



## No violation in court hearing on parental responsibility where father was not granted visa to attend

In today's **Chamber judgment**<sup>1</sup> in the case of **Jallow v. Norway** (application no. 36516/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 (right to a fair hearing)** of the European Convention on Human Rights.

The applicant, Ebrima Pa Jallow, is a Gambian national who lives in Gambia. The case concerned proceedings in which he lodged an application to be granted parental responsibility for his child, living in Norway, following the child's mother's death. In particular, he had to attend a court hearing in the proceedings via Skype as he was not granted a visa to enter Norway for reasons of immigration control.

Relying on Article 6 (right to a fair hearing), Mr Jallow alleged that the proceedings were unfair, mainly because he was not allowed to appear in person. The Court found in particular that Mr Jallow had been assisted by his lawyer who was present at the hearing at all times and, even though it was technically more complicated than if he had been in the same room, he had been given plenty of opportunities to present his case both during the case-preparation and at the hearing itself.

The Court **rejected as inadmissible** Mr Jallow's complaint that the refusal to give him parental responsibility violated his right to respect for his family life under **Article 8 (right to respect for family life)** of the Convention. The reasons provided by the High Court were both relevant and sufficient and there were no indications to suggest that the domestic authorities had not pursued the best interests of the child or had failed to strike a fair balance between the competing interests in the case.

### Principal facts

The applicant, Ebrima Pa Jallow, is a Gambian national who was born in 1972 and lives in Gambia.

Mr Jallow had a son, T., with his wife in Gambia in 1999. After he and his wife divorced about four years later, she remarried and moved to live with her new husband in Norway. T. lived with his grandmother in Gambia before joining them in Norway in 2007. When his ex-wife visited Gambia for three weeks in 2010, she and Mr Jallow conceived another child. Born in Norway in 2011, the child, G., lived there with his mother and brother. Mr Jallow met G. in 2015, when he was on a two-week holiday with his mother in Gambia, and possibly one time before that.

G.'s mother, who had sole parental responsibility for him, died in June 2017. His maternal aunt, who lived in England, and his father both applied for parental responsibility, with his father applying for a Schengen visa to travel to Norway for the court hearing. His visa application was rejected, with the decision being upheld on appeal. Unlike Mr Jallow, G.'s aunt was present at the court hearing.

The City Court dismissed both applications for parental responsibility, finding that in both cases there was a risk that G. would not be adequately cared for. In their assessment, it was noted that G.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

hardly knew his father, who had never been to Norway, and that his father wanted G. to move to Gambia. In the meantime, G. had been placed in a foster home.

Both G.'s father and aunt appealed. His father applied again for a Schengen visa to attend the joint hearing and, when it was rejected, appealed against that decision. The High Court, considering that participating by Skype would not be an optimal solution, wrote a letter to the Directorate of Immigration, confirming that he was a party to a case before it, and that it was important for the equality of arms between the parties that he be present throughout the two-day hearing. The Immigration Appeals Board decided that the risk of him not returning to his home country after the hearing was too high for a visa to be granted.

The High Court subsequently refused a request from Mr Jallow to reschedule the appeal hearing or to split his hearing from the aunt's, finding that, although following the proceedings via Skype was not a perfect solution, it was acceptable in the circumstances. It was in G's best interests for the matter to be settled as soon as possible, and Mr Jallow's counsel would be present to protect his interests during the appeal proceedings.

During the proceedings, it was clarified that Mr Jallow was not applying for custody of his child but for parental responsibility.

The High Court dismissed the appeals, concluding that it was not in G.'s best interests for either his aunt or his father to have parental responsibility for him. What seemed important, however, was that Mr Jallow become a part of G.'s life in due course, in a beneficial way for his son. The geographical and cultural gulf between G.'s father and his care provider in Norway would make shared responsibilities difficult. Mr Jallow was not well-enough acquainted with his son to participate in the decisions pertaining to parental responsibility in a manner that would be in G.'s best interests.

In April 2019, the Supreme Court's Appeals Committee refused Mr Jallow leave to appeal the High Court's judgment.

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), the applicant complained that the proceedings were unfair, mainly because he was not allowed to appear in person. He alleged among other things that he was put at a significant disadvantage vis-à-vis the child's aunt, who had also applied for parental responsibility of the child and who was able to be present in person.

In addition, Mr Jallow complained that the refusal to give him parental responsibility violated his right to respect for his family life under Article 8 of the Convention. He submitted that his not having been granted parental responsibility for G. had led to a severing of the ties between them.

The application was lodged with the European Court of Human Rights on 1 July 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,  
 Mārtiņš **Mits** (Latvia),  
 Stéphanie **Mourou-Vikström** (Monaco),  
 Lətif **Hüseynov** (Azerbaijan),  
 Jovan **Ilievski** (North Macedonia),  
 Lado **Chanturia** (Georgia),  
 Arnfinn **Bårdsen** (Norway),

and also Victor **Soloveytchik**, *Section Registrar*.

## Decision of the Court

### Article 6

The question before the Court was not whether a visa should have been granted in order to secure Mr Jallow a fair hearing, but whether the hearing was fair, given that he was not allowed to enter Norway in order to be physically present.

The Court noted that the case before the High Court was limited to deciding on parental responsibility only, not custody of the child. The High Court had first considered that giving evidence by video-link would not be the optimal solution. However, after it had become clear that Mr Jallow would not be allowed entry into Norway, the High Court had felt that it was acceptable to proceed with the scheduled hearing with his being present by Skype, and with his lawyer physically present at the hearing to represent him. It had felt that settling the matter quickly was in the best interests of the child, as more than a year had already passed since the City Court had delivered its judgment. In practice the High Court had had the choice between postponing the case for an indefinite period with no solution in view, or to facilitate his attendance through video-link.

Although Mr Jallow disagreed with the case going ahead without him being physically present, he did not – via his counsel – complain of specific problems during the hearing itself. Even though some connectivity issues were noted in the court records, they generally showed that his representative had had no objections to the hearing proceeding. Moreover, she had not complained that Mr Jallow was unable to communicate confidentially with her during the hearing.

The Court found that Mr Jallow had been assisted by his lawyer present at the hearing at all times and, even though it was technically more complicated at times than if he had been in the same room, he had been given plenty of opportunities to present his case both during the case-preparation and at the hearing itself.

Accordingly, the Court did not find that there was any indication that the hearing was unfair, and concluded that there had been no violation of Article 6 of the Convention.

### Article 8

The Court noted that Mr Jallow's relationship with his son consisted principally of his having met G. on the occasion of a two-week holiday in Gambia when he was aged four and which had taken place two years before his mother died and four years before the domestic court decisions. The connection between father and son being very limited, the High Court had felt that Mr Jallow was insufficiently qualified to take on parental responsibility for G. in a way that would be in the child's best interests. Nevertheless, it had recommended that contact be established between the two.

In the Court's assessment, the reasons provided by the High Court were both relevant and sufficient and there were no indications to suggest that the domestic authorities had not pursued the best interests of the child or had failed to strike a fair balance between the competing interests in the case.

Therefore, the Court considered that the complaint under Article 8 was ill-founded and had to be rejected.

*The judgment is available only in English.*

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