



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

FIFTH SECTION

**CASE OF M.F. v. NORWAY**

*(Application no. 5947/19)*

JUDGMENT

STRASBOURG

25 November 2021

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



**In the case of M.F. 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. 5947/19) 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 a Norwegian national, Ms M.F. (“the applicant”), on 16 January 2019;

the decision to give notice to the Norwegian Government (“the Government”) of the complaint concerning Article 8 of the Convention;

the decision not to have the applicant’s name disclosed;

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

the respondent Government’s not having objected to the case 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 21 October 2021,

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

## INTRODUCTION

1. The application concerns a complaint under Article 8 of the Convention relating to the placement in foster care of the applicant’s daughter and the applicant’s contact rights.

## THE FACTS

2. The applicant was born in 1978. Before the Court she was represented by Ms A. Skjelbred, a lawyer practising in Tønsberg.

3. The Norwegian Government (“the Government”) were represented by their Agent, Mr M. Emberland of the Attorney General’s Office (Civil Matters), assisted by Mr T. Midttun Tobiassen, associate at the same office.

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

## I. BACKGROUND

5. The applicant is a Norwegian national. Together with an ex-partner, B, she has a girl, X, who was born in December 2016, and a boy born in December 2017. With another ex-partner, C, the applicant has two older children: Y, who was born in February 2006, and Z, who was born in May 2007.

6. In March 2013 the child welfare services instigated a review of the applicant's care skills in regard to the children Y and Z. At the time, the applicant had ended her relationship with C, and had the daily custody for Y and Z. The review was instigated due to the child welfare services' reception of several notices of concern relating to the personal hygiene of the children and their failing to arrive at school on time. Against this background, the municipal child welfare services implemented several assistance measures in order to increase the applicant's ability to care for the children, such as helping her to establish good everyday routines to ensure that the children came to school on time and brought their packed lunch.

7. In February 2016 the applicant moved to another municipality, and the above assistance measures offered by the municipality from which she moved, therefore ended. In the light of notices of concern from the children's school, the child welfare services in the municipality to which the applicant had moved, instigated a review of the applicant's ability to provide her children with care. They were particularly concerned about the children's absence from school.

8. In August 2016 the applicant moved with her children to yet another municipality. There she lived together with B, with whom she had established a relationship. The child welfare services in that municipality implemented several assistance measures for the applicant to improve her ability to provide Y and Z with care.

9. In October 2016 the applicant and the children were passengers in a car driven by B, which was stopped by the police. B was suspected of driving under the influence of substances, and the police in addition found illegal drugs during the subsequent search of the apartment in which they lived. The police considered the apartment to be "chaotic and unhygienic", and advised the applicant to seek accommodation in a family care shelter.

10. The applicant was at this time pregnant and in November 2016 the child welfare services raised concerns about the yet unborn child, referring to the assistance measures implemented in respect of the applicant's two older children and to B's criminal record and substance abuse.

11. The applicant gave birth to X early in December 2016. Three days after her birth, the child welfare services instigated a review of the applicant's care skills. Furthermore, the child welfare services received a notice of concern from the midwife at the hospital, referring to B lacking interest in the wellbeing of both X and the applicant, and the applicant's

lack of adequate hygiene and her indifference in regards to both the needs of the new-born child and the careless attitude of B.

12. In the time after the birth of X, the child welfare services conducted several visits to the applicant's and B's home. They also received another notification of concern, which indicated that B used illegal drugs. Further reviews of the applicant's caring skills were carried out and further assistance measures implemented.

13. The relationship between the applicant and B ended in the late winter or early spring 2017. The applicant and the three children then moved in with the applicant's mother. During the time when they lived there, the child welfare services conducted further visits and implemented further assistance measures.

## II. THE PROCEEDINGS CONCERNING PUBLIC CARE IN RESPECT OF THE APPLICANT'S SON, X

14. On 29 May 2017 the child welfare services applied to the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) for a care order in respect of X. It reads in the application that the child welfare services deemed that it was a matter of a placement of X until she had grown up and that they would in time assess the possibilities of the foster parents' adopting X. For that reason the child welfare services submitted that the purpose of contact rights would be to ensure that X had knowledge of her parents and that contact should be limited in order to make X feel secure about where she would live and to whom she was to become attached.

15. Following the application for a care order, the applicant and B made an agreement that the applicant would have custody for X until the proceedings regarding the care order were completed. The applicant and C made an agreement that C would have custody for Y and Z. The child welfare services continued to implement several support measures with the aim to increase the applicant's ability to provide X with care.

16. On 11 and 12 September 2017 the County Social Welfare Board, which was composed of one jurist qualified to act as a professional judge, one psychologist and one lay person, conducted a hearing. The applicant attended with legal-aid counsel and gave evidence. Fifteen witnesses were heard.

17. The Board gave its decision on 14 December 2014. It identified serious shortcomings in the care with which the applicant had provided X. In particular, it found that the applicant failed to see X's needs. In addition, it took note of Y's and Z's absence from school, which it coined as a "gross educational neglect". The Board also placed emphasis on the applicant's blaming others for the shortcomings in her care for the children and considered that there were strong indications of her failing to set boundaries

for them. Furthermore, the Board considered whether the flaws in the applicant's caring skills were situational, but found that external factors, though they had had an impact, could not explain the shortcomings in the care that she had provided. In the light of the assistance measures that had been offered to the applicant in the past, the Board considered that further assistance measures would not serve to improve her caring skills.

18. As to contact rights for the applicant, the Board considered that the placement of X in a foster home would likely be long-term, as the applicant's challenges relating to her caregiving skills were linked to her personality and the Board considered her unable to go through the necessary changes in approximately two years. The Board also considered that X should not be unnecessarily disturbed by too extensive contact rights in the period in which she should establish herself in the foster home. Contact rights for the applicant in respect of X were ultimately set at two hours, three times per year, under supervision. Contact rights for B in respect of X were also set in the decision.

19. By an application of 25 September 2017, the applicant brought the Board's decision before the District Court (*tingrett*) for review. She requested that the Board's decision not be implemented while the review proceedings were pending. The District Court, after having held a meeting on that matter, dismissed the request and the applicant's further attempts to have that decision changed were fruitless. The District Court appointed a psychologist as an expert to assist it and he gave a report on 11 January 2018. In the meantime, in December 2017, the applicant and B had had another child.

20. The District Court held a hearing on 5, 6 and 7 February 2017. Its bench was composed of one professional judge, one expert and one lay person. The applicant attended, with legal-aid counsel, and gave evidence. Eleven witnesses were heard. The court-appointed expert also participated in the meeting and elaborated on his report.

21. In its judgment of 15 February 2018 the District Court upheld the care order.

22. At the outset the District Court stressed the principle of the best interests of the child. Furthermore, as a main rule, children should grow up under the care of their parents; the situation had to be reasonably clearly untenable for a care order to be issued.

23. The District Court went on to assess whether the applicant had been able to provide X with sufficient emotional care. Crucial to this issue would be the applicant's capacity to "mentalise" in a manner that enabled her to "see" X's care needs and her capacity to provide a level of care that corresponded to those needs. In that context, the District Court examined the applicant's mental health and the level of care she had provided for children. It found the applicant to suffer from a damaged ability to form relations and that this affected her emotional caring skills.

24. In the view of the District Court, the above was also substantiated by the level of care she had provided to her two elder sons. In this respect, the District Court in particular relied upon the assessments done in other proceedings involving the applicant, such as the proceedings against C, the father of her two oldest children, regarding the custody for them. From these, the District Court referred, *inter alia*, to the assessments of the interplay between the applicant and her children, which an expert had held to be problematic. In particular, the expert held that the applicant lacked the ability to read the children's signals and behaviour, and could "mentally disappear" from the relation with her children. This caused lack of acknowledgement of the children's emotions and wrongful stimulation of the children. In the view of the District Court, this had led to the children suffering from mental health problems, and was held to constitute serious neglect of the applicant's two eldest children.

25. Regarding the assessment of the level of care she provided to X, the District Court in particular relied on the reports from the child welfare services during the first period after the birth of X, and the assessments done by the court appointed expert. The reports from child welfare services showed, in the District Court's view, that the child welfare services had had concerns about the emotional care that the applicant had supplied to X. The child welfare services had referred in particular to instances where X as an infant child had turned away from the applicant when lifted from the cradle and lack of eye contact between the applicant and X, both which the child welfare services interpreted to indicate lack of emotional attachment. The child welfare services had furthermore had concerns about what they perceived as the applicant's lack of structure in her care for X, *inter alia* failing to establish routines to ensure proper feeding and sleep for X, failing to notice when X needed to have her diaper changed, and that X to a too great extent sat in chairs over a long period of time.

26. The reports from the court appointed expert indicated that X, who at the time was under the care of the foster parents, was a well-functioning child. However, he held her to have an inherent vulnerability, which could manifest itself if the conditions for care changed. The expert held this to originate from the initial phase of her life which had been marked by instability. In the light of talks with the applicant and B, the expert concluded that the lack of stability of sufficient care in the early part of X's life constituted neglect. Furthermore, the expert held that X recognised the applicant during the contact sessions, but that X turned away from the applicant and showed a stronger attachment to the foster parents than to the applicant.

27. Against the above background, the District Court found that X had been subjected to emotional neglect when under the applicant's care.

28. As to whether the applicant's care skills could be improved through assistance measures, the District Court considered this to depend on whether

she would be willing to start a therapeutic process. Even if successful, a treatment of the applicant would to the District Court's assessment likely take several years. It found against this background that assistance measures could not in the near future create an adequate care situation for X and that X did not have time to await improvements in the applicant's care skills. It was therefore considered to be in X's best interests that the care order be upheld.

29. With regard to contact rights, the District Court emphasised in particular that X's settling in in her foster home would be a key factor, as X was considered to be in a critical phase for developing attachment to her foster parents. Furthermore, the District Court found that the care order would most likely entail a placement for X's entire childhood, since the assessment of the court appointed expert indicated that the applicant would need long-term treatment as her problems were linked to her personality. In addition, the District Court took into account the effect that the total strain of the contact rights would have on X. In view of this, the District Court set the contact rights for the applicant at two hours, three times per year, under supervision.

30. On 16 May 2018 the High Court (*lagmannsrett*) refused the applicant leave to appeal against the District Court's judgment. The High Court considered that the District Court had had a sufficient basis for deciding the case and had thoroughly examined the relevant factors. Furthermore, the High Court found that the arguments adduced in the appeal did not render the District Court's conclusions questionable. Nor did the High Court find that there had been any substantial weaknesses with regard to the procedures before the District Court.

31. On 23 July 2018 the Supreme Court (*Høyesterett*) dismissed the applicant's appeal against the High Court's decision.

32. In the meantime, on 20 June 2018 the applicant had applied to the County Governor (at the relevant time *fylkesmannen*; since 1 January 2021 *statsforvalteren*) for a review of the child welfare services' actions in her case. The review resulted in two reports in which several shortcomings in the child welfare services' dealing with her case were identified. The County Governor closed the case on 17 October 2019.

### III. DEVELOPMENT SUBSEQUENT TO THE APPLICATION LODGED WITH THE COURT

33. On 8 February 2019, after the application had been lodged with the Court, the applicant applied to the County Social Welfare Board for the care order in respect of X to be lifted. The Board dismissed her application on 3 January 2020. The applicant brought the Board's decision before the District Court for review, and on 22 June 2020 the District Court decided to



lift the care order. The District Court's judgment became final as it was not appealed against and X was returned to the applicant on 13 July 2020.

## RELEVANT LEGAL FRAMEWORK

34. 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. According to section 4-21 the parties may request the County Social Welfare Board to discontinue the public care as long as at least twelve months have passed since the Board or the courts last considered the matter. Contact rights between a child in public care and his or her parents are regulated in section 4-19, according to which the extent of contact rights is decided by the Board. By virtue of the same provision, the private parties can demand that contact rights also be reconsidered by the Board, as long as at least twelve months have passed.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that the proceedings relating to a care order for X had violated her right to respect for her 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**

36. 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**

37. The applicant submitted that the child welfare services had failed to examine what impact her moving away from B would have had on her care skills, and whether less intrusive measures could have been implemented.

Moreover, she maintained that what the respondent Government coined as assistance measures, had in reality been measures only to assess the care that she had provided X with.

38. Furthermore, the applicant argued that the District Court had been wrong in considering that her lack of parenting skills had been due to her personality and not situational circumstances, and that it had not taken into account evidence that spoke in her favour. She also argued that granting contact rights of only three or four visits per year had been similar to a permanent separation of the family and had not been in pursuance of the aim that the family be reunited.

39. The Government submitted that the domestic authorities had adduced relevant and sufficient reasons to justify the impugned measures, in the course of proceedings where the applicant had been provided with the requisite protection of her interests. They made reference to the District Court's having found that X had been the victim of serious neglect. Assistance measures had been attempted before X was placed in public care and the District Court had examined the facts of the case in detail.

40. With regard to contact rights the Government argued that the limitations imposed did not amount to a separate violation of the Convention and that they had not been at variance with the general aim that the family be reunited. They pointed out that it had been established that the applicant would not be able to resume care of X within a reasonable time.

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. As to the facts of the instant case, the Court finds that the taking into public care of the applicant's child, X, and imposition of limitations on her right to contact with X, entailed an interference with the applicant's right to respect for her family life; that the interference was in accordance with the law, namely the 1992 Child Welfare Act (see paragraph 34 above) and

pursued the legitimate aims of X's "health and morals" and her "rights". The remaining question is whether the interference was proportional and "necessary in a democratic society" within the meaning of the second paragraph of Article 8 of the Convention.

44. In that connection, the Court observes, firstly, that the care order proceedings were extensive. The County Social Welfare Board and the District Court both conducted hearings over several days where numerous witnesses were heard and the applicant attended with her legal aid counsel and gave evidence. The District Court had also appointed an expert who appeared at the hearing and elaborated on his written report (see paragraphs 19 and 20 above). A certain review was, moreover, inherent in the leave to appeal-proceedings (see paragraphs 30-31 above).

45. The Court considers as a starting point that the applicant was adequately involved in the decision making process and given every opportunity to plead her case. It has observed that the County Governor criticised some of the child welfare services' actions (see paragraph 32 above), but does not find that his reports, which relied on the application of domestic law, demonstrate shortcomings in violation of the Convention in the proceedings through which the applicant exhausted domestic remedies and that were brought before this Court.

*1. The care order issued in respect of X*

46. As concerns the decision to issue a care order in respect of X, the District Court, whose judgment became the final decision on the merits, broadly examined the applicant's caring skills and X's care needs. It took into account the level of care that the applicant had provided to her two elder children and an expert's assessment that had been carried out in that connection (see paragraph 24 above). Furthermore, it looked into the emotional care provided to X and relied on the court-appointed expert's assessment of X's situation, which the expert considered had constituted neglect (see paragraphs 25-26 above).

47. The Court observes that the applicant's arguments largely relate to the evidentiary findings of the domestic courts, particularly with regard to what had been considered as the causes for the applicant's lack of parenting skills. However, the Court does not find that it has any basis to set the District Court's conclusions on those evidentiary matters aside. Moreover, bearing in mind the wide margin of appreciation that is afforded to domestic authorities in respect of care orders, the Court considers that the District Court advanced relevant and sufficient reasons as to why it upheld the care order.

48. There has accordingly been no violation of Article 8 of the Convention on grounds of the decision to take X into public care.

2. *The applicant's contact rights*

49. Turning to the limitations that were imposed on the applicant's right to contact with X, it is incumbent on the Court to carry out a "stricter scrutiny" of those measures (see *Strand Lobben and Others*, cited above, § 211). In that connection, it notes that already when the child welfare services applied for the care order, they deemed that it would be a long term placement and that restrictions on the applicant's right to contact with X should therefore be imposed (see paragraph 14 above). In response, the Board, and, on appeal, the District Court, carried out assessments of whether the care order would likely become long-term, and both instances concluded in the affirmative (see paragraphs 18 and 29 above). There are no indications of any of those authorities' having assessed whether more frequent contact between the applicant and X could contribute to avoiding that the placement might end up long-term.

50. The Court reiterates in connection with the above that, in addition to the general observation that the ties between members of a family and the prospects of their successful reunification will per force be weakened if impediments are placed in the way of their having easy and regular access to each other, it has emphasised more specifically that arrangements in which weeks – and even months – pass between the times that the parent and the child are allowed to meet cannot generally be considered to support the aim of reunification (see, for example, *M.L. v. Norway*, cited above, § 79). In the instant case, the contact rights in respect of the applicant and her daughter were – in contrast to the general starting point for the assessment of contact rights under Article 8 of the Convention – set at two hours, three times yearly (see paragraphs 18 and 29 above).

51. 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. However, in the instant case, similarly to in the case of *K.O. and V.M. v. Norway* (cited above, § 70), the domestic authorities appear to have relied on quite general considerations relating to the child's need for stability when deciding to limit the applicant's contact rights to only two hours, three times a year. The District Court thus referred only to X's general "settling in" in the foster home, the likeliness of the placement lasting for X's "entire childhood" and the "total strain" of contact (see paragraph 29 above).

52. On the basis of the above, the Court finds that there has been a violation of Article 8 of the Convention in respect of the restrictions on contact between the applicants and A.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

54. The applicant claimed 25,000 euros (EUR) in respect of compensation for non-pecuniary damage. She also stated that she would wish to claim compensation for costs and expenses should they exceed what was covered by legal aid, but that this was not yet clear.

55. The Government stated that they were satisfied that the Court, in the event of it finding a violation, would award compensation for non-pecuniary damage at a level that would align with comparable cases. They further stated that they could not see that the applicant could file any later claims in respects of costs and expenses.

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

57. As to recovery of costs and expenses the Court observes that the applicant, within the deadline set, submitted a time-sheet to show counsel’s amount of work on the case. She did not submit any materials to demonstrate either her obligation to pay or that she has in fact paid anything, and stated that she would wish to reserve a possibility to file an additional claim. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court rejects the claim for costs and expenses because the applicant did not submit itemised particulars of all claims, together with any relevant supporting documents.

58. 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 care order issued in respect of the applicant’s child;
3. *Holds* that there has been a violation of Article 8 of the Convention on account of the limitations that were imposed on the applicant’s right to contact with her child;

4. *Holds*

- (a) that the respondent State is to pay the applicant, within three months, EUR 25,000 (twenty-five thousand euros), 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller  
Deputy Registrar

Ganna Yudkivska  
President