediminas Sagatys, *judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 24148/22) 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 9 May 2022 by a Bulgarian national, Ms M.T. ("the applicant"), who was born in 1973 and lives in Oslo, and was represented by Ms C. Schjatvet, a lawyer practising in Oslo;

the decision not to disclose the applicant's name;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The application concerns proceedings in which it was decided to continue public care of one of the applicant's sons and in which the applicant's contact rights during the public care were determined.

2. The applicant has two sons, including X, who was born in 2007.

3. On 6 November 2017 the County Social Welfare Board issued care orders in respect of both of the applicant's children. On review, the domestic courts upheld only the care order issued in respect of X.

4. On 6 December 2019 the applicant applied to have the care order in respect of X lifted. On 5 May 2020 the Board dismissed the application. The applicant and X's father, who had separated in 2014, were each granted

contact for four hours six times per year. On 3 December 2020 the District Court upheld the Board's decision.

5. In the course of appeal proceedings brought by the applicant, on 16 August 2021 the High Court decided to dismiss as inadmissible an application lodged by the applicant requesting that it give a declaratory judgment holding that there had been violations of the Constitution and of Article 8 of the Convention. The High Court gave judgment on the merits on 6 September 2021. X's father had opposed the applicant's application to have the care order lifted and to have X returned to her and had himself requested to be granted contact rights.

6. At the outset, the High Court gave an extensive overview of the legal framework, including the Supreme Court's case-law, in which that court had clarified the implementation of the requirements of Article 8 of the Convention and the Court's case-law in cases concerning child welfare measures (see *Abdi Ibrahim v. Norway* [GC], no. 15379/16, §§ 62-66, 10 December 2021).

7. The High Court went on to examine in detail the proceedings that had previously been conducted on the question of whether a care order in respect of X should be issued and concluded on that point that there had been no shortcomings in the processing of the case nor had any violations of Article 8 of the Convention occurred on that occasion. Turning to the question of whether the care order in respect of X should be lifted, it reiterated some of the findings of an expert who had been appointed in the course of the proceedings, in particular the findings concerning the applicant's caregiving skills and X's care needs. The expert had stated during the High Court's hearing that the applicant had insufficient caregiving skills and that X, moreover, had particular care needs that she could not provide for. It emerged that X had lived for a long time in conditions that made it difficult for him to develop positively, emotionally, cognitively, and socially. X had severe educational and socio-emotional problems, with poor language skills and limited social functioning. Considerable extra resources had been put in place to help him. It was assumed that the developmental problems were caused by serious deficiencies in the care situation. According to the expert he was in need of close follow-up, as he was particularly vulnerable to rejection and had a special need for emotional affirmation. It was further stated that the applicant had a "distance" from her children and was generally limited in her emotional care of them. More specifically, it was stated that her cognitive functioning was below average and that she had difficulties in processing information, planning and managing impulse control. The High Court examined in detail the degree to which those matters had developed since the care order had first been issued and concluded that they had not improved to a level such that it would be possible to lift the care order. In that connection it assessed whether assistance measures might aid in creating satisfactory conditions for X but concluded that that was not the case. In addition, the

High Court took note of X's opinions; he had stated that he did not wish to move back and the High Court observed that he was a 14-year-old with strong views.

8. The High Court also examined whether the child welfare services had strived to achieve the ultimate aim of reuniting the family and found that that had been the case. It reviewed in that context the various measures offered, such as guidance and courses, and the steps taken by the child welfare services to facilitate contact and help the applicant develop her caregiving abilities. Moreover, the High Court assessed the attachment that X had developed to his foster family and it considered that if he were removed from the foster family at that time, it would cause him serious harm.

9. On the basis of all of the above, the High Court concluded that the care order could not be lifted.

10. Proceeding to the issue of contact rights, the High Court again drew up the legal framework principally as it had been set out by the Supreme Court, which had in turn built it on the provisions of the Convention and on the Court's case-law (see paragraph 6 above). It took as its starting point the aim of reuniting the family and held that a contact regime should be set with a view to strengthening and developing the family ties. The High Court went on to examine whether the contact sessions had been successful, X's own opinions and the assessment of the court-appointed expert. It transpires that there had been continuous contact by telephone and text messages between the contact sessions, and the High Court considered the contact sessions themselves to have been of good quality, albeit somewhat variable. In the High Court's overall assessment, X's clear wish for less contact with the applicant was also emphasised. It concluded that each of X's parents should be granted contact for five hours seven times per year in addition to one session in summer.

11. Relying on Article 8 of the Convention, the applicant complained that the domestic courts had dismissed her application for a declaratory judgment to the effect that there had been a violation of that provision. She further submitted that the child welfare services had done nothing to rebuild the family and preserve the biological ties following the issuance of the care order and that the processing of the child welfare case had led to the complete estrangement of the applicant and X.

## THE COURT'S ASSESSMENT

12. The Court finds that the domestic decisions to uphold the care order in respect of the applicant's son X and to grant her limited contact rights with X entailed an interference with the applicant's right to respect for her 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 was applicable at the material time. It pursued the legitimate aim of protecting X's

"rights" and his "health". The remaining question is whether the interference was "necessary" within the meaning of Article 8 § 2 of the Convention.

13. The general principles relevant to the necessity test 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). From those principles, it follows that the Court must determine whether, in the light of the entirety of the case, the reasons adduced to justify the measures in question were relevant and sufficient for the purposes of Article 8 § 2 and whether the applicant has been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

14. The Court also bears in mind that it has recently given judgments in several cases involving the respondent State in which it found a violation of Article 8 of the Convention relating to the justifications provided by the domestic authorities for the establishment of particularly restrictive contact regimes (see, for cases where shortcomings in relation to decisions on contact rights in themselves led to the finding of a violation, *K.O. and V.M. v. Norway*, no. 64808/16, §§ 67-71, 19 November 2019, and *A.L. and Others v. Norway*, no. 45889/18, §§ 47-51, 20 January 2022; see also, for cases where similar shortcomings formed important parts of the context in which violations had occurred, *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; *M.L. v. Norway*, no. 64639/16, §§ 92-94, 22 December 2020; and *Abdi Ibrahim*, cited above, § 152).

15. In determining whether the domestic courts gave relevant and sufficient reasons for their decision not to lift the care order and to grant the applicant limited contact rights, the Court notes that the High Court thoroughly examined whether the care order could be lifted and the amount of contact which would be appropriate. It relied on the Supreme Court's case-law which implemented this Court's case-law and applied the principles flowing therefrom to the facts as they had been established by way of extensive proceedings. The High Court emphasised X's very particular care needs, given his severe educational and socio-emotional problems, and the limitations in the applicant's caregiving skills as regards her ability to provide emotional care and her cognitive functioning, and concluded that the applicant could not provide X with adequate care. In its overall assessment, X's opinions were taken into account and the High Court also considered the manner in which the child welfare case had been conducted and whether X could be returned to the applicant if further assistance measures were implemented (see paragraphs 7-8 above).

16. Furthermore, the Court notes that in its reasons, the High Court took the Convention and the Court's case-law into account, in particular by

applying the Supreme Court's case-law in which the Court's case-law had been implemented (see paragraphs 6 and 10 above). The Court does not find there to be any issue owing to the fact that a separate decision on Article 8 of the Convention had not been given in the course of the child welfare proceedings (see also, *mutatis mutandis*, *I.D. v. Norway* (dec.), no. 51374/16, §§ 68-69, 4 April 2017, where a similar complaint had been lodged under Article 13).

17. As to the applicant's general argument that insufficient regard had been paid to the ultimate aim of reunification of the family, including the allegation that the child welfare services had dealt with the case in a manner that had led to the estrangement of the applicant and X, the Court also takes note of the detailed examination of the High Court on that point. In view of the various measures that the High Court emphasised had been attempted by the child welfare services to assist the family after the issuance of the care order (see paragraph 8 above), the Court does not find that the applicant has demonstrated the appearance of any shortcomings in this respect. In the light of the foregoing, the Court finds that relevant and sufficient reasons were given for the decisions on the issues relating to the care order and the applicant's contact rights.

18. In the light of the considerations above, the Court finds that the interference with the applicant's right to respect for her family life was proportionate to the legitimate aims pursued and was thus "necessary in a democratic society" for the purposes of Article 8 § 2. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must accordingly be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 27 June 2024.

| Dorothee von Arnim<br>Deputy Registrar | Jovan Ilievski<br>President |
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