Information Note on the Court's case-law No. 32

July 2001

K. and T. v. Finland [GC] - 25702/94

Judgment 12.7.2001 [GC]

Article 8

Article 8-1

Respect for family life

Taking into care of child at birth on basis of emergency care order: *violation*
Taking into care of child in children's home on basis of emergency care order: *no violation*
Taking of children into care: *no violation*
Failure of authorities to take proper steps to reunite parents and children in care: *violation*
Restrictions on parents' access to children in care: *no violation*

(Extract from press release)

Facts – The applicants, a mother and her cohabitant T., are Finnish nationals. K. is the mother of four and T. is the father of two of the children.

Prior to the events, the applicant mother had been hospitalised on several occasions, having been diagnosed as suffering from schizophrenia. In May 1993, when she was expecting her third child J., the Social Welfare Board, considering that K. was unable to care for her second child M., placed him in a children's home as a short-term support measure consented to by the applicants. As soon as she was born in June 1993, J. was, by virtue of an emergency order, placed in public care in the children's ward of the hospital, given K.'s unstable mental condition and the family's long-lasting difficulties. In a further emergency order, issued a few days later, M. was likewise placed in public care. K.'s unsupervised access to the children was prohibited and she was again hospitalised on account of her psychosis. The emergency care orders were replaced by normal care orders in July 1993. These were confirmed by the County Administrative Court. The Supreme Administrative Court rejected the applicants' appeals.

In September 1993 the access restriction was prolonged and in 1994 the children were placed in a foster home some 120 kilometres away from the applicants. Social welfare officials allegedly told both the applicants and the foster parents that the children's placement would last for years. The applicants proposed, in vain, that the care arrangements take place in the home of relatives and that the arrangements should, in any case, be aimed at reuniting the family.

In May 1994 both applicants' access to the children was restricted to one monthly and supervised visit to the foster home. In December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Nevertheless, only supervised meetings with the children held once a month on premises chosen by the Social Welfare Board were authorised. The Board confirmed this decision in January 1995 and the applicants' appeal was rejected.

Meanwhile, in May 1994, the applicants had also requested that the care orders be revoked. This request was rejected by the Social Welfare Board in March 1995. In April 1995 K. gave birth to a fourth child, who was not placed in public care. Shortly afterwards K. was taken into compulsory psychiatric care for six weeks, again on account of her schizophrenia.

The care plan was again revised in May 1996 and in April 1997 but the access restriction was maintained. In December 1998 the social authorities considered that the reunification of the family was not in sight. In November 2000 the applicants and the children were nevertheless allowed to meet once a month without supervision. The current access restriction remains valid until the end of 2001.

The applicants complained that their right to respect for their family life, guaranteed under Article 8, had been violated on account of the placement of their children J. and M. in public care and the subsequent care measures. They also complained that they had not been afforded an effective remedy, guaranteed under Article 13.

In its Chamber judgment of 27 April 2000, the Court held, unanimously, that there had been a violation of Article 8 in respect of the decisions to take the children into public care and the refusal to terminate the care. The Chamber further held (unanimously) that there had been no violation of Article 13.

Law – Article 8

(a) *The emergency care orders*

The Court accepted that when an emergency care order had to be made, it was not always possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor was this desirable, if those having custody of the child were seen as the source of an immediate threat to the child. The Court had however to be satisfied that the Finnish authorities were entitled to consider that in relation to both J. and M. there existed circumstances justifying their removal from the care of the applicants without prior consultation. In particular, it was for Finland to establish that a careful assessment of the impact of the proposed care measure on the applicants and the children, as well as of the possible alternatives to taking the children into public care, had been carried out before implementing any care measures.

The Court found it reasonable for the authorities to believe that if K. had been forewarned of the authorities' intention to take either M. or the expected child J. away from her, there might have been dangerous consequences both for herself and her children. The authorities' assessment that T. would not on his own have been capable of coping with the mentally-ill K., the expected baby J. and M. was likewise reasonable. Associating only T. in the decision-making process was not a realistic option for the authorities either, given the close relationship between the applicants and the likelihood of their sharing information.

However, the taking of a new-born baby into public care at the moment of its birth was an extremely harsh measure. There needed to have been extraordinarily compelling reasons before a baby could be physically removed from the care of its mother, against her will, immediately after birth, as a consequence of a procedure in which neither she nor her partner had been involved. Such reasons had not been shown to exist. The authorities had known about the forthcoming birth of J. for months in advance and were well aware of

K.'s mental problems, so the situation was not an emergency in the sense of being unforeseen. The Finnish Government had not suggested that other possible ways of protecting J. from the risk of physical harm from K. had even been considered. When a measure so drastic as to immediately deprive a mother of her new-born child was contemplated, it was incumbent on the national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and the child, was possible. The reasons relied on by the authorities were relevant but not sufficient to justify the serious intervention in the applicants' family life. Even having regard to the national authorities' margin of appreciation, the Court concluded that the emergency care order in respect of J. and the methods used in implementing that care were disproportionate. While there may have been a "necessity" to take some precautionary measures to protect J., the interference in the applicants' family life could not be regarded as having been "necessary" in a democratic society.

Different considerations came into play as far as M. was concerned. The authorities had good cause to be concerned about K.'s capacity, even with the aid of T., to continue caring for her family in a normal way, following the birth of her third child. M. was showing signs of disturbance and thus a need for special care. The emergency care order in respect of him was not capable of having the same impact on the applicants' family life as that made in respect of J. He had already been physically separated from his family as a result of his voluntary placement in a children's home. The lack of association of T. and K. in the decision-making process was understandable in order not to provoke a crisis in the family before the stressful event of J.'s birth. The national authorities were therefore entitled to consider it necessary to take exceptional action, for a limited period, in the interests of M.

Conclusions: violation (fourteen votes to three) in respect of J.; no violation (eleven votes to six) in respect of M.

(b) *The normal care orders*

Keeping in mind that the authorities' primary task was to safeguard the interests of the children, the Court had no reason to doubt that the authorities could consider that the children's placement in public care as from 15 July 1993, and in a foster home as from early 1994, was called for rather than the continuation of open-care measures or the introduction of new measures of that type. Nor could it be said that the normal care orders were implemented in a particularly harsh or exceptional way. Moreover, the applicants were properly involved in the decision-making process leading to the making of the normal care orders and their interests were protected.

Conclusion: no violation (unanimously) in respect of both J. and M.

(c) *The alleged failure to take proper steps to reunite the family*

The Court recalled the guiding principle that the public care of a child should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permitted. Any measures implementing such temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible became more pressing the longer the period of care lasted, subject always to its being balanced against the duty to consider the best interests of the child.

The Court noted that some enquiries had been carried out in order to ascertain whether the applicants would be able to bond with J. and M. They did not, however, amount to a serious or sustained effort to facilitate family reunification. The minimum to be expected of the authorities was that they examined the situation anew from time to time to see whether there had been any improvement in the family's situation. The possibilities of reunification would progressively diminish and eventually disappear if the biological parents and their children were not allowed to meet each other at all, or only so rarely that no natural bonding between them was likely to occur. The restrictions and prohibitions imposed on the applicants' access to their children hindered rather than helped a possible family reunification. In the present case, the exceptionally firm negative attitude of the authorities was striking.

Conclusion: violation (unanimously).

(d) *The access restrictions and prohibitions*

In so far as the complaint concerning the access restrictions was covered by the finding of a breach of Article 8 as a result of the failure to take sufficient steps for the reunification of the applicants' family, it was not necessary for the Court to examine the impugned measures as a possible separate source of violation. Regarding the present situation, including the period after the delivery of the Court's initial judgment, the Grand Chamber arrived at the same conclusion as the Chamber. Having regard to the children's situation during this later period, the authorities' assessment of the necessity of access restrictions did not fall foul of Article 8 § 2.

Conclusion: no violation (unanimously).

Article 13: The Grand Chamber saw no reason to depart from the Chamber's finding of a violation.

Conclusion: no violation (unanimously).

Article 41: 40,000 Finnish marks to each applicant in respect of non-pecuniary damage.
