



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

1959 · 50 · 2009

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23109/07
by Aron GANDRUD
against Norway

The European Court of Human Rights (First Section), sitting on 1 October 2009 as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 21 May 2007,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aron Gandrud, is a Norwegian national who was born in 1970 and lives in Espeland, near Bergen. He is represented before the Court by A. Kayser, a lawyer practising in Bergen.

A. The circumstances of the case

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

A. Factual background to the case

In 1993 the applicant married Ms S.M.L., a national of the United States of America (USA) who was born in 1968. Together the couple got two sons, A. and T., who were born respectively in November 1995 and August 1997. Since the couple separated in 1997 the relation between the applicant and S.M.L. has been characterised by tense conflict, lack of cooperation and mutual distrust which they had sought to have solved by US and Norwegian courts. This involved disputes about such matters as parental responsibilities, daily care and access with respect to the children and prohibition on the parents to travel with the children abroad.

In July 1998 the Bergen City Court concluded that, in view of the high level of conflict, S.M.L. should be the sole holder of parental responsibilities. It decided that the children should live permanently with her and granted the applicant certain access rights. In November 1999, while an appeal was pending before the Gulating High Court, the parties concluded a judicial settlement agreement according to which the parents should share the parental responsibilities, the mother should continue to assume the daily care and the father should have certain access rights.

Both the applicant and S.M.L. had a difficult upbringing. At the age of 12 the applicant moved from his mother to live with his father. S.M.L. started abusing drugs at the age of 13.

In 1998 the applicant met and started cohabiting with Ms K.B. and together they got two children, born respectively in December 1999 and July 2001. He has access to them twice a week. In May 2003 the applicant married Ms H., a marriage that was turbulent and lasted only for a few months. Since 2004 he has been living with Ms M. and her five boys from two earlier relationships. The boys have had access to their respective fathers.

Since 1997 the applicant has been occupied full time at home, except for periods when he worked in a support home for mentally disabled persons. He has also worked with computer programming.

In 2000 S.M.L. met Mr L. and they married the same year. They got two children, Z. (born in November 2000) and C. (born in July 2005). L. was educated as engineer and was formerly employed in the off shore oil industry. Because of his back problems and S.M.L.'s drugs abuse, he stayed at home as from 2005. They lived together with their two common children and with the applicant's and S.M.L.'s two children.

S.M.L.'s drugs abuse had involved most types of narcotic substances from hashish to heroin. She had been off drugs for shorter and longer periods, notably for several years before Z. was born in 2000. As from March 2003 her drugs abuse resumed, involving injections of heroin. In November 2003 S.M.L. was hospitalised for detoxification but left after five days. After six to seven weeks she continued to intoxicate herself. In April 2004 she was again hospitalised for detoxification, for a period of 10 to 12 days. From September to December 2004 S.M.L. was again hospitalised for the same reason. In the spring of 2004 the police caught S.M.L. in possessing drugs and she was imposed a fine. When she was absent from home it was L. who looked after the children, including A. and T. when they were not with the applicant.

B. S.M.L.'s and the applicant's agreement to transfer the daily care to him and S.M.L.'s subsequent wish to resume the care

At some time during the winter or spring of 2005 S.M.L. found it necessary because of her drugs abuse problem and pregnancy with C. to transfer the daily care of T. and A. to the applicant. The boys then moved to the home of the applicant and M. and her five children. According to the applicant this happened in January 2005; according to S.M.L. it occurred in March 2005.

S.M.L. had several relapses with drugs abuse, the latest in May/June 2005. In June 2005 she was compulsorily committed to a detoxification centre for six to seven weeks until she gave birth to C. so that she should avoid taking drugs during the last part of her pregnancy. Thereafter she stayed at home under supervision by the child welfare services, involving two home visits per week by those services and her giving several urine samples per week to them for monitoring.

Both A. and T. had special care needs. A. was alert, somewhat serious and pensive, and had over the years experienced difficulties at school in terms of adaptation and social relations with other children. He had been seriously burdened by the parental conflict, disruption in contacts with key persons, his mother's drugs abuse problem and the negative focusing by one parent on the other. He was struggling with concentration and performance at school. He had a need for security, stability and freedom from involvement in the parental conflict. As from October 2005 A. received regular counselling from a psychologist.

T. was a multi handicapped child, who had a brain damage and was diagnosed as suffering from the Lennox-Gastaut Syndrome (one of the most serious forms of epilepsy) and who since the age of one had had epileptic fits. He also suffered from serious mental disability, had great deficiencies in his functional and cognitive development and his mental faculties corresponded to those of a child less than one year of age. He was totally

unable to assess the consequences of his acts and therefore had to be followed constantly. At times T. had been attached or tied and equipped with a helmet in order not to cause injury to himself or to others. The support apparatus had provided S.M.L.'s home with a sprinkle bed so that T. needed not be secured or attached. He went to a specialised school and spent forty days and nights every six months at a support centre with specialised personnel.

In August 2005 S.M.L. wished to resume the daily care for T. and A. A returned to S.M.L. but T. continued to live with the applicant. On 6 September 2005 the applicant collected A. at his school and objected to them moving back to S.M.L.. From the same date until 20 and 25 October 2005, respectively, the applicant kept A. and T. from going to school and refused S.M.L. to have access to them.

C. Proceedings brought by the applicant claiming an interim order and counter claim by S.M.L.

In the meantime, on 29 August 2005, the applicant made a request to the Bergen City Court for an interlocutory injunction to the effect that A. and T. should live permanently with him and that S.M.L. should be granted a right of access under supervision. On 27 September 2005 S.M.L. requested an interim decision for the daily care and the parental responsibilities in respect of the children to be granted solely to her and for the applicant to be accorded access rights. On 19 October 2005 the City Court held a preparatory meeting without the parties succeeding in reaching an agreement on temporary arrangements. On 24 October 2005 the applicant claimed the daily care and joint parental responsibilities and suggested that S.M.L. be granted access rights. After several writs had been submitted, S.M.L. filed a new request for an interim decision on 28 October 2005.

On 17 November 2005 the City Court issued an interim order that S.M.L. should assume the daily care until a decision had been taken in the main proceedings and that, until such time, the applicant should not have access to A. and T.

D. Main proceedings

1. Judgment by the City Court

The City Court held an oral hearing from 5 to 7 December 2005, during which both parties represented by a lawyer and twenty-one witnesses were heard. By a judgment of 22 December 2005 the City Court, sitting with one professional judge and two expert lay judges (both psychologists) ordered that S.M.L. should be the sole holder of parental responsibilities and should

assume the daily care in respect of A. and T. It granted the applicant access rights at the ordinary level.

By way of introductory note, the City Court remarked that both parties appeared genuinely fond of their children and wishing them well. As a starting point, both parents seemed able to care for the children in a satisfactory manner.

The City Court further found it established that on the whole both children had had regular contacts with both parents after their separation except for certain periods when the mother and the father had denied one another access to the children. The children were also well attached to the applicant even though it was mainly the mother who, except for a period in 2005, had assumed the daily care for them since the break-up of the parents' relationship in 1997. The children were familiar with both parents' housing environment, their new partners and step brothers and step sisters. A risk of change of environment could therefore not be a decisive consideration.

It was difficult to predict who of the parents would contribute to giving the children the greatest possibility to have contact with both parents. Each of them had at periods refused the other to have access to the children. The level of conflict between the parents had made it difficult for them to communicate and cooperate. The conflict, which could be attributed to both parties, had had damaging effects on A., for which they both were responsible, according to Psychologist G.'s witness statement. Both parents were responsible for reducing the level of conflict.

The City Court considered that S.M.L. was just as able as the applicant to take care of T.'s special needs resulting from his brain damage and epilepsy. It attached weight to the fact that the children for most of their lives had lived with their mother, except for a longer period in 2005 when they had lived with their father according to an agreement between the parents.

The City Court observed *inter alia* that witnesses of the child welfare services and the Sudmanske Family and Child Centre had stated that there was no suspicion that S.M.L. currently abused drugs and that it was considered that she was able to assume the care in a satisfactory manner. The City Court found established that her urine samples had proven negative and she had not abused drugs for the last six months. At present it did not appear that S.M.L. had a drug abuse problem that could have a decisive effect on her ability to assume the care. There was however uncertainty as to whether she in future would manage to refrain from taking drugs. Until the summer of 2006 the child welfare services would continue to supervise the conditions in her home.

The City Court noted that A. had clearly stated to the presiding judge a wish to live with his mother together with T. Since A. was 10 years old his opinion should carry great weight. T., on the other hand, had a brain damage and it had therefore not been possible to hear his views.

The City Court further noted that from 6 September 2005 the applicant had kept the children back from school and their mother for 1½ month. It found it particularly unfortunate that he in this way had interfered with their right and duty to receive education. The City Court did not accept his explanation that he did not want the children to be used as a weapon in the parental conflict; his conduct suggested that he was unable to put his children's interests before his own interests.

Considering the case as a whole, and having regard to the best interests of the children, the City Court held that they should live permanently with S.M.L. In addition to the applicant's above-mentioned conduct in September 2005, the City Court attached decisive weight to A.'s wish to live with his mother and to the fact that, with the exception of a period in 2005, for most of the time since the couple's separation in 1997 she had assumed the care for the children.

As regards the applicant's access to the children, the City Court found no special reasons pertaining to the applicant suggesting that he should not have access to them. After conversations with A., witness expert, Psychologist G. had stated that access to the other parent would not be negative for him provided that he had a foreseeable and secure care environment. A. had also said to the presiding judge that he wished to have access to his father.

Against this background, the City Court granted the applicant access to A. and T. at the ordinary level from Friday night to Monday morning every other week-end, two weeks every summer, every other Christmas and Easter, every other autumn and winter holiday. It found no grounds for making supervision a condition for access.

Finally, the City Court held that it would be in the children's best interests that S.M.L. be the sole holder of parental responsibilities. In this connection it placed weight on the parents' inability to communicate and cooperate due to the very tense and deadlocked conflict between them. Such cooperation was absolutely necessary especially in relation to the medical treatment and school education of T., who suffered from severe brain damage. It also had regard to the fact that the applicant as late as August 2005 had changed T.'s school without the mother's agreement and had kept both children away from school for a longer period in the autumn of 2005.

2. Implementation of access after the City Court's judgment

Following the City Court's judgment, the applicant's access to A. and T. was implemented accordingly until June 2006. In view of two reports of concern, one made by A.'s school on 1 June 2006 and another by T.'s school on 2 June 2006, S.M.L. and her lawyer asked for a meeting with the applicant and requested an explanation. The applicant responded that he did not wish to have any such meeting before the appeal hearing, whereupon S.M.L. denied him access. No access took place until the High Court's

judgment. The precise contents of these reports of concern have not been disclosed to the European Court. According to the applicant's appeal submissions to the Supreme Court, S.M.L.'s refusal to let him have access to A. and T. after June 2006 was essentially due to his alleged failure to follow-up adequately an episode concerning damage to one of A.'s teeth during his stay at the applicant's home. A little corner of the tooth had broken off and this the applicant had incidentally mentioned to S.M.L. once he met her in the local grocery.

3. Appellate proceedings

The applicant appealed against the above judgment to Gulating High Court. After holding an oral hearing from 19 to 22 September 2006, the High Court, sitting with three professional judges and two expert lay judges (one psychologist and one psychologist specialist), by a judgment of 5 October 2006 upheld the City Court's judgment with regard to daily care and parental responsibilities and reduced the applicant's access rights (applying the relevant provisions of the Child Act 1981 (*barneloven*)). The High Court saw no reason to hear anew A.'s views on where he should live and on access while noting that neither of the parties had wished it to do so.

In its reasoning, the High Court pointed out that an assessment ought to be made of the best interests of the children in light of the case as a whole. This assessment ought to take into account such factors as who of the parents would be most able to provide the best physical and psychological care for the children, including their following-up in the short term and long term, draw limits, shield them against the parental conflict and contribute to the best possible parental contact. Regard should also be had to any risk of change of environment and the need to ensure stable conditions of upbringing. Since both children had special care needs, especially T. who would need public support measures, it would be of particular importance who of the parties was able to understand the children's needs, to cover those needs and to do so in cooperation with the public services.

Since in the present there was a judicial settlement agreement of 1 November 1999, whereby S.M.L. should assume the daily care, the parents would jointly assume parental responsibilities and the applicant would have access rights basically at an ordinary level, the question was whether concrete and demonstrable reasons for departing from this arrangement.

Since they were born, the children had mainly lived with S.M.L., apart from a period in 2005.

The High Court found that there were no decisive reasons for altering the children's place of residence. Since S.M.L. had got her drugs abuse problem under control, her willingness and ability to provide the children with the best possible care and follow-up did not leave much to be desired. She had cooperated well with the social support apparatus and did all she could in

order to provide the best possible conditions for the children's upbringing. An additional positive factor was her husband.

As regards the applicant, the High Court had doubts about his abilities to assume the care for the children. There was no doubt that he was very fond of his children and wished to give them the best he could, both emotionally and materially. But it was clear that his cooperation with public institutions had not been of the best and that this had led him to act in a somewhat rash manner. In this connection the High Court referred to the fact that, without having conferred with S.M.L. and without having sought professional advice, he had changed school for T. because of his disagreement with the school. This had been especially unfortunate for T., who due to his handicap had special needs for stability and security. Thereafter, he had kept both children away from school.

The applicant's cohabitation with M. and her children was a positive factor. M. appeared to be a caring person both able and willing to contribute positively to the applicant's children. However, in view of the historical background, it would be premature to say anything about how stable this relationship was.

Both parties had refused one another access to the children and were in this respect on an equal footing. In conferring the daily care of the children to S.M.L., the High Court presupposed that she would actively contribute to the access arrangements being implemented in the best possible manner for the children. In the interest of the children she ought to comment on their access with the applicant in a positive manner in their presence. The level of access fixed below would make it difficult for her to refuse access at her own whim. This was so especially for as long as the applicant was cohabiting with M., who in the worst case scenario would represent a safety valve for the children's welfare.

What militated particularly against S.M.L. being a care person for the children was her very negative attitude towards the applicant, both in her conduct vis-à-vis him and the way she had commented on him vis-à-vis the children. She had in addition contacted persons closely related to the applicant and had made very derogatory remarks about him. Her conduct in this regard could not be justified by her negative experiences of the applicant.

The High Court further had regard to A.'s wishes and found no reason for separating the brothers who had a close contact. As regards housing conditions, family and social network, there was no information permitting to distinguish between the parents.

In light of the above considerations, the High Court upheld the City Court's conclusion that the children should live permanently with their mother.

As regards parental responsibilities the High Court observed that it seemed unlikely that the parents' ability and willingness to cooperate would

improve. Both children, especially T., had particular needs and the parent assuming the daily care would to a large extent have to cooperate with different instances of support.

As to the further question regarding the applicant's access to the children, the High Court unanimously agreed that the arrangement under the 1999 judicial settlement agreement and the City Court's judgment ought to be amended.

With respect to T., the High Court observed that support measures by the child welfare services had been granted involving him spending every fourth week in a support centre. In view of his need for stability and foreseeability, it would be a burden to him if he were to have access to the applicant at the ordinary level. Because of T.'s mental condition, it could be questioned to what extent he was able to understand and enjoy this. Moreover, the parents were unable to cooperate about T. and to agree on how he should be treated. When staying with the applicant, T. would experience a different regime from that of S.M.L. and the support centre. This he would perceive as being very negative. Therefore the High Court considered that the applicant's access should be reduced to one Sunday from noon to 6 p.m. every four weeks. Since he would stay every four weeks at the support centre, the applicant's access should take place on the Sunday two weeks after so that he would spend every other week-end at S.M.L.'s home.

With respect to A., the High Court was divided (five votes to one). The majority considered that in view of A.'s particular need for stability and foreseeability after the long standing parental conflict, his access to the applicant would be so damaging that it ought to be restricted. In this connection the High Court referred to the applicant's having been unable to care for A.'s needs in an adequate manner. It decided that he should have access to A. from Saturday 10 a.m. to Sunday 6 p.m. every four weeks.

The minority (one of the professional judges) did not consider A.'s access to the applicant as being negative for A. S.M.L.'s negative focussing on the applicant made it necessary to enable A. to get the opportunity to know his own father. That the applicant currently lived with M and her five children would also be an asset for A., who in addition would get the opportunity to know his two half-siblings whom the applicant had got with Ms K.B. and to whom the applicant had access every other week-end. As to the argument that A. had been tired after spending week-ends with the applicant, the minority considered that access should end on Sunday at 6 p.m. but should continue to start on Friday after school and otherwise follow the ordinary arrangement provided for by law.

On 6 December 2006 the Appeals Leave Committee of the Supreme Court refused the applicant leave to appeal. In so far as the appeal concerned the application of the law on the issue of daily care, the Committee found it obvious that the appeal had no prospects of success. As

for the remainder, the Committee did not consider that a different conclusion could be reached without hearing oral evidence anew on a potentially decisive point or that hearing the appeal was warranted by the general interest or other special reasons.

COMPLAINTS

The applicant complained that the decision taken by the national courts regarding his parental responsibilities, daily care and access rights in respect of A. and the T. violated his rights under Article 8 of the Convention.

THE LAW

Article 8 of the Convention reads:

“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.”

The applicant complained that the High Court’s judgment of 6 October 2006, against which leave to appeal was refused by the Appeals Leave Committee of the Supreme Court on 6 December 2006, gave rise to violations of his Article 8 rights. In his opinion, the rejection of his claim to assume parental responsibilities and the daily care in respect of A. and T. was not supported by sufficient reasons.

The applicant alleged that since he was the one of the parents who was the most cooperative, conferring the parental responsibilities on him only would in his view have been the solution that would have ensured the children the greatest possible degree of access to both parents. It had not been adequately assessed whether this solution would have been optimal for the best interests of the children.

T.’s quality of life had he lived with his father had not been considered as an alternative and had not been adequately examined by an expert.

The decision not to grant the applicant joint parental responsibilities entailed discriminatory treatment of him as a parent compared to his ex-wife amounting to a further breach of Article 8.

Also, the restrictions on the applicant’s access to the children, in particular to T., gave rise to a violation of the above provision. Granting

them access for only six hours at a time had been stressful and frightening for T. and defeated the purpose of access.

The first question is whether the impugned measures decided by the national courts entailed an interference with the applicant's right to respect for family life under paragraph 1 of Article 8. In this regard the Court notes that the national courts' decision did not concern the imposition of a public measure affecting his family life, but a decision by the competent national courts in their particular function of dispute settlement in regard to a disagreement between two private parties, following the break-up of their marriage. The national courts' decision refusing to grant the applicant the daily care of the children, to grant the parental responsibilities to S.M.L. alone and restricting his access to the children nevertheless amounted to an interference with his rights under paragraph 1 of Article 8 (see *Elsholz v. Germany* ([GC], no. 25735/94, § 44, ECHR 2000-VIII; *Sahin v. Germany* [GC], no. 30943/96, § 49, ECHR 2003-VIII; and *Sommerfeld v. Germany* [GC], no. 31871/96, § 44, ECHR 2003-VIII (extracts)).

As to the further issue whether the measures were justified under paragraph 2, the Court sees no reason to call into doubt that they were in accordance with the law, namely the relevant provisions of the Child Act, and pursued the legitimate aim of protecting the "health or morals" and the "rights and freedoms" of the children. The only issue arising is whether the measures were "necessary".

In determining this issue, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify the measures were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. In this connection it reiterates the following principles summarised in *Sahin*, cited above (and in the parallel judgment in *Sommerfeld*, cited above, §§ 62-64):

"64. [...] Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, and *Kutzner v. Germany*, no. 46544/99, §§ 65-66, ECHR 2002-I; see also the Convention on the Rights of the Child – paragraphs 39-41 above).

65. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations

between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner*, cited above, § 67).

66. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII)."

Turning to the particular circumstances, the Court notes that the City Court and the High Court, both sitting with expert lay judges, made a careful assessment of the best interests of the children in relation to each of the disputed measures. The City Court also heard Psychologist G. as an expert witness. Both the City Court and the High Court had regard to a number of factors, notably who of the parents was the most capable of providing care for the children, including for their special care needs and cooperating with public institutions in such matters, ensuring stability in their upbringing, shielding them from the parental conflict and contributing to the best parental contact for both parents.

In so far as the applicant complained of the refusal to grant him the daily care of the children, the Court observes that as a starting point for its reasoning the City Court considered that both parents seemed able to care for the children in a satisfactory manner, though the High Court was more reserved with regard to the applicant's abilities in this respect. Both the City Court and the High Court cautiously reviewed a number of factors pertaining to each of the parents that might constitute a risk with regard to their respective abilities to assume care.

As to the mother, S.M.L., she had in the past had a serious drug abuse problem which, in addition to her pregnancy with C., had been the reason why she during the winter or spring 2005 had transferred the daily care of T. and A. to the applicant. However, in June 2005 she underwent treatment at a detoxication centre for six to seven weeks until she gave birth to C. In December 2005, when the case stood before the City Court, the latter carefully considered the evidence and found no appearance of any drugs abuse problem that could have a decisive effect on her ability to assume care. In October 2006, the High Court found it established that S.M.L. had got her drug abuse problem under control and that her willingness and ability to provide the children with the best possible care and follow-up did not leave much to be desired. She had cooperated well with the social support apparatus and did all she could in order to provide the best possible conditions for the children's up-bringing. There were no decisive reasons for altering their place of residence.

As regards the applicant, both the City Court and the High Court found reason to question his abilities to assume the children's care. The City Court observed that from 6 September 2005 he had for 1½ month kept the children back from school, thereby interfering with their right and duty to receive education, and from their mother. The High Court placed emphasis on the fact that the applicant had kept both children away from school and moreover that, without having conferred with S.M.L. and without having sought professional advice, had changed school for T. because of his disagreement with the school. The applicant's cooperation with public institutions had not been the best, which had led him to act rashly.

In addition to the applicant's conduct in September 2005, the City Court, bearing in mind A.'s age attached decisive weight to his wish to live with his mother together with T. and to the fact that, apart from a period in 2005, the children had lived with their mother for most of the time since the couple's separation in 1997. The High Court too attached weight to A.'s wishes and found no reason for separating the brothers.

In light of the above, the Court finds no reason to doubt that the refusal to grant the applicant the daily care of the children was based on relevant and sufficient reasons. Bearing in mind the national courts' careful examination in this case and the State's wide margin of appreciation in such matters, there is nothing to indicate that the authorities failed to strike a proper balance between the best interests of the children and the applicant's interest in being reunited with them.

This part of the application is therefore manifestly ill-founded and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

The above considerations must also be taken into account in relation to the applicant's complaint of the decision to grant the parental responsibilities in respect of the children to S.M.L. alone. In this regard the Court also observes that, in view of the great problems of cooperation between the parents and the poor prospects of improvement in this respect as well as the special care needs of the children, both the City Court and the High Court found that it would be in their best interests that parental responsibilities be assumed by the mother only.

The Court considers that the reasons relied on by the national courts following their careful examination were relevant and sufficient and clearly fell within their margin of appreciation. There is nothing to suggest that they failed to strike a proper balance between the competing interests or, as suggested by the applicant, subjected him to unjustified differential treatment in comparison with S.M.L.

Also this part of the application is therefore manifestly ill-founded and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

In as much as the applicant felt aggrieved by not being the sole holder of parental responsibilities, this was not a matter that he pursued before the

domestic courts. It therefore has to be rejected for failure to exhaust domestic remedies under Article 35 §§ 1 and 4 of the Convention.

Finally, in so far as the applicant complained of the restrictions on his access to his children, the Court notes that the High Court limited his access to T. to one Sunday from noon to 6 p.m. every four weeks and his access to A. to one visit from Saturday 10 a.m. to Sunday 6 p.m. every four weeks. Emphasis was placed on both children's need for stability and foreseeability. As to T., the level of access was adjusted in light of his need to spend one week-end per month at a support centre. Moreover, regard was had to the particular regime required by his mental condition and the parents' inability to cooperate and to agree on how he should be treated. The consideration that, when staying with the applicant, T. would experience and perceive negatively a different regime from that of the mother and the support centre was also taken into account. As to A., regard was had to the need to spare him from the damaging effects of the long standing parental conflict and to the applicant having shown inability to adequately care for his needs. It is also to be noted that when limiting access arrangements at the level which it did, the High Court assumed that S.M.L. would actively contribute to their success and encourage the children in this respect.

The Court is satisfied that the restrictions on access were supported by relevant and sufficient reasons and that they struck a proper balance between applicant's interests in maintaining contact with the children and their best interests.

This part of the application too is therefore manifestly ill-founded and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President