



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

FIFTH SECTION

CASE OF JALLOW v. NORWAY

(Application no. 36516/19)

JUDGMENT

Art 6 (civil) • Fair hearing • No substantial disadvantage or inequality of arms for appearance through video-link in proceedings for parental responsibility, where applicant was not able to enter the country to be physically present

STRASBOURG

2 December 2021

FINAL

02/03/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jallow v. Norway,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Jovan Ilievski,
Lado Chanturia,

Arnfinn Bårdsen, *judges*,
and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 36516/19) 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 Gambian national, Mr Ebrima Pa Jallow (“the applicant”), on 1 July 2019;

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

the parties’ observations;

Having deliberated in private on 2 November 2021,

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

INTRODUCTION

1. The case concerns complaints lodged with the Court under Articles 6 and 8 of the Convention relating to proceedings through which the applicant sought to be granted parental responsibilities for his child of whom he had never had custody, after the child’s mother had died.

THE FACTS

2. The applicant was born in 1972 and lives in Gambia. Before the Court, he was represented by Ms Schjatvet, a lawyer practising in Oslo.

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 Mr J. Vangsnes and Mr T. Midttun Tobiassen, attorneys 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 has two children living in Norway, T. and G., born in 1999 and 2011 respectively. He lives in Gambia and is married and has five children there.

6. The applicant was married to K.J. when their oldest son, T., was born in Gambia in 1999.

7. The applicant and K.J. divorced around 2003. K.J. married another man in Norway who successfully applied for family reunification with her there in 2003. K.J. was given an independent residence permit in 2004. The oldest son, T., was given a residence permit in Norway in 2007. Until then he had resided with his grandmother in Gambia.

8. G. was conceived when K.J. visited Gambia for three weeks in 2010. K.J. returned to Norway, and G. was born there in 2011.

9. In 2011 or 2012 the Norwegian Labour and Welfare Directorate (*Arbeids- og velferdsdirektoratet*) contacted K.J. to clarify who G.'s father was. She informed them that it was the applicant and the Directorate therefore sent a request to the Norwegian embassy in Ghana, who tried to track down the applicant through the consulate in Gambia. They were able to reach the applicant's brother, who stated that the applicant had moved to Guinea-Bissau. As they were unable to reach the applicant himself, the matter was put on hold in 2012. K.J. was informed that she should contact the Directorate if she received new information about the father. As the applicant himself has not recognised paternity of G., he is listed with an unknown father in the Norwegian National Population Register.

10. The applicant has never been to Norway, and neither has he ever had parental responsibilities for G. From his birth in 2011, G. lived with his mother and brother in Norway.

11. G. met with the applicant in Gambia in 2015, when K.J. took her children on a two-week holiday there. The parties' accounts of the degree of contact between the applicant and G. differ. The applicant submitted that K.J. and the children stayed close to where he lived, and that the applicant and G. saw each other every two to three days during that period. G. had probably also been to Gambia and met the applicant once prior to that. Moreover, the applicant maintained that he also had telephone contact with the children until K.J. died on 25 June 2017; the Government have argued, however, that it is undisputed that G. did not speak English at this time, and that he would therefore not have been able to communicate with the applicant in a shared language.

12. After the death of their mother, G. lived with a friend of the family, G.N., whom they call an "uncle", and his family. At some point, G.'s maternal uncle, M.J., arrived in Norway from England to look after G. and they moved into K.J.'s flat together. T. then moved out.

II. THE PROCEEDINGS CONCERNING PARENTAL RESPONSIBILITIES FOR G.

13. On 20 August 2017 G.N. (see paragraph 12 above), applied to the City Court (*tingrett*) to be given parental responsibilities for G. That application was withdrawn on 29 August 2017. The City Court notified the child welfare services of the situation; they had already been informed of K.J.'s death.

14. On 19 September 2017 the sister of G.'s late mother, A.J., who lived in England, applied to the City Court to have parental responsibilities for G.

15. On 10 October 2017 the City Court received an email from the applicant, also applying for parental responsibilities for G.

16. The City Court appointed a lawyer to assist G., who submitted a response to the applications on 13 October 2017.

17. The applicant further explained his application for parental responsibilities for G. in a letter of 23 October 2017.

18. On 25 October 2017 the City Court held a planning meeting which a court-appointed expert, G's uncle M.J. (see paragraph 12 above), G's guardian, A.J.'s lawyer (see paragraph 14 above) and the lawyer appointed by the City Court to assist G. (see paragraph 16 above) attended. It was decided that the expert should examine the situation in England further. The expert was given a mandate and asked to prepare a written report.

19. In the meantime, on 22 November 2017, the applicant applied for a Schengen visa at the Norwegian embassy in Accra. On 29 November 2017 the embassy rejected the application, giving the following explanation:

“Where our and the local Schengen Cooperation's experience with specific groups and nationalities indicates that many fail to leave Norway or the Schengen area upon expiration of their visas, it has become our practice to issue a visa only in exceptional cases. Probability of return is assessed individually, and importance is attached to both the emigration potential in the applicant's country of origin and to the individual factors regarding the applicant.”

20. The applicant lodged an appeal against the decision not to issue a visa with the Directorate of Immigration (*Utlendingsdirektoratet* – UDI), which rejected it on 6 April 2018.

21. In the meantime, on 17 December 2017, the City Court had received a further written communication from the applicant, in which he explained that he had not been granted a visa at that time.

22. The court-appointed expert (see paragraph 18 above) submitted her written report on 2 January 2018. The City Court held a hearing on 4 January 2018. A.J. attended and gave evidence and one witness was heard. The expert also gave evidence about her work on the case. G.'s guardian opposed the applications from both A.J. and the applicant.

23. The City Court gave judgment on 8 January 2018. It reiterated that G's mother, K.J., had had sole parental responsibilities for G. when she

died. G.'s father, the applicant, had at no time lived with the family in Norway. As a result of this, there was, within the meaning of section 38 of the Children Act, no longer anyone with parental responsibilities for G. and, as provided in section 63 of the Children Act, the City Court had to decide on the applications from those who had applied to have parental responsibilities granted to them (see paragraph 49 below).

24. The City Court found that there would be a danger of G. not being given adequate care and maintenance, or that he would suffer in other ways, if A.J. were granted parental responsibilities for him. Her application was therefore dismissed. The court then moved on to assess the applicant's application, and noted in that context that he had never been to Norway and had expressed the wish that G. should move to Gambia. Moreover, G. knew little of the applicant – he had probably only met him once and spoken to him on the telephone a few times. In addition, the applicant had failed to show much interest in assisting G. after his mother's death. There was in the City Court's assessment a significant danger of G. not being given adequate care and maintenance if the applicant were to be granted parental responsibilities for G.

25. After assessing all the information that had been presented to it, the City Court found that the minimum standards referred to in the third and fourth paragraphs of section 63 of the Children Act had clearly not been met (see paragraph 49 below) and the applicant's application to be granted parental responsibilities for G. was therefore dismissed.

26. Since the City Court had dismissed both of the applications for parental responsibilities for G., it notified the child welfare services in accordance with section 63 of the Children Act (see paragraph 49 below). G. had already been placed in a foster home by that time.

27. G.'s aunt, A.J., appealed against the City Court's judgment to the High Court (*lagmannsrett*). The applicant wrote a letter to the City Court following its judgment. The High Court did not, however, consider that by writing the letter the applicant had intended to appeal against the City Court's judgment and he was therefore not included as a party to the case. A preparatory meeting before the High Court was held in June 2018, at which the applicant was accordingly not present or represented. The High Court scheduled the hearing of the appeal for 11 and 12 September 2018. The High Court reappointed the expert that had been appointed by the City Court (see paragraph 18 above), who submitted a first report to the High Court on 31 August 2018.

28. In the meantime, on 27 June 2018, the applicant applied again for a Schengen visa. The Directorate of Immigration rejected the application on 25 July 2018. The applicant appealed against that decision on 17 October 2018.

29. It became clear that the applicant had intended to appeal against the City Court's judgment and he instructed counsel, who presented herself at

the High Court on 30 October 2018. A new preparatory meeting was held on 15 November 2018 and the hearing was rescheduled for 10 and 11 January 2019.

30. On 22 November 2018 the High Court wrote a letter to the Directorate of Immigration. It confirmed that the applicant was a party to a case before it concerning parental responsibilities for his son, following the death of the child's mother, and stated that the hearing of the appeal had been scheduled for 10 and 11 January 2019 and that it was desirable that the applicant be present throughout the whole hearing. It was expected that he would give evidence, and both the court-appointed expert, members of the bench and the parties' counsel would want to put questions to him. Given the far-reaching character of the case, the High Court considered that evidence given by Skype would not be an optimal solution.

31. In the letter, the High Court further stated that it was of the view that it was important for the elucidation of the case and for the equality of arms between the parties that the applicant be present throughout the whole hearing. The applicant had opposed A.J.'s application and he had to be given the opportunity to question her and any witnesses she might wish to present. It would be difficult to ensure these rights as a party for the applicant if he were not present.

32. The High Court stated furthermore that, in purely technical terms, the proceedings could be transmitted to Gambia via video-link so that the applicant could follow them, providing that compatible equipment could be found. But the applicant would have to be able to discuss with his counsel when questions were put and, as they could not discuss openly in front of the whole court, it was difficult to picture how it would be possible to carry out the hearing without numerous interruptions.

33. On 3 January 2019 the expert appointed by the High Court submitted a second report (see paragraph 27 above).

34. The Immigration Appeals Board (*Utlendingsnemnda* – UNE) dismissed the applicant's appeal against the rejection of his application for a Schengen visa (see paragraph 28 above) on 7 January 2019. The Appeals Board concluded that the likelihood of the applicant returning to his home country was not sufficiently high to enable a visa to be granted. The decision included, *inter alia*, the following considerations:

“UNE notes the statement from [the High Court], dated 22 November 2018. Furthermore, UNE holds that taking part in a child custody case in court is in many cases considered to be a strong welfare reason for issuing a visa. However, as this case stands now, UNE considers there is a great potential for emigration. UNE therefore agrees with UDI in its assessment that there are not sufficiently strong welfare reasons in this case to outweigh the appellant's lack of necessary ties to his country of origin. In its assessment UNE emphasised the fact that it is technically possible for the appellant to follow the proceedings via Skype. Further, his attorney can attend the proceedings and safeguard the appellant's legal interest. UNE does not

consider that not granting a visa breaches Article 3 of the Convention on the Rights of the Child or section 104 of the Constitution.”

The applicant since several times requested that the decision be revised, and one of the decisions taken in response to a request to that effect was made on 29 May 2019.

35. In a letter received by the High Court on 8 January 2019, the applicant requested that the appeal hearing be rescheduled, due to the negative decision of the Immigration Appeals Board. He argued that the refusal to grant him a visa was invalid, and that the High Court had to reschedule the hearing until a visa had been granted, so that he could attend it.

36. The High Court refused the request in a decision of 9 January 2019, in which it noted that it was not likely that the visa decision was flawed. It also took note of the fact that the applicant had understood that he might not get a visa and that the possibility of following the proceedings by Skype had been outlined already in the planning meeting in November 2018 (see paragraph 29 above). For the High Court, the applicant following the proceedings via Skype was not a perfect solution, but acceptable in the circumstances. The High Court, moreover, distinguished the applicant’s case from that in *Ciliz v. the Netherlands* (no. 29192/95, ECHR 2000-VIII), *inter alia* on the grounds that it was not a similar issue of interference with family life in the applicant’s case, since he had never lived with G. and had only met him twice. In addition, the High Court stated that the fact that the expert reports (see paragraphs 27 and 33 above) had not been translated did not give grounds for rescheduling and pointed out that the first report dated from as early as 31 August 2018. Lastly, the High Court emphasised that it was important for G. that the matter relating to parental responsibilities for him be decided – since more than a year since the City Court had given judgment had already passed – and that the applicant had counsel who would protect his interests during the appeal proceedings.

37. The appeal hearing was held in the High Court on 10 and 11 January 2019. A.J. attended with counsel, as did G.’s guardian and lawyer, the court-appointed expert, and the applicant’s counsel. In addition to the parties and the court-appointed expert, five witnesses gave evidence. On 10 January 2019 the applicant asked *in limine litis* for his appeal and that of A.J.’s to be split, so that his appeal could be examined at a later point in time. The High Court refused the request. The court records include the following order:

“On 8 January 2019, Attorney Schjætvet [(the applicant’s counsel)] petitioned for the appeal proceedings to be rescheduled. On 9 January 2019, the Court of Appeal refused the petition. Among other things, it was stressed that [G.] was in need of peace and stability, that it was vital for him that the matter of parental responsibilities be decided straight away, and that further rescheduling of the matter would be a burden to him. The same arguments apply now.

JALLOW v. NORWAY JUDGMENT

Before the Court of Appeal, it has been clarified that Ebrima Pa Jallow is not applying for day-to-day care of the child, but only parental responsibilities. However, this makes no difference to the burden the matter places on the boy.

It has been argued that Ebrima Pa Jallow was not assessed by the expert witness. The Court of Appeal refers in this context to the fact that the appeal proceedings were rescheduled because the father had not made a statement, and he was given the chance to identify reference persons/informants for the expert's assessment.

The Court of Appeal has unanimously found that the matter should not be subdivided, and that the petition for parental responsibilities on Ebrima Pa Jallow's behalf will not be rescheduled."

38. Moreover, it appears from the court records that the issue of the applicant's participation via Skype was returned to on several occasions, *inter alia* by way of the following notes:

"The presiding judge raised the question of how Ebrima Pa Jallow would follow the proceedings in a technical sense. It was clarified that, technically, it would be difficult to get the translation into English to him via Skype. Technical assistance would have to be called, which would be organised in a later break. Following this, attorney Schjathvet agreed that the opening statements could be made without her client, Ebrima Pa Jallow, being able to follow the proceedings on Skype.

...

The court adjourned for a break from 11.05 a.m. to 11.25 a.m. Things were still not ready for Ebrima Pa Jallow to be able to follow the proceedings via Skype, but attorney Schjathvet still allowed the proceedings to continue without the Skype transmission.

...

The technology for transmission by Skype was now ready so the interpreter translated while sitting beside the person testifying, using the laptop belonging to attorney Schjathvet which had Skype.

...

On Friday 11 January 2019, the appeal proceedings continued in the same location with the same persons present. Ebrima Pa Jallow was not on Skype from the commencement of the day's proceedings, but it was decided that contact would be attempted later.

Attorney Schatvet gave her consent that the proceedings could continue without Ebrima Pa Jallow being on Skype.

...

After the lunch break, Ebrima Pa Jallow came on Skype and was able to follow the proceedings. ..."

39. In its judgment of 11 February 2019, the High Court dismissed the appeals. The High Court concluded that it was not in G.'s best interests that his aunt, A.J., or the applicant be given parental responsibilities for him. After describing the legal framework, the High Court first set out G.'s situation, before turning to the applications of A.J. and the applicant, respectively.

40. In respect of G.'s situation, it stated among other things that G. was well aware of the ongoing dispute about him and that it had been an additional burden on him. According to the expert (see paragraph 27 above), G. needed peace, stability and predictability going forward. He was a child with special needs both in terms of emotional and social development and the expert recommended that he live with people with special skills regarding children and development, care persons who would be particularly sensitive to his signals and able to recognise and interpret his fundamental needs and emotional states. Moreover, the expert reported that G., who was by then nine years old, had found his place in his foster family and called them "mummy, daddy and big brother". He had stated clearly that he wanted to live with them in Norway and the expert considered that removing him from them would represent a risk to his development.

41. The High Court went on to find that it would not be in G.'s best interests for A.J. to be given parental responsibilities for him. In that context it took note that A.J.'s application to be given parental responsibilities had been made on the assumption that she would also have daily care of him. Turning, then, to the applicant's application, the High Court noted that it had become clear that he did not wish to be responsible for the daily care of G. and for G. to move to his home in Gambia. It appeared uncertain to the High Court whether the applicant intended to come to Norway and claim responsibility for the daily care of G. at a later point in time.

42. Furthermore, the High Court emphasised that as the question before it was whether it would be in G.'s best interests for the applicant to be given parental responsibilities for him without also being given daily care of him, the applicant's parenting skills were not relevant. According to the expert, it would be positive if the applicant gained parental responsibilities for G. provided he did not want G. to move, but otherwise it would in her opinion be unnatural for the applicant to participate in parental-responsibility decisions. A potential future case concerning daily care would be a heavy burden on G., but the expert stated that if the applicant were granted parental responsibilities, she would expect him to maintain a low profile, and to introduce him and his family cautiously. The expert further asserted that what was important to G. at the time was where and with whom he lived. Who had parental responsibilities for him was less important.

43. The High Court stated that it agreed with the expert that it would not have any immediate practical consequences for G. whether or not the applicant was granted parental responsibilities, and that what seemed important was that the applicant become a part of G.'s life in due course, in a way that was useful for G. In the first place, this could be by sending photographs, showing an interest in G.'s daily life, and being there if G. was interested in contact. Gradually they could become better acquainted. Such contact would not depend on the applicant having parental responsibilities.

44. As to parental-responsibility decisions, the High Court noted that the applicant had little knowledge about G. and therefore lacked the qualifications to participate in those decisions in a manner that would be in G.'s best interests. In addition, the geographical and cultural gulf between the applicant and G.'s care provider in Norway would make shared parental responsibilities between the applicant and G.'s guardian difficult.

45. The High Court also stated that it had to be mindful of the fact that the applicant would, were he given parental responsibilities for G., be more easily able to initiate future proceedings concerning G. It referred to the applicant having made different statements about what he wished for G. with regard to where and with whom he was to live. The High Court stated, lastly, that it considered that the Court's judgment in *Gül v. Switzerland* (19 February 1996, *Reports of Judgments and Decisions* 1996-I) did not provide guidance, as the applicant's case concerned only issues of parental responsibilities, not daily care, whereas the case of *Gül* had concerned family reunification.

46. The applicant appealed against the High Court's judgment to the Supreme Court (*Høyesterett*). The Supreme Court's Appeals Committee (*Høyesteretts ankeutvalg*) refused him leave to appeal in a decision of 10 April 2019.

III. JUDICIAL REVIEW OF THE APPLICANT'S VISA DECISIONS SUBSEQUENT TO THE APPLICATION LODGED WITH THE COURT

47. On 4 October 2019 the applicant applied to the City Court for judicial review of the visa decision of 7 January 2019 of the Immigration Appeals Board, that had not been refused revised in, *inter alia*, a decision of 29 May 2019 (see paragraph 34 above) by way of a civil lawsuit against the Norwegian State. He also requested a declaratory judgment holding that there had been a violation of Article 8 of the Convention on the grounds of that decision.

48. The court hearing took place on 5 May 2020, and the City Court delivered its judgment on 10 June 2020. It concluded that the relationship between G. and the applicant did not amount to "family life" within the meaning of Article 8 of the Convention. The visa rejection therefore did not violate Article 8. However, it found that there had been a procedural error in the decision of the Immigration Appeals Board. The Board had originally been under the assumption that the applicant had not documented his family relations in Gambia. This point had been rectified in one of several motions for reversal, but the City Court found that the Immigration Appeals Board had not assessed the case on the correct factual grounds. The decision was therefore found to be invalid.

RELEVANT LEGAL FRAMEWORK

49. Section 38 of the Children Act of 8 April 1981 (*barneloven*), as worded at the time of the facts of the case brought before the Court, provided that parental responsibilities for a child who had lost a parent was transferred to the other parent if the latter already shared parental responsibilities or the child was living with him or her. Section 63 set out at the relevant time that if there was no longer anyone with parental responsibilities for a child, persons who wanted to be given it were to contact the court in the area where the child lived. If only one application to have parental responsibilities was received, the court was to grant the application unless there was a danger of the child not being given adequate care and maintenance, or if he or she would suffer in other ways. If no one applied to have parental responsibilities, or the court dismissed all the applications, the court was to inform the child welfare services in order for them to make a decision on the placement of the child.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

50. The applicant complained that the proceedings through which he sought to be granted parental responsibilities for his child were not conducted fairly in violation of Article 6 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

51. The Court observes that the applicant and another relative of G., A.J., both applied before the courts to have parental responsibilities for G. given to them. The Court also notes that G. – through his guardian – opposed the applications from both A.J. and the applicant. In the light of these circumstances, the Court proceeds on the basis that Article 6 of the Convention was applicable in respect of the proceedings that are the subject of the complaint brought before the Court.

52. Furthermore, the Court notes that this complaint 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

1. *The parties' submissions*

53. The applicant submitted that he had not only not been allowed to be physically present during the domestic court's hearing, he had also been refused entry to Norway for the purpose of preparing for the hearing and, in that connection, to meet in person with G., the expert witness, the child welfare services and his lawyer. The applicant had thereby also been put at a significant disadvantage *vis-à-vis* G.'s aunt, A.J., who had been allowed to meet G., the expert, the child welfare services and her lawyer in the context of the proceedings before both levels of jurisdiction.

54. Furthermore, the applicant submitted that his not having been granted parental responsibilities for G. had entailed a severing of the biological ties between them since the County Social Welfare Board had thereby become competent to authorise G.'s adoption in accordance with the Child Welfare Act. The applicant's presence in court had been necessary since his personal character and way of life had been in play.

55. The applicant also argued that the reasons the domestic court had given for its judgment were insufficient to demonstrate that the applicant's physical presence had been unnecessary and he pointed out, *inter alia*, that it had not given any reasons as to why it had changed its mind from the position taken in its letter of 22 November 2018 to the Directorate of Immigration, in which it had argued that the applicant's presence was of great importance both for the elucidation of the application for parental responsibilities and for the equality of arms between the parties. Immigration concerns had no place in the fair-trial assessment.

56. The Government maintained that, as a starting-point, the question was whether the applicant's physical absence from the hearing had deprived him of a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party, or whether it had put him at a substantial disadvantage *vis-à-vis* his opponent in presenting his case. Not every disadvantage would lead to an infringement of Article 6 § 1 of the Convention.

57. As to the facts of the instant case, the Government submitted that the applicant had not had an absolute right to be physically present at the hearing. They asserted in that connection that the case differed from that in *Karpenko v. Russia* (no. 5605/04, 13 March 2012), *inter alia* as the domestic proceedings in the applicant's case had, unlike in *Karpenko*, concerned the establishment, not the termination, of parental responsibilities. They also emphasised that in its judgment of 11 February 2019 the High Court had found that the applicant's parental competence had been of no interest to the question of parental responsibilities since he had not lodged an application for the daily care of G.

58. As to the applicant's presence at the court hearings in Norway via Skype, the Government submitted that this had not undermined his position *vis-à-vis* his opponents. They also pointed out that the applicant's counsel had been present in person and had consented to the proceedings continuing on the occasions when the Skype connection had not been working. The High Court's letter of 22 November 2018 in which it had emphasised the importance of the applicant's participation in person had to be read in the light of the fact that it had not at that point in time been clear that the applicant had only lodged an application for parental responsibilities, not the daily care of G.

2. *The Court's assessment*

59. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents. However, the rights deriving from these principles are not absolute. The Court has already ruled, in a number of judgments, on the particular case in which precedence is given to superior national interests when denying a party fully adversarial proceedings. The Contracting States enjoy a certain margin of appreciation in this area. However, it is for the Court to determine in the last instance whether the requirements of the Convention have been complied with (see, for example, *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 146-47, 19 September 2017, and the references therein).

60. In the instant case, the Court notes that the background for the applicant's submissions relating to unfairness and inequality of arms is essentially his having been refused an entry visa to Norway. The Court further notes that the decision not to grant the applicant a visa was taken on the basis of public interest considerations, notably relating to immigration control. However, the question before the Court is not whether a visa should have been granted in order to secure the applicant a fair hearing, but whether the hearing was, in the particular circumstances of the case, fair in respect of the applicant, given that he was not allowed to enter Norway in order to be physically present.

61. At the outset the Court cannot but take note that the case before the High Court concerned interests of a personal character for the applicant, and of the fact that the High Court, while preparing the case, sent a letter to the Directorate of Immigration emphasising the need for the applicant's physical presence in order to ensure a fair trial for him (see paragraph 30 above). In particular, the Court observes that, as A.J. had also lodged an application to be given parental responsibilities for G., in its letter the High

Court emphasised the need for equality of arms between the parties; the applicant was to be given the opportunity to question A.J. and any witnesses the latter might wish to present, and to be able to discuss with his counsel in that connection, which would be more difficult were he not allowed to be physically present with his counsel in court. In addition, the applicant was to appear before the bench himself and be given the opportunity to give evidence and be questioned. At the time, the High Court considered that giving evidence by Skype would not be the optimal solution (see paragraphs 30-32 above).

62. However, the Court also observes that the High Court, after it had become clear that the applicant would not be allowed entry into Norway, made new and updated assessments, and ultimately considered it acceptable also from the perspective of the applicant's right to a fair hearing to proceed with the scheduled hearing with the applicant present by Skype, and with his lawyer physically present at the hearing. It did so in two decisions of 9 and 10 January 2019 on the basis of considerations which included: G.'s interest in having the matter settled; the fact that more than a year had already passed since the City Court had delivered its judgment; it having been clarified that the applicant was not seeking to have the daily care of G. (something which had not been clear when the court had first contacted the immigration authorities); and that he would have counsel present to secure his interests (see paragraphs 36 and 37 above).

63. The Court notes that the High Court, since the physical appearance of the applicant was no longer an option, in practice had the choice between postponing the case for an indefinite period with no solution in view, or to facilitate the attendance of the applicant through video-link. In the light of the reasons provided by the High Court, the Court has no basis for criticising the High Court for its choice in this regard. In that respect, the Court emphasises in particular the following factors:

64. Firstly, the High Court itself emphasised the negative sides of postponing the case, notably being at odds with the best interests of G. Moreover, as the Court has held in different contexts, the appearances by video-link are as such not necessarily problematic, as long as this measure in any given case serves a legitimate aim and that the arrangements are compatible with the requirement for due process (see, for example, *mutatis mutandis*, *Dijkhuizen v. the Netherlands*, no. 61591/16, § 53, 8 June 2021; *Bivolaru v. Romania* (no. 2), no. 66580/12, § 138, 2 October 2018); *Ichetovkina and Others v. Russia*, nos. 12584/05 and 5 others, § 37, 4 July 2017; *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, §§ 41-43, 16 February 2016; and *Marcello Viola v. Italy*, no. 45106/04, §§ 67 and 73-74, ECHR 2006-XI (extracts)).

65. Secondly, the Court recalls that the case before the High Court was ultimately limited to deciding on parental responsibilities only, not the custody for G.; that is, the day-to-day responsibility for him. It transpires

from the reasoning in the High Court's judgment that the decision on parental responsibilities in this case did not to a decisive extent depend on the judges' immediate impression of the parties through their physical presence (see paragraphs 39-45 above).

66. Thirdly, the Court takes note of the fact that although the applicant disagreed with the High Court proceeding with the case without him being physically present, it appears that he did not – via his counsel – complain of specific problems during the hearing. Even though some connectivity issues were noted in the court records, they generally show that counsel had no objections to the hearing proceeding (see paragraph 38 above). The Court also notes in this respect that the applicant's representative made no complaints to the High Court that the applicant was unable to communicate confidentially with her during the hearing.

67. Fourthly, the Court emphasises that the applicant participating in the proceedings via Skype, was assisted by his lawyer present at the hearings at all times. Indeed, even though it was technically more complicated for the applicant to, for example, consult with counsel in connection with the questioning of witnesses than had he been in the same room, he was afforded broad opportunities to present his case (see paragraphs 36 and 37 above).

68. Accordingly, while the Court accepts the applicant's assertion that his lack of physical presence had to some degree entailed that A.J. was *a priori* in an easier situation than him owing to her being physically present, the Court does not find that the technical solution employed placed him at any "substantial disadvantage" as required by the Court's case-law for there to be a violation of Article 6 of the Convention in a case such as the present one, or that he did not have a reasonable opportunity to present his case to the High Court. The Court notes that A.J. was not as such the applicant's opponent in the said proceedings, nor did the High Court find in favour of her.

69. As concerns the applicant's arguments that he could not adequately prepare his case because he was not allowed entry into Norway or because the court-appointed expert reports (see paragraphs 27 and 33 above) had not been translated, the Court observes that the reports were made available ahead of the High Court hearing on 10 and 11 January 2019 and there is nothing to indicate that the applicant was unable to communicate with counsel or others during the case-preparation stage even if he was not able to do so in person at the meetings. The expert who had prepared the reports also attended the High Court's hearing where she elaborated on her reports and was available for questioning (see paragraph 37 above). The Court does not find that these matters give any indication that the trial was unfair.

70. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

71. The applicant complained that the refusal to give him parental responsibilities for G. had violated his right to respect for his 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.”

72. The Government submitted that the complaint under Article 8 of the Convention was inadmissible *ratione materiae* as there had been no “family life” in the instant case. They also maintained that, as concerned the substance, the High Court’s assessment of the matter had fallen well within the margin of appreciation afforded to member States in a case such as the present one. According to the Government, the applicant’s application had not demonstrated how he would be able to provide “care and consideration” for G. while living in Gambia or on what basis he would take decisions for G. in his personal matters and in accordance with his interests and needs.

73. The applicant submitted that there had been family life when G.’s brother T. was born in 1999 and that the family ties had not ceased to exist because the parents had divorced and remarried other people. Exceptional circumstances were required for family life to cease to exist and no such circumstances had been present in this case. In the applicant’s view, there had been a violation of Article 8 of the Convention and the Government’s arguments were discriminatory in so far as it was the refusal to give the applicant an entry visa that represented the hurdle as to why he could not provide G. with care and exercise his parental responsibilities.

74. The Court reiterates that a biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, is insufficient to attract the protection of Article 8. As a rule, cohabitation is a requirement for a relationship amounting to family life. Exceptionally, other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* “family ties” (see, for example, *A.B.V. v. Russia*, no. 56987/15, § 65, 2 October 2018, and *Anayo v. Germany*, no. 20578/07, § 56, 21 December 2010, with further references). In the instant case, G. is the applicant’s biological son. G. was born in Norway in 2011. The applicant has never been to Norway and, based on the information provided to the Court, their relationship consisted principally of the applicant having met G. on the occasion of a two-week holiday of the latter in Gambia when he was aged four and which took place two years before his mother died and

four years before the domestic court decisions. In addition to that, the applicant and G. possibly had some telephone contact (see paragraphs 10-11 above). Nevertheless, even assuming that such limited contact would suffice to create *de facto* “family life” within the meaning of Article 8, the Court finds that the complaint is in any event manifestly ill-founded for the following reasons.

75. As concerns the procedural guarantees that flow from Article 8 of the Convention in cases concerning alleged interferences with the right to respect for family life, the Court has found above that the applicant’s assertion that the trial was unfair and that he has been the victim of an inequality of arms cannot succeed from the angle of Article 6 (see paragraphs 59-70 above). It does not consider that viewing the procedures from the perspective of Article 8 can lead to a different conclusion.

76. As concerns the substantive decision not to give the applicant parental responsibilities for G., the Court notes that it has to be a fundamental element that the connection between the applicant and G. at the time of the impugned decision was very limited. Taking that as its starting-point, the Court observes that the High Court based its decision not to give the applicant parental responsibilities for G. on considerations which included the fact that parental responsibilities was a separate matter from establishing contact between the applicant and G. – which the High Court does indeed appear to have considered should be done – and that the applicant, given the distance between him and G. and the lack of knowledge about him and his situation – would not have the qualifications to participate in taking the decisions that fall within the competence of the person having parental responsibilities in a way that would be in G.’s best interests (see paragraphs 42-44 above). In the Court’s assessment, the reasons provided by the High Court were both relevant and sufficient and there are no indications to suggest that the domestic authorities did not pursue the best interests of the child or failed to strike a fair balance between the competing interests in the case.

77. In the light of the above circumstances, the Court considers that the application discloses no appearance of a violation of Article 8 of the Convention and that the complaint under that provision is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention admissible, and the complaint under Article 8 inadmissible;
2. *Holds*, unanimously, that there has been no violation of Article 6 of the Convention.

JALLOW v. NORWAY JUDGMENT

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

Victor Soloveytchik
Registrar

Síofra O'Leary
President