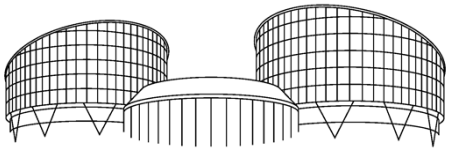

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF K.E. AND A.K. v. NORWAY

(Application no. 57678/18)

JUDGMENT

STRASBOURG

1 July 2021

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

In the case of K.E. and A.K. v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Ganna Yudkivska, *President,*
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 57678/18) 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 Norwegian nationals, Mr K.E. and Ms A.K. ("the applicants"), on 26 November 2018;

the decision to give notice to the Norwegian Government ("the Government") of the application;

the decision not to have the applicants' names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the Government's not having objected to the application being examined by a Committee;

the comments submitted by the Governments of the Czech and Slovak Republics and the organisation Ordo Iuris Institute of Legal Culture, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 10 June 2021,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention in relation to proceedings in which a care order was issued in respect of the applicants' child, X, and the applicants' contact rights set at one hour, four times yearly, under supervision.

THE FACTS

2. The first applicant, Mr K.E., was born in 1975, and the second applicant, Ms A.K, was born in 1981. They are Norwegian nationals and live in Norway. They were represented by Mr K. Fredriksen, a lawyer practising in Bergen.

3. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms L. Tvedt, attorney at the same office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND AND EMERGENCY PLACEMENT DECISION

5. The applicants have the child X, who was born in May 2017. The first applicant also has one son Y, born in 2006, from an earlier relationship, of whom he has custody. The second applicant also has two other children from an earlier relationship; they were born in 2006 and 2007 and were both taken into public care in 2007.

6. The applicants moved in together in November 2016, when the second applicant was pregnant with X. In late January 2017 the child welfare services received a notice of concern: the midwife in contact with the second applicant had concerns regarding her caregiving skills, as her two elder children had been placed in foster care. The child welfare services then contacted the second applicant, who failed to respond to the enquiry. In mid-May 2017 the child welfare services received another notice of concern, namely that the second applicant had terminated all contact with the midwife and did not attend scheduled medical consultations regarding her pregnancy. The child welfare services made several subsequent efforts to contact the second applicant, but again she did not respond.

7. In the end of May 2017 X was born. On her birthday the child welfare services initiated a review. After the birth, X and her parents stayed at the hospital, and X was then considered as a normally healthy new-born infant. The child welfare services contacted the applicants at the hospital with enquiries about assistance measures, and the applicants agreed to stay at a family centre, to which they moved directly from the hospital.

8. During the stay at the family centre the staff there observed the applicants' abilities in providing X with care and the applicants received information and guidance in that respect. On 20 June 2017 a meeting between the applicants and representatives of the centre regarding discharge was held. According to the later emergency care order (see paragraph 9 below), the applicants were informed during the meeting that the staff of the centre was of the opinion that the applicants failed to meet X's fundamental care needs – both her physical and psychological care needs – and that the staff to an increasing degree noticed a negative emotional development of X.

9. On the following day, 21 June 2017, an emergency placement decision in respect of X was made by the child welfare services, and the decision was approved by the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) on 22 June 2017.

10. The applicants appealed against the decision, contending that they had provided the child with adequate care and that they had received positive feed-back form the staff at the centre. On 29 June 2017, after an oral hearing, the Board upheld it. Contact rights for the applicants were set at two hours, twice per week.

11. The applicants brought the Board's decision before the District Court (*tingrett*) for judicial review, but since withdrew their application.

II. PROCEEDINGS REGARDING A CARE ORDER IN RESPECT OF X

12. On 28 July 2017 the child welfare services applied to the County Social Welfare Board for a care order in respect of X.

13. A hearing before the Board took place at 19 and 20 September 2017. The Board's bench was composed of a jurist qualified to act as a professional judge, a psychologist and a lay person. The applicants had legal aid counsel and appeared in person and gave evidence before the Board. Eight witnesses and a representative of the child welfare services also appeared.

14. On 26 September 2017 the Board issued a care order and decided that X be placed in a in foster home. The applicants' contact rights were set at two hours, six times per year, under supervision.

15. Regarding the applicants' ability to care for X, the Board firstly assessed the second applicant. The Board found that she had had a disadvantaged background in Costa Rica, before she was adopted to Norway at the age of nine. Furthermore, the Board referred to the decision from 2007 to issue care orders in respect of her two elder children (see paragraph 5 above), which had been based, among other things, on her at the time having been in a relationship with a partner who struggled with drug addiction; that she had great difficulty generalising knowledge; and that she had limited ability to see and adapt to her children's care needs according to their development. The Board also stated that it could recognise features of the second applicant as they had been described in that former decision, including that she struggled to recognise her own feelings, which the Board assumed to entail that she also struggled to recognise feelings in others, such as X.

16. Turning to the first applicant, the Board assessed the care that he had provided to his son Y from an earlier relationship, who had lived with the first applicant as his sole caregiver from he was a few months old (see paragraph 5 above). The first applicant had received some assistance measures from the child welfare services during the upbringing of Y, mainly with regard to establishing everyday routines, and the child welfare services had, owing to concern regarding Y's school performance, instituted a review which was ongoing at the time of the proceedings before the Board. Furthermore, the Board assessed the life situation of the first applicant and noted, among other things, that he did not have a job and that he had failed to attend certain meetings with the public support systems.

17. The Board went on to assess the applicants' care for X during their stay at the family centre (see paragraphs 7-8 above), in the light of the report made by the staff there and the staff's evidence before the Board. The

Board summarised the descriptions of the applicants' care as lacking in sensitivity, which encompassed both emotional and practical care. The applicants were described as having little focus on how X experienced their approaches to caring for her, for example washing her forcefully when changing nappies, and stressing her due to both parents participating in caring for her at the same time, one washing her while the other dressing her. Furthermore, the applicants were described as not being observant of X's signals, such as not regulating her temperature adequately and continuing to try to nurse her although she indicated that she was full. Lastly, the Board found the second applicant had to be reminded to steady the head of X, that X did not have eye-contact with the second applicant when changing nappies, and that both applicants had to be corrected in their handling of very basic issues such as changing nappies.

18. Against the above background, the Board held there to be substantial deficiencies with the emotional as well as the practical care which the applicants provided to X. On the question of whether assistance measures could remedy the deficiencies, the Board noted that both applicants had challenges on several areas, such as regarding employment, personal economy, basic structure of everyday life, and keeping appointments. The second applicant had refused contact with the midwife and failed to abide by her medical recommendations; she had refused contact with the child welfare services during her pregnancy, and she failed to adhere to advice from the family centre that she should carry her child in a baby carrier. Regarding the first applicant, the Board held that his care for Y revealed substantial deficiencies, as Y had not been given information about the relationship between the two applicants before the applicants moved in together.

19. The Board stated that the stay at the family centre had been the most comprehensive assistance measure that the parents could have been supplied with, but that X still showed signs of neglect and that she was in immediate need of sensitive care. As it would take time for the parents to develop skills to notice and meet the care needs of X, the Board held that a care order was necessary and would be in the best interests of the child.

20. On contact rights, the Board held that the care order and placement in a foster home would be long-term, as both applicants had substantial challenges of their own, and would need time to accrue the necessary skills to be able to provide X with adequate care. Furthermore, the Board stated that X should take root in the foster home and become a family member there. The aim of contact sessions would thus be to give X knowledge of her biological parents. Furthermore, the Board found that the contact sessions that had been conducted had been good, and concluded that contact sessions of two hours, six times per year, would balance the interest of the parents in meeting with X with the interest of X to have stability in her everyday life. The child welfare services were authorised to supervise the contact sessions.

21. On 18 October 2017 the applicants brought the decision of the Board before the District Court for review. The District Court appointed an expert in psychology to assess the applicants' ability to provide care. The expert presented his findings in a report of 25 March 2017.

22. The District Court held a hearing on 24 and 25 April 2017. Its bench was composed of one professional judge, one psychologist and one lay person. The applicants had legal aid counsel, were present, and gave evidence. Five witnesses were heard.

23. In its judgment of 25 May 2018 the District Court upheld the Board's decision in so far as concerned the care order.

24. In its reasoning, the District Court first reiterated that, under domestic law, not every deviance from normal care of children would give reason for a care order; the situation had to be reasonably clearly untenable. Against that background, it went on to find that there were several factors indicating that such an untenable situation was present in the case, and that the applicants' total caregiving skills were not sufficient to meet the care needs of X at the time of the proceedings and in the future.

25. The District Court referred to the report from the family centre (see paragraphs 7-8 and 17 above), which, among other things, indicated that the applicants struggled to interpret and respond to the needs of the child, issues which were made manifest through the challenges that the applicants had with meeting X's need for practical care, contact, stimulation and help with regulation. Furthermore, the report concluded that X was daily subjected to lacking care, was inflicted with stress and discomfort, and did not receive the necessary intuitive and sensitive care from her parents. The report held that exposing X to further strain would have serious consequences for her future development.

26. Moreover, the District Court referred to the findings of the court-appointed expert (see paragraph 21 above), who had, among other things, found that the parents had challenges with reading the child's signals and respond to the child's behaviour in an adequate manner, and that the situation was unchanged from the time of the initial care order. Furthermore, the expert had found that it would probably take a long time before the applicants would develop care skills at a level sufficient to care for a small child.

27. In the light of the above, the District Court found that a return of X to the applicants would most likely cause different sorts of negative reactions for X, which would potentially inhibit or reverse the positive development she had had since the placement in the foster home. The District Court referred again to the report of the expert, which indicated that such reactions would be longing and grief in a short time perspective, and sadness and emotional withdrawal, eating disorders, regulation of sleep, and strong emotional reactions to issues connected with separation in the long-term.

28. The District Court also assessed the best interest of the child and found in that respect that the positive developments in the foster home indicated that it was in X's best interests to remain there.

29. In conclusion the District Court held that the care situation for X would be clearly untenable if she were to be moved from her foster parents and reunited with her parents, and that the legal criteria for a care order accordingly were met.

30. The District Court went on to assess whether assistance measures could improve the applicants' caring skills. In this context it relied on the report given by the court-appointed expert (see paragraph 21 above), and emphasised in particular the applicants' lack of network, that the assistance measures at the family centre had failed to improve their caring skills, and that the child welfare services had stated that they had strived to get into a position in which they could offer help to the family. The District Court considered it decisive that the applicants had stated that they were of the opinion that they did not need help; they appeared only to a limited degree receptive to guidance, and they seemed to lack motivation to avail themselves of supportive measures from public institutions.

31. As to contact rights, the District Court held that the likely duration of the care order would generally be a factor of great importance: If the care order was likely to be temporary, reunification of the family would have to be facilitated through frequent and close contact with the biological parents, while if the care order was meant to be long-term, the aim would mainly be to supply the child with sufficient knowledge of her biological parents, as the daily attachment instead should be focused on the foster parents. In the present case, the District Court found that the care order would be long-term. The District Court also assessed the contact sessions which had been conducted, and found these to have been mainly well functioning, however with certain exceptions regarding the applicants' approach to X, which had been marked by a lack of comprehension and response to the signals X had given. Furthermore, X had become tired and stressed in contact sessions of two hours, but had not shown any reactions after the contact sessions.

32. The District Court found in conclusion that the applicants' contact rights should be of a limited extent as this was in X's best interests, and accordingly set the contact rights at one hour, four times per year, under supervision.

33. On 13 August 2018, in a reasoned decision, the High Court (*lagmannsrett*) refused the applicants leave to appeal against the District Court's judgment. The High Court held, *inter alia*, that the judgment of the District Court did not have any substantial weaknesses; the judgment was sufficiently balanced and thorough, and nothing adduced in the appeal gave reason to question the District Court's handling of the case.

34. On 20 September 2018 the Supreme Court (*Høyesterett*), in a summary decision, dismissed the applicants' appeal against the High Court's decision.

RELEVANT LEGAL FRAMEWORK

35. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicants complained that the care order issued in respect of X and the decision to limit their right to meet X to one hour, four times yearly, violated their right to respect for their family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

A. Admissibility

37. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

38. The applicants maintained that the limitations on their right to contact with their child did not accord with the principle that it is normally in children's best interests to be brought up by or at least remain in contact

with their biological parents. They also submitted that the limitations on their contact rights were not to the child's benefits. Moreover, the applicants argued that the care order had as well not accorded with the requirements flowing from Article 8 of the Convention.

39. The Government pointed out that the child welfare-case had been thoroughly reviewed by several levels of domestic authorities with multi-disciplinary compositions. They had had the benefit of direct contact with all the persons concerned and had carried out detailed assessments of the relevant circumstances on the basis of up-to-date information.

40. As to the contact rights, the Government emphasised that the District Court's having had regard to the likely long-term nature of the care order when deciding on the number of contact sessions, did not mean that it had given up on the possibility of reunification. The decision had been taken on the basis of what X could cope with at that time, also taking into account her age. There had not been any permanent separation of the family members and the applicants had the right to regular review both of the care order and the level of contact rights.

41. The third party interveners – the Governments of the Czech and Slovak Republics and Ordo Iuris Institute of Legal Culture – primarily made submissions on the general principles within which to examine applications with complaints relating to proceedings that have concerned childcare-measures. Ordo Iuris also made a comparison of public childcare-practices in Norway and Poland.

42. 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).

43. Turning to the facts of the instant case, the Court considers that it cannot be called into question that the impugned childcare-proceedings and the measures adopted therein entailed an interference with the applicants' right to respect for their family life as guaranteed by Article 8 of the Convention. The Court also finds that the measures were in accordance with the 1992 Child Welfare Act (see paragraph 35 above). Furthermore, the Court does not find that it can be called into question that the proceedings pursued legitimate aims, namely of protecting X's "health and morals" and her "rights". Accordingly, the question is whether the impugned proceedings and measures adopted therein were also "necessary in a

democratic society" within the meaning of the second paragraph of Article 8.

44. In that context, the Court observes that the proceedings complained of were extensive and that the applicants were given every opportunity to fully participate in them (see paragraphs 13 and 22 above). It notes that the applicants have not argued otherwise or in any other respect maintained that the decision-making process did not fully ascertain to the requirements flowing from Article 8 of the Convention.

1. Placement of the applicants' daughter in public care

45. Instead, the applicants complain, firstly, about the care order in respect of X, as they deem that it was unnecessary.

46. The Court notes in that connection that the domestic authorities carried out a detailed assessment of the family's situation at the time and took into account matters such as the applicants' abilities to interpret and respond to X's needs; their challenges in meeting X's need for practical care, contact, stimulation and help with regulation (see paragraph 25 above). They also relied on X's development in the foster home and her best interests (see paragraph 28 above). Moreover, they examined the possibilities for improving the applicants' caring skills through assistance measures (see paragraph 30 above).

47. On the basis of the above, the Court finds that the domestic authorities advanced relevant and sufficient reasons for the care order and is satisfied that those authorities did not overstep the wide margin of appreciation that they are afforded in respect of decisions to take children into public care (see, for example, *Strand Lobben and Others*, cited above, § 211). There has accordingly been no violation of Article 8 of the Convention with regard to the placement of the applicants' daughter in public care.

2. Restrictions on the applicants' contact rights

48. Furthermore, the applicants complain of the limitations imposed on their right to contact with X after she had been taken into public care.

49. Bearing in mind that measures of that sort call for a stricter scrutiny (see, for example, *Strand Lobben and Others*, cited above, § 211), the Court notes the very limited contact regime put in place by the District Court when it reviewed the care order – four one-hour visits, under supervision, each year (see paragraph 32 above). Moreover, it notes that also the Board had decided on a very limited contact arrangement – of two hours, six times yearly, under supervision – when the care order was issued (see paragraph 14 above).

50. According to the Court's case-law, limitations on contact between parents and their children to the degree imposed in the instant case cannot as

a starting point be considered to align with the aim that the family, upon being separated by way of a care order, again be reunited, and it is only after careful consideration that that aim may be abandoned (see, for example, *K.O. and V.M. v. Norway,* cited above, § 69; and *M.L. v. Norway*, cited above, § 79). The Court is mindful that in cases such as the present one, there will inevitably be particular circumstances that need to be accommodated, and takes into account that it falls to the domestic authorities to make the proper assessment to that end (compare *K.O. and V.M. v.* Norway, cited above, § 70). However, in this case, both the District Court's and the Board's decisions to impose the considerable limitations on the contact rights were largely owing only to the fact that they had already concluded that the care order would be long-term (see paragraphs 20 and 31-32 above). There is in contrast nothing in the District Court's judgment to show that that court weighed in the need for the family members to have easy and regular access to each other in order not to weaken the prospect of a successful reunification, or even any other measures to counter the risk that the family relations between the applicants and X would end up completely curtailed.

51. For the above reasons, the Court concludes that there has been a violation of Article 8 of the Convention in respect of the restrictions imposed on contact between the applicants and their daughter.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicants claimed 75,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government stated in response that the amount was well-above what could be derived from the Court's case-law.

55. The Court considers that the applicants must have sustained non-pecuniary damage through distress, in view of the violation found above, and awards the applicants jointly EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicants claimed EUR 10,000 in respect of costs and expenses.

57. The Government pointed out that the claim was unsubstantiated.

58. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court rejects the claim for costs and expenses because the applicants did not submit itemised particulars of all claims, together with any relevant supporting documents.

C. Default interest

59. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention with regard to the placement of the applicants' daughter in public care;

3. *Holds* that there has been a violation of Article 8 of the Convention with regard to the restrictions on contact between the applicants and their daughter;

4. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (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' claim for just satisfaction.

Done in English, and notified in writing on 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Martina Keller Deputy Registrar	Ganna Yudkivska President