



Child adoption without taking account of the mother's wishes breached her human rights

In today's **Grand Chamber** judgment¹ in the case of **Abdi Ibrahim v. Norway** (application no. 15379/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the decision by the Norwegian authorities to allow the adoption of a child by a foster family against his mother's wishes. The mother, a Somali national who had moved to Norway, did not ask for her son's return as he had spent a long time with his foster parents, but wished for him to maintain his cultural and religious roots.

The Court decided to examine the applicant's wish to have her son brought up in line with her Muslim faith as an integral part of her complaint under Article 8, as interpreted and applied in the light of Article 9 (freedom of religion). It was not necessary to examine separately any alleged failures to comply with Article 9.

The Court pointed out that various interests had been taken into account when placing the applicant's son in care, not just whether the foster home would correspond to the mother's cultural and religious background, and that that had complied with her rights.

However, the ensuing contact arrangements between mother and son, which had been very limited and had culminated in adoption, had failed to take account of the mother's interest in allowing her son to retain at least some ties to his cultural and religious origins.

Indeed, there had been shortcomings in the overall decision-making process leading to the adoption, which had not given sufficient weight to the mother and child's mutual interest in maintaining ties.

Principal facts

The applicant, Mariya Abdi Ibrahim, is a Somali national born in 1993.

Her child, a son born in 2009 in Kenya before she moved to Norway, where she was granted refugee status, was taken into emergency foster care in late 2010. The parent-child centre where the applicant had initially been staying in order to be assisted in caring for her son had advised the welfare services that the child was at risk.

He was subsequently placed with a Christian family, although the applicant had argued he should go to either her cousins or to a Somali or a Muslim family.

As to contact arrangements, in 2010 mother and child were allowed to meet for two hours, four times per year. This regime was then changed to one hour, six times per year in 2011. In 2013 the authorities applied to allow the foster family to adopt the child, which would lead to the applicant having no contact rights, and for the applicant's parental rights to be removed for that purpose.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

She appealed: she did not ask for the child's return as he had spent a long time with his foster parents to whom he had become attached, but she sought contact so, among other things, he could maintain his cultural and religious roots.

The High Court ruled by a majority in May 2015 to dismiss the applicant's appeal and allow the adoption. The decision was largely based on the child's attachment to his foster home and his negative reaction to contact with the applicant. Moreover, her son was a vulnerable child in need of stability. Adoption would mean that the applicant would not be able to request her son's return in the future and would remove potential conflict between her and the foster parents. The court also examined issues arising from his being adopted by a Christian family, such as ethnicity, culture and religion.

Between 2013 and the High Court's decision in 2015 the child and the applicant met twice.

The applicant was refused leave to appeal to the Supreme Court in September 2015.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 March 2016.

The applicant complained about the withdrawal of her parental rights and the authorisation for adoption, relying on Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

In its Chamber [judgment](#) of 17 December 2019, the Court, deciding to consider the applicant's complaints under Article 8 of the European Convention alone, held, unanimously, that there had been a violation of that Article.

On 11 May 2020 the Grand Chamber Panel accepted the applicant's request that the case be referred to the Grand Chamber.

Before the Grand Chamber she argued in particular that, throughout her case, she had been vocal about her religious identity and her specific wishes for her son's upbringing. The adoption had severed all ties to her religion as the foster family had baptised the child.

She also argued that the Court should indicate to the Government measures to be taken under Article 46 (binding force and enforcement), such as reopening the adoption proceedings.

A Grand Chamber hearing on the case was held in the Human Rights Building, Strasbourg, on 27 January 2021.

The Governments of the Czech Republic, Denmark and Turkey, as well as the non-governmental organisation AIRE Centre and the child's adoptive parents were granted leave to intervene in the written proceedings as third parties.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Ksenija **Turković** (Croatia),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Paul **Lemmens** (Belgium),
Ganna **Yudkivska** (Ukraine),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Pere **Pastor Vilanova** (Andorra),

Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),
Péter Paczolay (Hungary),
Arnfinn Bårdsen (Norway),
Peeter Roosma (Estonia),

and also Søren Prebensen, *Deputy Grand Chamber Registrar*.

Decision of the Court

The principal reason behind the applicant's request to refer her case to the Grand Chamber was that, in the Chamber's decision, all her arguments had been examined under Article 8, rather than in part under Article 9. The Court considered, however, that the applicant's wish to have her son brought up in line with her Muslim faith could be examined as an integral part of her complaint under Article 8, as interpreted and applied in the light of Article 9. It was not necessary to examine separately any alleged failures to comply with Article 9.

The Court went on to note that finding a foster home which corresponded to the applicant's cultural and religious background had not been the only possibility for complying with the applicant's rights under Article 8, as interpreted in the light of Article 9. The domestic courts had taken various interests into account throughout the whole process, and in particular the applicant's son's psychological stability. Moreover, there was a relatively broad agreement in international law that, in such cases, the authorities were not obliged to place a child in a family sharing his/her religious, ethnic, cultural and linguistic identity or that of his/her parents, but that they did have an obligation to take those factors into account.

In any case, the authorities had made efforts, although ultimately unsuccessful, to find a foster home culturally similar to the applicant but it had not been possible because of a shortage of foster parents from minority backgrounds.

However, the Court found that the contact arrangements after the applicant's son had been taken into care, culminating in the decision to allow adoption, had failed to take due account of her interest in allowing her son to retain at least some ties to his cultural and religious origins.

Indeed, the overall decision-making process leading to the adoption had not been conducted in such a way as to ensure that all of the applicant's views and interests had duly been taken into account.

In particular, the key issue in the High Court's decision had been the child's attachment to his foster home and his reaction to contact sessions with the applicant; yet the applicant had had very little contact with her son from the outset.

Furthermore, the High Court had focused on the potential harm of removing the child from his foster parents, rather than on the grounds for terminating all contact with his mother. The High Court had apparently given more importance to the foster parents' opposition to "open adoption", which would have allowed contact, than to the applicant's interest in continuing to have a family life with her child.

Nor was the Court convinced by the High Court's emphasis on the need to pre-empt any future challenges by the applicant with regard to the care order or her visiting rights.

The Court therefore considered that it had not been shown that there had been such exceptional circumstances as to justify a complete and definitive severance of the ties between the child and the applicant, or that the overriding requirement behind that decision had been the child's best interests.

The Court was not satisfied that in depriving the applicant of her parental responsibility in respect of X and authorising his adoption by the foster parents, the domestic authorities had attached sufficient weight to the applicant's right to respect for family life, in particular to the mother and child's mutual interest in maintaining their family ties.

There had accordingly been a violation of Article 8.

Article 46 (binding force and enforcement)

The Court decided not to indicate any measures, either individual or general, to the Norwegian Government.

Individual measures could ultimately entail an interference with the child and his adoptive parent's current family life, and lead to new issues on the merits.

As for general measures, the Court noted that the State was making efforts to implement the judgments against it concerning child welfare measures and was in the process of enacting new legislation to address any systemic issues.

Article 41 (just satisfaction)

The Court held, unanimously, that Norway was to pay the applicant 30,000 euros (EUR) in respect of costs and expenses. It dismissed, by 14 votes to three, the remainder of the applicant's claim for just satisfaction.

Separate opinions

Judges Lemmens and Motoc expressed a joint partly dissenting opinion. Judge Serghides expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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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.