



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

Information Note on the Court's case-law 98

June 2007

Wagner and J.M.W.L v. Luxembourg - 76240/01

Judgment 28.6.2007 [Section I]

Article 8

Article 8-1

Respect for family life

Mother living with her adopted daughter since the date of the foreign adoption order:

article 8 applicable

Refusal to enforce a full adoption order by a foreign court in favour of a single woman:

violation

Article 6

Civil proceedings

Article 6-1

Fair hearing

Failure by a court of appeal to examine one of the applicants' main grounds of appeal and one based on an alleged violation of the Convention: *violation*

Article 14

Discrimination

Refusal to recognise as valid in domestic law a full adoption order by a foreign court:
violation

Facts: Under an enforceable Peruvian judgment Ms Wagner, a national of Luxembourg, legally adopted a three-year-old girl in Peru who had been declared abandoned (the applicants).

They brought a civil action to have the Peruvian judgment declared enforceable in Luxembourg for purposes, in particular, of the child's civil registration, acquisition of Luxembourg nationality (she still had Peruvian nationality) and permanent residence in Luxembourg.

The court rejected the request on the ground that the Peruvian full adoption judgment had been in contradiction with the laws of Luxembourg, which were applicable under the conflict-of-law rule enshrined in the Civil Code and which prohibited full adoption by a single person. The applicants appealed, contending *inter alia* (in a section entitled "Public Policy Implications") that in placing Luxembourg law above an international

agreement in order to refuse execution, the judgment was incompatible with Article 8 of the Convention. Their appeal was declared unfounded, on the ground that the court had rightly held that the Peruvian decision was in contradiction with Luxembourg legislation on conflict of laws, under which conditions of adoption were governed by the law of the country of which the adopter was a national, which in Luxembourg restricted full adoption to married couples. The Court of Appeal concluded that it was unnecessary to examine the other conditions for declaring the decision enforceable, including compatibility with good international relations. The Court of Cassation confirmed the decision. It decided that the Court of Appeal had no need to answer the applicants' submissions under the heading "Public Policy Implications", that question having been made irrelevant by the court's decision not to apply the foreign law, and that the arguments contained in the applicants' appeal concerning Article 8 of the Convention "did not amount to a ground of appeal requiring a reply, given their doubtful, vague and imprecise nature". The applicants subsequently obtained an open adoption judgment in Luxembourg, which was the only possibility open to a single person of adopting a child there.

Law: Article 6 –It was the duty of the courts to duly consider and reply to a party's main submissions and, if those submissions concerned "rights and freedoms" guaranteed by the Convention or the Protocols thereto, to examine them with particular care and attention.

The issue of the incompatibility of the first-instance decision with Article 8 of the Convention – with particular reference to whether it was in accordance with good international relations – was one of the main grounds of appeal raised by the applicants, and as such called for a specific and explicit reply. The Court of Appeal, however, had failed to reply to it. The Court of Cassation had upheld that position, despite its case-law according to which the Convention produced direct effects in the Luxembourg legal system.

Conclusion: violation (unanimously).

Article 8 – This Article was applicable: Ms Wagner had behaved as the child's mother in every respect since the Peruvian adoption judgment, so "family ties" existed *de facto* between them.

The refusal to declare the Peruvian judgment enforceable – which stemmed from the absence of provisions in Luxembourg law enabling a single person to be granted full adoption of a child – amounted to "interference" with the applicants' right to respect for their family life.

The aim had been to protect the "health or morals" and the "rights and freedoms" of the child.

The question remained whether the interference had been "necessary in a democratic society". A broad consensus existed in the Council of Europe on the issue of adoption by unmarried persons, which was permitted without further restrictions in most of the member States.

It had been the practice in Luxembourg automatically to recognise Peruvian judgments granting full adoption (several single women had been able to register the judgment without applying for an enforcement order). On arrival in Luxembourg, the applicants had thus been entitled to expect that the Peruvian judgment would be registered. However, the practice of registering judgments had been suddenly abandoned and their case had been submitted to the judicial authorities. In refusing to declare the judgment enforceable those authorities had let the conflict-of-law rule take precedence over the social reality and the situation of the persons concerned. Since the Luxembourg courts

had not officially acknowledged the legal existence of family ties created by the full adoption granted in Peru, those ties could not take full effect in Luxembourg. As a result, the applicants encountered obstacles in their day-to-day lives and the child did not enjoy the legal protection which would enable her to fully integrate into her adoptive family. As the child's best interests had to take precedence in cases of that kind, the Luxembourg courts could not reasonably disregard the legal status which had been created on a valid basis in Peru and which corresponded to family life within the meaning of Article 8.

Full adoption severed a child's links with its birth family and opened the way to full and complete integration into the new family, and the limits placed on it in Luxembourg law were meant to protect the interests of the adopted child. In this case, however, as the second applicant had been declared abandoned and placed in an orphanage in Peru, it would have been in the higher interest of the child not to refuse to enforce the Peruvian adoption judgment.

The courts could not reasonably disregard the family ties which existed *de facto* between the applicants and in so doing dispense with the need to examine the situation in detail.

Conclusion: violation (unanimously).

Articles 14 and 8 together – Although the first applicant had complied in good faith with all the rules laid down by the Peruvian procedure and the welfare assistant had issued an opinion in favour of the adoption in Luxembourg, the Peruvian full adoption judgment had not been recognised in Luxembourg. The second applicant had been subjected in her daily life to a difference in treatment compared with children whose full adoption granted abroad was recognised in Luxembourg. The child's links with her birth family had been severed and had not been replaced with full and complete links with her adoptive mother. The child therefore found herself in a legal vacuum, which had not been remedied by the fact that an open adoption had been granted in the meantime.

As she did not have Luxembourg nationality, the child could not, for instance, take advantage of the benefits accorded to Community nationals. Furthermore, for over ten years, since her arrival in Luxembourg, she had had to apply regularly for residence permits in Luxembourg and to obtain a visa to visit certain countries. As to Ms Wagner, she suffered in her daily life the indirect consequences of the obstacles facing her child.

There was no justification for such discrimination, especially since, prior to the events in question, full adoption orders had been automatically granted in Luxembourg in respect of other Peruvian children adopted by single mothers, and it had been decided in 2006, in a slightly different context, that a Peruvian adoption decision in favour of a Luxembourg woman was to be acknowledged as of right.

Conclusion: violation (unanimously).

Article 41: EUR 715 in respect of pecuniary damage and EUR 2,500 in respect of non-pecuniary damage.