

Press release issued by the Registrar

**CHAMBER JUDGMENT
KEARNS v. FRANCE**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Kearns v. France* (application no. 35991/04).

The Court held unanimously that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

(The judgment is available in English and French.)

1. Principal facts

The applicant, Karen Kearns, is an Irish national who was born in 1966 and lives in Dublin (Ireland).

The application concerned her request, outside the relevant statutory time-limit, for the return of a child born to her but registered anonymously.

Married and living in Ireland, on 18 February 2002 the applicant gave birth in France to a daughter, from an extramarital relationship.

Requesting that the birth be kept secret, the applicant signed a record of the child's placement in State care and gave her consent to adoption on 19 February 2002. The conditions and effects of anonymous registration of a birth were explained to her during two interviews with the social services, particularly as regards the two-month period within which, after handing a child over to the authorities, the mother could request the child's return. The applicant was assisted at the interviews by a nurse and a doctor who spoke English and acted as interpreters.

On 7 May 2002 the child was placed with a foster family by the State authorities with a view to her full adoption.

On 25 and 26 July 2002 the applicant went to the hospital's maternity ward and subsequently to the French social services, requesting the return of the child. After her request was refused because the two-month time-limit for withdrawing consent to adopt had expired, she applied

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.

to the Lille *tribunal de grande instance*. She argued that the consent she had given on 19 February 2002 had been invalid on account of the family pressure exerted on her and because she had not been fully aware of the consequences of registering the birth anonymously.

In a judgment of 31 October 2002 the court found against the applicant. Subsequently, in a judgment of 22 September 2003, Douai Court of Appeal set aside the initial judgment, holding that the applicant, “an Irish national who is a native English speaker and does not speak French”, had not been in a position to realise “the consequences in French law of anonymous registration of a birth”. On 6 April 2004 the Court of Cassation quashed and annulled the Court of Appeal’s judgment.

An order for the child’s full adoption by a foster family was made on 17 June 2004.

The biological father applied to the Irish courts for recognition of his rights over the child.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 October 2004.

On 12 September 2006 the President of the Chamber granted leave to the child’s biological father to intervene in the proceedings as a third party.

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

Boštjan M. **Zupančič** (Slovenian), *President*,
Jean-Paul **Costa** (French),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
Egbert **Myjer** (Dutch),
David Thór **Björgvinsson** (Icelandic),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 8 of the Convention, the applicant complained of the shortness of the two-month period within which she was entitled to claim her child back. She also submitted that the French authorities had not taken all the necessary steps to ensure that she understood the precise implications of her actions, arguing that she had not been provided with sufficient linguistic assistance to be able to understand all the relevant procedures and time-limits.

The applicant further alleged, under Article 6 § 1 (right to a fair hearing), that she had been denied the right to an effective remedy on account of the shortness of the time-limit for withdrawing consent and that she had not been given sufficiently precise information about the time-limit.

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

Decision of the Court

Article 8

Length of the period allowed for withdrawing consent

The Court observed that there was no international consensus concerning adoption and that, as regards the time-limit for withdrawing consent, there was considerable diversity in the legislation of Council of Europe member States that had instituted such a limit; some legal systems allowed consent to be withdrawn until the adoption order was issued, whereas in others, by contrast, consent was irrevocable. In the States that had a fixed time-limit for withdrawing consent, it varied from ten days to three months. Seeing that the issue raised in the applicant's case concerned a field in which there was no consensus in the member States' legislation and practice, greater latitude had to be given to a State in striking a balance between the competing public and private interests when such matters came before it.

In weighing up interests that were not easily reconciled – those of the biological mother, the child and the adoptive family, and also the public interest – the Court considered that the child's best interests should be paramount.

In that respect it accepted the arguments put forward by the Government on the basis of studies by child-welfare professionals, which had stressed that it was in the child's interests to enjoy stable emotional relations within a new family as quickly as possible. It further observed that the *tribunal de grande instance* had held that psychological and legal stability and certainty should be sought for the child.

The Court considered that while the two-month time-limit might seem brief in the applicant's case, it nevertheless appeared sufficient to allow the biological mother time to reflect and to reconsider her decision to give the child up. While acknowledging the psychological distress which the applicant must have experienced, the Court observed that she had been 36 years old at the time, had been accompanied by her mother and had had two lengthy interviews with the social services after giving birth.

In those circumstances, the Court considered that the time-limit prescribed by French law sought to strike a balance and to ensure sufficient proportion between the competing interests.

The Court further held that the action brought by the child's father before the Irish authorities had no bearing on the conclusion it had reached.

Information provided to the applicant

The Court observed that the applicant, an Irish national resident in Dublin, had chosen to come to France to give birth in order to take advantage of the possibility of registering the birth anonymously, which did not exist in Irish law. It noted in that connection that the applicant had visited the maternity ward in the week prior to the birth, assisted notably by a lawyer. In addition, her two lengthy interviews with the social services had taken place in the presence of people acting as interpreters.

The Court considered, referring to the form of consent to adoption signed by the applicant and to the various documents handed to her, that no ambiguity could have persisted in her mind as to the time-limits and conditions for seeking the return of her daughter.

The Court concluded that the French authorities had provided the applicant with sufficient and detailed information, affording her linguistic assistance not required by law and ensuring that she was informed as thoroughly as possible of the consequences of her choice. Accordingly, since all the necessary steps had been taken to ensure that she understood the precise implications of her actions, there had been no violation of Article 8.

Article 6 § 1

The Court considered that no separate issue was raised under Article 6 § 1.

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

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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.