



Adoption of child following mother's deportation, despite father's opposition: authorities failed to act diligently

In today's Chamber judgment in the case [K.A.B. v. Spain](#) (application no. 59819/08), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

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

The case concerned the adoption – despite the father's opposition – of a child who was declared abandoned after his mother's deportation.

The Court found, in particular, that the authorities' inaction, the deportation of the mother without prior verification, the failure to assist the applicant with his formalities, in spite of his precarious situation, and the exclusive attribution of responsibility to the applicant for the child's abandonment, had decisively contributed to preventing any possibility of reunion between father and son, in breach of the applicant's right to respect for his private life.

Principal facts

The applicant, K.A.B., is a Nigerian national who was born in 1976 and lives in Barcelona. He emigrated in 2001 to Spain (Murcia) with his partner, C., a Nigerian national, and their son O., who was born in 2000. On 17 October 2001 C. was deported from Spain without being allowed to return for 10 years. Her lawyer had pleaded that she was the mother of a one-year-old baby but the order was nevertheless enforced. O. was taken in by friends of the couple, as the applicant (the father) was in Barcelona for work-related reasons. On 1 November 2001 an investigation was opened by the prosecutor responsible for minors. As the Child Protection Department had not succeeded in reuniting the child with its mother, O. was declared abandoned on 16 November 2001 and placed in a children's home.

On 30 November 2001 the applicant went to the Child Protection Department and, claiming to be the child's biological father, said that he disagreed with the placement. He expressed his intention to undergo a paternity test. In January 2002 the director of the children's home took O. for the test but it did not take place as the applicant had not made payment for it. In the absence of further news of K.A.B. the child was placed in a foster family. The family initiated an adoption procedure in respect of O., but it was suspended when K.A.B. brought an action to establish paternity on 20 November 2004. After obtaining recognition of his paternity in November 2005, he started proceedings to challenge the adoption but was unsuccessful. The Family Court took the view that K.A.B.'s agreement to the adoption was not required because, as the applicant had not discharged the duties inherent in parental authority, a hearing was sufficient. That

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

decision was upheld by the *Audiencia Provincial*, which pointed to the applicant's lack of interest and found in particular that he had confined himself to seeking the paternity test, "without conviction", before giving up on encountering the first difficulty and remaining passive for two years. The applicant's *amparo* appeal was declared inadmissible as being devoid of constitutional content. On 25 April 2007 O.'s adoption by his foster family was authorised by the Family Court. On an appeal by K.A.B. that decision was upheld by the Supreme Court.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing) and 8 (right to respect for private and family life), the applicant complained that he had been deprived of all contact with his son and that neither he nor the child's mother had been informed of the proposal to adopt the child. He also complained that the authorities had remained inactive regarding C.'s deportation and his attempts to prove his paternity

The application was lodged with the European Court of Human Rights on 1 December 2008.

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

Josep **Casadevall** (Andorra), *President*,
 Corneliu **Bîrsan** (Romania),
 Alvina **Gyulumyan** (Armenia),
 Egbert **Myjer** (the Netherlands),
 Ineta **Ziemele** (Latvia),
 Luis **López Guerra** (Spain),
 Mihai **Poalelungi** (Moldova), *Judges*,

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

Decision of the Court

Article 8

The Court examined all of the applicant's complaints under Article 8 of the Convention.

It could not be excluded that the applicant's intention to regain contact with his son was covered by the protection of "family life". The inability to lead a family life was not attributable to K.A.B. himself. He had not seen his son since the mother's deportation. Twenty-two days later the Child Protection Department had taken over the child's guardianship and after another ten days he had been placed in a home, before being assigned to a foster family with a view to adoption, which had ultimately gone ahead despite the father's opposition. The formalities undertaken by the applicant, bearing in mind his precarious situation, were sufficient to show that he wanted to recover the child. In any event, the decisions of the Spanish courts, refusing any contact or possibility of reunion with his son, had constituted interference with his right to respect for, at least, his private life.

The Court noted that the administrative decisions concerning O. had been based on numerous reports by the social services and that the adoption procedure had been suspended during the paternity suit. In addition, during the judicial proceedings, the applicant had been able to defend his case and had been given access to the relevant information on which the courts had relied. The Court took the view, however, that the authorities' attitude had contributed in a decisive manner to preventing any reunion between father and son.

Firstly, between his mother's deportation and the declaration of his abandonment on 16 November 2001, the child had remained for almost one month in a state of legal limbo, which was particularly serious in view of his age. No steps had been taken by the authorities, neither when they were informed that the mother had a baby nor between the deportation and the opening of the investigation. The declaration of abandonment had triggered the subsequent proceedings leading to O.'s adoption, whereas that situation had at least partly been caused by the authorities themselves as they had deported the mother without prior verification.

Furthermore, the judgment of 13 July 2006 had established that the applicant had himself caused the child's abandonment by allegedly showing a lack of interest in the paternity suit. The Court noted that K.A.B. had not been informed of the payment that he was supposed to make for the test, that the Child Protection Department had not told him that the test could be covered the legal aid scheme and that the authorities had not tried to make contact with him even though they knew where to find him. When the applicant obtained confirmation of his paternity, three and a half years had already passed since the authorities had taken over O.'s guardianship. The passage of time, even though it was crucial to act swiftly in such cases, had had the effect of making permanent a situation of abandonment for which the applicant was not – at least not entirely – responsible. The Court found that responsibility for the child's abandonment had always been imputed to K.A.B. by the Spanish courts and that no suggestion of any responsibility on the part of the authorities had ever been raised.

Accordingly, the authorities' inaction, the deportation of the mother without prior verification, the failure to assist the applicant when his social and financial situation was most fragile, and the failure of the courts to give weight to any other responsibility for the child's abandonment, had decisively contributed to preventing the possibility of reunion between father and son. As a result, the Court, whilst reiterating that it was for each State to choose how to ensure fulfilment of its obligations under Article 8, concluded that the Spanish authorities had not made appropriate or sufficient efforts to ensure respect for the applicant's right to be reunited with his son, thus breaching his right to respect for his private life, in violation of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Spain was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Myjer expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in 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.