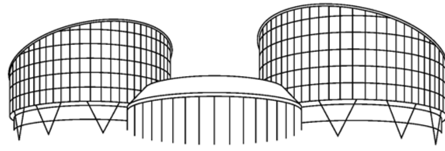

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 43483/22
T.E. and J.E.
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. 43483/22) 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 5 September 2022 by two Norwegian nationals, Ms T.E. and Mr J.E. (“the applicants”), who were born in 1986 and 1980 respectively and live in Tønsberg, and who were represented before the Court by Mr F.P. Gundersen, a lawyer practising in Oslo;

the decision not to disclose the applicants’ names;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns public care of the applicants’ children.

2. The applicants have two daughters: X, who was born in 2013, and Y, who was born in 2015. In 2017 the girls were placed in public care with the applicants’ consent.

3. On 25 May 2018 the County Social Welfare Board issued care orders in respect of X and Y. The care orders were upheld by the City Court on review.

4. On 23 December 2019 the child welfare services applied to the Board for a decision on whether the care order could be lifted, as the applicants had requested, or, in the alternative, whether the applicants’ contact should be

reduced, as the child welfare services proposed. The Board appointed a psychologist, who submitted a report on 31 March 2020, and conducted a hearing on 6 and 7 May 2020. In a decision of 19 May 2020 it decided not to lift the care orders, to grant the applicants contact with Y for two hours six times per year and not to grant them any contact with X.

5. On 14 October 2020 the District Court, on review, essentially upheld the Board's decision. In the operative part of its judgment it specified that when contact between the applicants and X was resumed, the child welfare services were authorised to supervise the contact sessions.

6. On 23 February 2022 the High Court made a new assessment and dismissed an appeal by the applicants against the District Court's judgment.

7. On 6 May 2022 the Supreme Court refused the applicants leave to appeal against the High Court's judgment.

8. Under Article 8 of the Convention, the applicants complained that the decisions to continue the public care of their children and the limitation of their contact rights had breached their right to respect for their family life.

THE COURT'S ASSESSMENT

9. The Court finds that the decisions to continue the public care of the applicants' children, X and Y, including the regulation of the applicants' contact rights, entailed an interference with the applicants' right to respect for their family life for the purposes of Article 8 § 1 of the Convention. It finds that the interference was in accordance with the law, namely the 1992 Child Welfare Act, which was applicable at the material time, and that it pursued the legitimate aims of protecting X's and Y's "health" and their "rights". The remaining question is whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2.

10. 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 applicants have been adequately involved in the decision-making process seen as a whole (see *Strand Lobben and Others*, cited above, §§ 203 and 212).

11. The Court observes that the instant case relates to proceedings in which the domestic authorities decided on whether the public care of X and Y should continue and on the contact regime that was to be put in place for the subsequent period.

12. In respect of the decision to continue the public care, the Court observes that the High Court took as its starting point the right to respect for

family life, as enshrined in, *inter alia*, Article 8 of the Convention, and emphasised that the Court had placed considerable importance in its case-law on the aim of reuniting families following decisions on public care. Reference was made to *Strand Lobben and Others* (cited above). The High Court went on to carry out a detailed examination of the children's care needs, starting with Y, who had several congenital diseases and needed constant help with and supervision of her personal and daily tasks. Lack of attendance to her care needs were life-threatening; she could not, for example, eat or sit up without help and needed technical assistance to stabilise her head in order to ensure that she could breathe. In addition to the foster parents, numerous health personnel were involved and various technical measures had been started, such as renovation works in the foster home in order to facilitate, *inter alia*, her transport with her wheelchair. Y had expressed that she wished to continue to meet with her mother and father with the same frequency or more often but that she had to live with her foster family. As regards X, she had experienced periods where her development had regressed considerably and she had difficulties with fundamental personal mechanisms of regulation, such as hunger, emotions, sleep or using the toilet. Psychiatric assessments had concluded that her symptoms met the criteria for post-traumatic stress disorder and the court-appointed expert had also concluded that a complex disorder of that type was the most likely explanation for her symptoms. Several other medical explanations for her losses of functioning were discussed by the High Court but it was concluded that they had been caused by developmental trauma which had occurred while she had been in the applicants' care. X's opinions had also been obtained by the court-appointed psychologist.

13. The High Court went on to assess each of the applicants' caregiving skills and considered that they were both deficient.

14. The High Court examined whether there had been any developments since the children had first been placed in care and concluded that there had not. Moreover, the High Court examined the overall manner in which the child welfare case had been conducted since the child welfare services had first come into contact with the family in 2014 in connection with a fire alarm in their apartment. Having reviewed the case, the High Court considered that the child welfare services had spent considerable resources and tried a number of assistance measures, but to no avail. It concluded that there were no feasible further measures which would enable the applicants to provide X and Y with the care that they needed.

15. Having regard to the foregoing, the Court considers that the domestic authorities, and the High Court in particular, gave relevant and sufficient reasons for their decision not to discontinue the care orders.

16. Proceeding to the issue of contact rights, the Court observes that the High Court again took Article 8 of the Convention and the Court's case-law as its starting point. As for Y, there was apparently agreement between the

parties that, when the construction of a separate dwelling for her had been completed, contact sessions could take place once a month. In its assessment of the current contact rights, the High Court emphasised the recommendations given by the expert, including the fact that Y had expressed to the expert her wish for contact to the same extent as she had at the time. The applicants had had no reservations in respect of the need for supervision. As to X, she was in psychiatric treatment at the Department of Child and Adolescent Psychiatry at the time and it was therefore considered that contact sessions could only be initiated in accordance with a recommendation by the treating institution. When assessing contact rights, the High Court emphasised, *inter alia*, the expert's finding that X struggled with post-traumatic stress disorder and that she had had extensive adverse reactions after the contact sessions (including problems with sleep, eating, motor skills and regulation of her emotions). It also transpired that she had experienced memory loss after the contact sessions. X had described frightening experiences from the time when she lived with the applicants, and it was noted that she likely had witnessed violence. According to the psychologists the reactions were a strain for her, and because of this she had setbacks after the contact sessions which resulted in her functioning at a lower age level. The High Court thus found that contact at the time in question would be an unreasonable burden for X but emphasised that efforts should be made to ensure that contact could be possible in the long term. The High Court further considered that the psychiatric clinic should indicate when contact could be resumed and assist in that process. As the court-appointed expert had indicated, supervision would be necessary at the beginning of that process and was therefore authorised.

17. The Court 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, 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).

18. However, in the instant case, the Court, having reviewed the detailed justifications given by the domestic authorities for the decision on contact rights, finds that the domestic courts, relying on several expert reports, thoroughly established the facts relating to X's and Y's health problems and

their resulting needs and best interests and gave relevant and sufficient reasons for their decision on contact rights in respect of both children. Taking note of, among other things, the High Court's thorough assessment relating to how the child welfare case had proceeded overall, including its assessment of the measures that had been offered throughout, the Court is also unable to subscribe to the applicants' arguments to the effect that insufficient regard had been paid to the aim of reunification of the family.

19. In the light of the considerations above, the Court finds that the interference with the applicants' right to respect for their family life was proportionate to the legitimate aims pursued and thus was "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) of the Convention 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 Deputy Registrar	Jovan Ilievski President