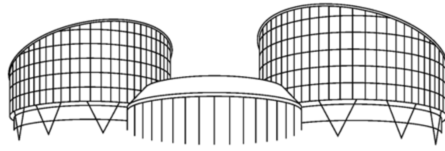

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 59082/19
A.A.
against Norway

The European Court of Human Rights (Fifth Section), sitting on 10 June 2021 as a Committee composed of:
Ganna Yudkivska, *President,*
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*
Having regard to the above application lodged on 9 November 2019,
Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

1. The facts of the case, as submitted by the applicant, may be summarised as follows.

2. The applicant is a Norwegian national, who was born in 1968 and lives in Oslo. He was represented before the Court by Mr K. Sørensen, a lawyer practising in Oslo. He has four children together with B, his former spouse. The applicant has had the daily care of the two oldest children, while care orders have been issued in respect of the two younger children. The application relates to the applicant's youngest son, X, born in December 2010.

3. The applicant and his family first came in contact with the child welfare services in August 2011, as B had reported of the applicant being violent against her. In the four year-period from August 2011 until July 2015, the child welfare services conducted regular visits to the family, and received several notices of concern regarding the situation in the family. During this period several support and aid measures to improve the

applicant's and B's ability to care for children were implemented, at certain times 20-30 hours of counselling each month. However, the implemented measures were not successful, and the child welfare services continued to receive notifications of concern regarding neglect of the children, *inter alia* to the effect that the children were being subjected to violence from the parents.

4. On 28 July 2015 the child welfare services made an emergency care order under which the applicant's two youngest children, X and his brother, were placed in an emergency foster home. The child welfare services set contact rights for the applicant at one hour every week, under supervision. The applicant and B appealed against the decision.

5. On 7 August 2015 the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) upheld the emergency care order. Contact rights for the applicant were set at three hours every week, under supervision.

6. On 14 January 2016 the Board issued a care order in respect of X.

7. On 22 September 2016, by judgment of the City Court (*tingrett*), the care order was upheld. The City Court found that X had been subjected to very bad conditions for care in a dysfunctional family over a prolonged period – approximately five years – during an early stage in his life. Moreover, it found that the home of the applicant, where X was cared for, was very chaotic, dirty and unsuited for children. Furthermore, the City Court noted that the applicant and B had a very high level of conflict, marked by arguments and violence. At least X's older brother had been exposed to violence from the applicant, and X had been witness to violence between the applicant and B. The City Court also noted that the applicant had received support from the child welfare services, including anger management courses, which had however proved unsuccessful as the applicant had continued subjecting X's brother to violence. The City Court held that the applicant with a high degree of probability would continue to use violence against one or several of the children. Regarding B, the City Court found her to have substantial undiagnosed and untreated mental health issues.

8. In the light of reactions that the children had suffered after contact sessions, the contact rights for the applicant in respect of X were set at three hours, four times per year. The applicant did not appeal against the judgment.

9. On 3 August 2018 the child welfare services, at the request of the applicant, initiated proceedings on whether the care order could be lifted, or, in the alternative, on the future contact rights for the applicant and B.

10. On 26 and 27 November 2018 an oral hearing before the Board was held. The Board's bench comprised one jurist qualified to act as a professional judge, one psychologist, and one lay person. The applicant had legal aid counsel and could give testimony, adduce evidence and argue his

case. A spokesperson for X was appointed, and gave evidence on X's opinions.

11. In its decision of 10 December 2018 the Board concluded that the care order could not be lifted. It found that X at the time was a very vulnerable child, who was fundamentally insecure and had substantial problems with self-regulation. The Board referred among other things to testimonies from X's special needs-teacher and his foster mother, stating that he was in need of an assistant following him throughout the school day in order to facilitate stability and protection against any deviation from a foreseeable and stable day. Following failures to facilitate sufficient stability for him, X had resorted to self-harm and violence against others, developed eating disorders, and struggled with incontinence at night time. Against that background, the Board stated that he was in need of parental care that would meet his particular needs, and that a failure to meet those needs would entail great risk of further development of psychological and physical problems for X.

12. Regarding the applicant's ability to care for X, the Board found that he had in part exposed X to "massive neglect", and that his caring skills had not substantially improved. The Board found that the applicant previously had been violent towards his wife and children, that he did not manage to control his anger, and it referred in that context also to the applicant's conduct during one of the contact sessions. Furthermore, the Board took X's wishes into consideration. He had expressed a desire to remain in the foster home.

13. Against the above background, the Board found that the care order could not be lifted.

14. Regarding the extent of contact rights, the child welfare services were of the view that the contact rights set in the District Court's decision of 16 September 2016 had been too extensive, as experience had since shown that contact sessions caused severe reactions for X. The Board agreed, as it noted that X had sustained in part tremendous and long-lasting reactions after contact sessions with his biological parents, and that such reactions had extended to 14 days – and in one instance to six to seven weeks – after contact sessions with the applicant. Although the Board considered that certain reactions had to be tolerated, reactions of such severity as X had were considered to be a serious matter. Against that background, the Board set the contact rights of the applicant at one and a half hours, twice per year, under supervision.

15. The applicant and B appealed against the Board's decision.

16. On 4 and 5 April 2019 an oral hearing before the City Court was held. The court's bench was composed of one professional judge, one psychologist, and one lay person. The parties to the case gave evidence and eight witnesses were heard. The child's spokesperson's report was presented

as evidence, while the City Court had declined a request from the applicant to appoint a separate expert to assess his caring skills.

17. In its judgment of 30 April 2019 the City Court upheld the Board's decision not to lift the care order. The City Court referred to the Board's reasoning, with which it concurred, and found that X had very extensive needs in respect of care of which a substantial part was owing to the neglect of the biological parents. It furthermore examined whether the applicant had sufficient ability to care for X, but found that he was unable to satisfy the child's need for parental care, in particular as he failed to comprehend the problems that X struggled with. The City Court assessed in that context whether measures could be implemented in order to improve the applicant's ability to care for X, but held, in the light of the child's extensive caring needs, that it would not be possible to implement further measures which in practice could improve the situation. In addition, the City Court referred to the explicit and strong wish of X to remain in the foster home.

18. Turning to contact rights, the City Court also referred to the reasoning of the Board. As had the Board, it considered that the placement in care would be long-term and in the light of the strong reactions that X suffered upon contact sessions, his very vulnerable situation and his comprehensive problems, the City Court found that there were special and strong grounds for setting the contact rights of the applicant at a low level. Accordingly, contact rights were set at one and a half hours, once a year, under supervision.

19. The applicant and B appealed against the City Court's judgment.

20. On 8 July 2019 the High Court (*lagmannsrett*), in a reasoned decision and sitting in a formation of three professional judges, refused the applicant and B leave to appeal. The High Court stated that it had been clearly substantiated that X had been subject to substantial neglect, which had caused his current particular and extensive need for care. Furthermore, as to the applicant, it had been substantiated that he lacked ability to care for X, and there were not reasons to question the City Court's assessment of the measures taken to improve his ability to provide X with care. As had the lower instances, the High Court lastly emphasised the wishes of X himself to remain in foster care.

21. Regarding contact rights, the High Court found it clear that the placement in care would be long-term and it noted in particular the negative and particularly strong reactions X had suffered upon contact sessions with the applicant, and that the reasons for those reactions had been thoroughly examined by both the Board and the City Court. Against that background, the High Court considered that the assessment done by the City Court was not questionable.

22. The applicant and B appealed against the High Court's decision.

23. On 8 August 2019 the Supreme Court (*Høyesterett*), in a summary decision, dismissed the appeal.

B. Relevant domestic law and practice

24. Under section 4-12 of the 1992 Child Welfare Act (*barnevernloven*), a child may be taken into public care if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security needed by the child according to his or her age and development. Contact rights between a child in public care and his or her parents are regulated in section 4-19, which sets out that the extent of the contact rights is decided by the County Social Welfare Board. Under the same provision, the private parties can demand that the matter be reconsidered by the Board as long as at least twelve months have passed since the Board or the courts last considered it.

COMPLAINTS

25. The applicant complained under Articles 8, 17 and 18 of the Convention about the decision not to lift the care order in respect of X and to set his contact rights at one and a half hours, once a year.

THE LAW

A. Alleged violation of Article 8 of the Convention

26. The applicant relied on Article 8 of the Convention and submitted that the decision to decline his application to have the care order lifted and to set his contact rights at one and a half hours, once a year, constituted a breach of his right to respect for his family life as enshrined in that provision, the relevant parts of which reads as follows:

> "1. Everyone has the right to respect for his private and family life (..).
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

27. In particular, the applicant submitted that the child welfare services had failed to sufficiently strive to facilitate a reunification of the applicant and X.

28. The Court notes that the general principles applicable to cases involving child welfare measures (including measures such as those at issue in the present case) are well-established in the Court's case-law, and were extensively set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019), to which reference is made. The principles have since been reiterated and applied in, *inter alia*, the cases of *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); and *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020).

29. The Court finds that, in the instant case, it cannot be questioned that the decision not to lift the care order and to restrict the applicant's contact rights in respect of X, constituted an interference with the applicant's right to respect for his family life. Based on the material presented to it, the Court is satisfied that the domestic measures complained of were in accordance with the 1992 Child Welfare Act (see paragraph 24 above) and adopted in pursuance of "the protection of health or morals" and "rights and freedoms" of X in accordance with Article 8 § 2 of the Convention. Accordingly, the issue before the Court is whether the measures were proportionate.

30. In that connection the Court considers, firstly, that the proceedings before the domestic authorities were conducted such that the views and interests of the applicant were made fully known and duly taken into account. It notes that proceedings took place with oral hearings at several levels of domestic authorities, where the applicant attended, assisted by legal aid counsel, and had ample opportunity to present his evidence and arguments (see paragraphs 10 and 16 above). The Court also considers that there are no indications of evidence or arguments adduced by the applicant not having been adequately assessed by the domestic courts (contrast, for example, *A.S. v. Norway*, cited above, § 67). In the light of the facts of the case and the applicant's submissions before the domestic courts, the Court does not find, either, that the decision not to appoint an expert was at variance with the Court's case-law (see, in contrast, *Strand Lobben and Others*, cited above, § 223).

31. On the basis of the above, the Court is satisfied that the domestic proceedings provided the applicant with the requisite protection of his interests.

32. With regard to the decision not to lift the care order, the Court notes in particular the finding that X had been subjected to massive neglect (see paragraphs 12, 17 and 20 above), which was related to findings concerning domestic violence (see, *inter alia*, paragraph 7 above). Furthermore, it notes that X was considered to have a very extensive need for care, of which a substantial part had been caused by that neglect (see paragraphs 11, 17 and 20 above), while the applicant's ability to care for him had not improved substantially (see paragraphs 12, 17 and 20 above). The Court also observes that the decision aligned with X's own wishes (see paragraphs 12, 17 and 20 above).

33. In the light of the above, the Court takes note that the domestic authorities' decision was effectively based on the conclusion that to return X to the applicant's care would expose the child to a real and serious risk to his health and development. Bearing in mind that a parent cannot be entitled

under Article 8 of the Convention to have such measures taken as would harm the child's health and development (see, for instance, *Strand Lobben and Others*, cited above, § 207) and the paramountcy of the child's best interests, the Court does not find that the application discloses any appearance of a violation of Article 8 as concerns the decision not to lift the care order.

34. Turning to the decision on contact rights, it falls to be noted that a decision to restrict a biological parent's right to contact with his or her child to one and a half hours yearly is a particularly far-reaching measure, generally incompatible with the ultimate aim that a care order be temporary (see, *inter alia, K.O. and V.M. v. Norway*, cited above, § 69; and *M.L. v. Norwa*y, cited above, § 79). Furthermore, as it effectively deprives the family members of nearly all their family life with each other, it is a measure that under the Court's case-law can only be adopted in exceptional circumstances and only when it is motivated by an overriding requirement pertaining to the child's best interests (see, for example, *A.S. v. Norway*, cited above, § 62).

35. In the instant case, however, the findings of the domestic courts were that X suffered manifest, severe and long-lasting reactions after contact sessions (see paragraphs 14, 18 and 21 above), which related to the neglect of which he had been victim.

36. Moreover, the Court notes on this point that, unlike what was at issue in the other cases relating to child welfare-measures in the respondent State recently adjudicated by the Court, and in which several violations of Article 8 of the Convention were found (see paragraph 28 above), the neglect of which X had been victim in the instant case related largely to physical violence in the home (see, *inter alia,* paragraph 7 above). Moreover, the Court observes that the domestic authorities had, in the course of the proceedings on the care order, predating those brought before the Court, found it highly likely that the applicant would continue to use violence against the children in the absence of appropriate measures (see paragraph 7 above).

37. The Court reiterates that protection of minors from harm has not only been stressed in the Court's case-law, it has also been affirmed in other international treaties, such as the United Nations Convention on the Rights of the Child, which obliges states to take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (see, for example, *Tlapak and Others v. Germany*, nos. 11308/16 and 11344/16, § 79, 22 March 2018). In the instant case, the child welfare services had known the family for years and tried out a range of supportive measures before taking more far-reaching compulsory measures in order to secure X's health and development (see, *inter alia*, paragraph 3 above). Against that background, the Court does not find that the domestic authorities can be

criticised for, in the course of the proceedings that are the object of the application lodged with the Court, having considered that X's placement in foster care would most likely be long-term (contrast, for example, *K.O. and V.M. v. Norway*, § 69; and *M.L. v. Norway*, cited above, §§ 79 and 93).

38. On the basis of the above, the Court finds that the application discloses no appearance of a violation of Article 8 of the Convention either in respect of the decision not to lift the care order or that on contact rights for the applicant in respect of X.

39. It follows that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

B. Alleged violations of Articles 17 and 18 of the Convention

40. Relying on Article 17 of the Convention, the applicant submitted that the decisions of the domestic authorities were intended to destroy his right to respect for his family life. Under Article 18 he maintained that the restriction clause in Article 8 § 2 had been utilised to serve the interest of the foster parents before the interests of the applicant and the children.

41. The Court considers that the complaints formally lodged under Articles 17 and 18 of the Convention, in the view of its above findings in respect of the complaint under Article 8, from which they are not readily separable, disclose no appearance of any violations and are likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 July 2021.

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Martina Keller Deputy Registrar	Ganna Yudkivska President