

Press release issued by the Registrar

CHAMBER JUDGMENT
WAGNER AND J.M.W.L. v. LUXEMBOURG

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Wagner and J.M.W.L. v. Luxembourg* (application no. 76240/01).

The Court held unanimously:

- that there had been **a violation of Article 6** (right to a fair hearing) of the European Convention on Human Rights;
- that there had been **a violation of Article 8** of the Convention (right to respect for family life) on account of the failure of the Luxembourg courts to recognise the family ties created by the judgment of full adoption delivered in Peru;
- that there had been **a violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8**, since J.M. (and, as an indirect result, her mother) had been penalised in her daily life on account of her status as a child adopted by an unmarried mother of Luxembourg nationality whose family ties created by the foreign judgment were not recognised in Luxembourg.

Under Article 41 (just satisfaction), the Court awarded Ms Wagner 715 euros (EUR) in respect of pecuniary damage, EUR 2,500 for non-pecuniary damage and EUR 13,760 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicants are Jeanne Wagner, a 39-year-old Luxembourg national (born on 31 August 1967) and her adoptive daughter, J.M., who was born in Peru in 1993. Both applicants live in Luxembourg. Ms Wagner is the mother of four children who attend schools in Luxembourg.

Under a Peruvian judgment of 6 November 1996, Ms Wagner adopted a three-year-old Peruvian girl who had been declared abandoned.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In 1997 the applicants brought a civil action seeking to have the Peruvian decision declared enforceable in Luxembourg for the purposes, in particular, of the child's civil registration and acquisition of Luxembourg nationality.

On 2 June 1999 the district court dismissed the applicants' application for an order to enforce the Peruvian adoption judgment, on the ground that the latter was contrary to Article 367 of the Civil Code, whereby full adoption was not available to a single woman. The applicants appealed, arguing in particular (in a section entitled "The public-policy implications") that the judgment given at first instance was incompatible with Article 8 (right to respect for family life) of the European Convention on Human Rights. The applicants' appeal was declared unfounded on 6 July 2000 on the ground that the first-instance court had correctly found the Peruvian decision to be at odds with the Luxembourg legislation on conflict of laws, which stipulated that adoptions were governed by the law of the country of which the adopter was a national. The court concluded from that that it was unnecessary to examine the other conditions for declaring the judgment enforceable, including that of compatibility with good international relations.

The Court of Cassation upheld the conclusions of the first-instance and appeal courts on 14 June 2001. It found firstly that the court of appeal had no longer been required to respond to the applicants' ground of appeal entitled "The public-policy implications", as there was no longer any point to the question, given the decision not to apply Peruvian law. Secondly, it found 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 also brought administrative proceedings following the refusal by the Minister for the Family, Social Solidarity and Youth to take the necessary measures to ensure that the full adoption was recognised by the Luxembourg authorities. Their action was upheld at first instance but was dismissed on 1 July 2004 by the higher administrative court, ruling on an appeal by the Ministry.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 November 2000 and declared admissible on 5 October 2006.

A public hearing was held in the Human Rights Building in Strasbourg on 18 January 2007 (press release no. 40-2007).

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

Christos **Rozakis** (Greek), *President*,
 Loukis **Loucaides** (Cypriot),
 Françoise **Tulkens** (Belgian)
 Anatoli **Kovler** (Russian),
 Khanlar **Hajiyev** (Azerbaijani),
 Dean **Spielmann** (Luxemburger),
 Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren Nielsen, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 6 § 1 (right to a fair hearing), the applicants submitted that they had been deprived of a fair hearing because the Luxembourg civil courts had failed to examine their argument based on a violation of Article 8 (right to respect for family life). They further complained under Article 8 of the failure by the Luxembourg authorities to recognise the family ties created between them by the judgment of full adoption delivered in Peru. Lastly, relying on Article 14 (prohibition of discrimination), in conjunction with Article 8, the applicants considered that they had suffered unjustified discrimination on account of the refusal to recognise the full adoption.

Decision of the Court

Article 6

The Court reiterated that even though courts were not required to explain the reasons for dismissing each and every argument a party might raise, they were not absolved from the obligation to give due consideration to and reply to a party's main submissions. If, in addition, those submissions concerned the "rights and freedoms" guaranteed by the Convention or the Protocols thereto, the national courts were obliged to examine them with particular care and attention.

In the Court's view, the issue of the incompatibility of the first-instance decision with Article 8 – 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 omitted to reply to the submission that public policy dictated precisely that the Peruvian adoption decision should be declared enforceable, in accordance with Article 8. Moreover, the Court of Cassation had upheld the stance taken by the first-instance and appeal courts, despite its case-law according to which the Convention produced direct effects in the Luxembourg legal system.

In the circumstances, the Court considered that the applicants had not been given an effective hearing before the Luxembourg courts, which had failed to guarantee their right to a fair hearing. The Court therefore held that there had been a violation of Article 6 § 1.

Article 8

Although the refusal by the Luxembourg courts to declare the Peruvian judgment enforceable stemmed from the absence of provisions in Luxembourg legislation enabling an unmarried person to be granted full adoption of a child, the Court

¹ This summary by the Registry does not bind the Court.

considered that it amounted in the present case to “interference” with the applicants’ right to respect for their family life.

The refusal to declare the Peruvian adoption judgment enforceable had been aimed at protecting “health or morals” and the “rights and freedoms” of the child. The Court considered that it was not unreasonable for the Luxembourg authorities to adopt a cautious approach in examining whether the adoption order had been made in conformity with the Luxembourg rules on conflicting laws.

As to whether the impugned measures had been “necessary in a democratic society”, the Court reiterated that it was not its task to take the place of the Luxembourg authorities responsible for defining the most appropriate policy regulating adoption, but rather to review under the Convention the decisions they had taken pursuant to their power of appreciation.

In that connection the Court observed that a broad consensus existed in Europe on the issue of adoption by unmarried persons. A study of member States’ legislation had revealed that adoption by unmarried persons was permitted without further restrictions in most of the 47 countries.

The Court noted that it had been the practice in Luxembourg to automatically recognise Peruvian judgments granting full adoption. As the first applicant had complied with all the rules laid down by the Peruvian procedure, the judge had granted a full adoption in respect of the second applicant. On arrival in Luxembourg, the applicants had 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 for examination to the Luxembourg judicial authorities, which had refused the application for an order to enforce the judgment.

The Court took the view that the decision not to declare the judgment enforceable did not take account of social reality. 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.

Reiterating that the child’s best interests had to take precedence in cases of that kind, the Court considered that 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. Accordingly, the Court held that there had been a violation of Article 8.

Article 14

The Court reiterated that, in the enjoyment of the rights and freedoms recognised by the Convention, Article 14 prohibited different treatment of persons in analogous situations without objective and reasonable justification.

The Court noted that, as a result of the refusal to declare the judgment enforceable, J.M. 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, J.M. could not, for instance, take advantage of the benefits accorded to Community nationals. Furthermore, for over ten years, she had had to apply regularly for residence permits in Luxembourg and to obtain a visa to visit certain countries, in particular Switzerland. As to Ms Wagner, she suffered in her daily life the indirect consequences of the obstacles facing her child, since she was obliged, among other things, to complete all the administrative formalities arising out of the failure of her minor daughter to obtain Luxembourg citizenship.

The Court saw 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 unmarried mothers.

J.M. had been penalised in her daily life on account of her status as the adoptive child of an unmarried mother of Luxembourg nationality whose family ties created by a foreign judgment were not recognised in Luxembourg. The Court therefore held that there had been a violation of Article 14 taken in conjunction with Article 8.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.