

APPLICATION N° 31924/96

Dahlia DI LAZZARO v/ITALY

DECISION of 10 July 1997 on the admissibility of the application

Article 8 of the Convention *This provision does not oblige the State to grant to a person the status of adoptive parent or adopted child*

Article 12 of the Convention *The right to found a family implies the existence of a couple and does not include adoption by an unmarried person*

This provision does not guarantee a right to adopt or otherwise integrate into a family a child which is not the natural child of the couple concerned

Article 25 of the Convention *The Commission cannot examine in abstracto the compatibility of a national Law with the Convention. However, a person can complain that a law violates their rights by itself if they run the risk of being directly affected by it*

An unmarried applicant may claim to be a victim of a violation of Article 8 where he or she is unable to adopt a child because the domestic law authorises adoption by unmarried persons only in special circumstances

Competence *ratione materiae*

- a) *The Commission is competent to review compliance only with the European Convention of Human Rights and not other international conventions*

In interpreting the ECHR the Commission may draw on provisions in other international conventions which offer a higher degree of protection. However, the Commission must not lend the terms of the ECHR a meaning which the Contracting Parties clearly intended to exclude

b) *The Convention does not guarantee, as such, any right to adopt*

THE FACTS

The applicant, born in 1953, is an Italian national and lives in Rome

Before the Commission, she was represented by Ms Mareta Scoca, a lawyer practising in Rome

A Particular circumstances of the case

The facts, as submitted by the applicant, may be summarised as follows

On 11 December 1992 the applicant, wishing to adopt a child, brought an application before the Youth Court in Rome for recognition of her eligibility to apply to adopt. She stated in her pleadings that she was unmarried and that she was bringing her application under Article 6 of the Convention on Adoption signed in Strasbourg on 24 April 1967 and implemented in Italy by Law No. 357 of 1974, which came into force on 25 August 1976. The applicant claimed that Article 6 of the above mentioned Convention grants unmarried persons the right to adopt and that this provision cannot be waived under Article 24 of the said Convention.

In a decision of 18 March 1993 the Youth Court of Rome rejected the applicant's request.

The court held that Article 6 of the Convention on Adoption did not grant unmarried persons the right to adopt, but merely gave the legislature the option of incorporating that right into domestic law. As the Italian legislature had not extended the right to adopt to unmarried persons, the application should be rejected. However, the court held that adoption by an unmarried person was not, as such, contrary to public policy. For that reason, the Italian courts could give authority to execute foreign decisions granting unmarried persons the right to adopt. Moreover, as Italian law provided that an unmarried person could apply to adopt a child in special cases, as listed in section 44 of Law No. 184 of 1983 (disabled children, sick children, children over a certain age), the applicant could apply to adopt a child in one of those categories.

The applicant appealed against this decision to Rome Court of Appeal, Youth Division

In an order of 9 July 1993, Rome Court of Appeal, holding that Article 6 of the Convention on Adoption was part of domestic law, was automatically enforceable and, as such, granted unmarried persons the right to adopt, stayed the proceedings and decided to refer the case to the Constitutional Court for a ruling as to whether Article 6 of the Convention on Adoption was compatible with Articles 3, 29 and 30 of the Constitution.

In a decision of 9 May 1994, the Constitutional Court declared the question of constitutional legitimacy manifestly ill-founded.

The court held that Law No. 184 of 1983, although passed later than the instrument ratifying the Convention on Adoption, had not repealed it. Article 6 of the Convention, it held, did not empower the Italian courts to grant unmarried persons the right to adopt beyond the limits provided for in the 1983 Law Article 6 merely gave the legislature the option of allowing unmarried persons to adopt. Domestic law had made limited use of this option by providing that unmarried persons could adopt only in special circumstances (section 25) or in special cases (section 44). That said, the Constitutional Court declared that the Constitution did not prevent further legislation widening the possibilities of adoption for unmarried persons.

The proceedings resumed before Rome Court of Appeal

In a decree of 28 November 1994, basing itself on the part of the Constitutional Court's decision declaring that the Convention on Adoption was compatible with the Italian Constitution, Rome Court of Appeal held that the applicant was eligible to apply to adopt a child and ordered her application to be examined. The wording of this decree shows that the Court of Appeal did not share the Constitutional Court's opinion that Article 6 of the Convention on Adoption was not automatically enforceable.

The Principal State Counsel attached to Rome Court of Appeal filed an appeal in the interests of the law against that decree.

In a judgment of 7 July 1995, the Court of Cassation upheld the Principal State Counsel's appeal and quashed the lower court's decision. The Court of Cassation held that Article 6 of the Convention on Adoption was not directly applicable and could not therefore be applied by the courts. The court referred to the explanatory report of the Council of Europe, which, regarding Article 6 of the Convention, stated: "This Article relates, in the generally accepted order of preference, first to adoption by a couple, and then to adoption by one person. In a country where the law permits adoption only by a couple, paragraph 1 would not make it obligatory to introduce adoption by one person."

The proceedings resumed before Rome Court of Appeal.

In accordance with the decision of the Court of Cassation, Rome Court of Appeal made an order of 20 October 1995 discontinuing the proceedings.

B. *Relevant domestic law and the European context*

1 The Convention on Adoption signed in Strasbourg on 24 April 1967 was incorporated into Italian law by Law No 357 of 1974, which came into force on 25 August 1976.

Article 6, paragraph 1 of that Convention provides "the law shall not permit a child to be adopted except by either two persons married to each other, whether they adopt simultaneously or successively, or by one person".

Article 6 is not included in the list of provisions which can be waived, set out in Article 24 of the Convention.

2. A number of European States grant unmarried persons the right to adopt. for example, France, Austria, Switzerland, Belgium, Finland, Sweden, Germany, Poland, Romania, Bulgaria and Portugal.

3. Section 6 of the Italian Law on Adoption (No. 184 of 1983) provides that couples who have been married for at least three years may adopt a child. Unmarried persons cannot adopt, save in the following cases:

Section 25, IV. where a married couple has applied to adopt a child and during the period in which the child is in their pre-adoptive care, prior to the final decision on adoption, one spouse dies, the other spouse can adopt.

Section 25, V: where a married couple applies to adopt a child and during the period in which the child is in their pre adoptive care the couple separates, one or other of the spouses may adopt

Section 44 (a): an unmarried person may apply to adopt an orphan child to whom he or she is related up to and including the sixth degree or with whom he or she has a stable relationship which began before the parents' death.

Section 44 (c): an unmarried person may apply to adopt a child whom they cannot take into their pre-adoptive care. This provision is construed as allowing unmarried persons to adopt seriously ill or disabled children.

COMPLAINT

The applicant complains that Italian adoption law and the Constitutional Court and the Court of Cassation's interpretation of Article 6 of the Convention on the Adoption of Children of 24 April 1967 prevent her from adopting a child

The applicant alleges a violation of her right to respect for her private and family life within the meaning of Article 8 of the Convention. In support of her complaint, the applicant also invokes Articles 3, 12, 16 para 3, 25 and 59 para 2 of the Universal Declaration of Human Rights and Article 6 of the Convention on the Adoption of Children signed in Strasbourg on 24 April 1967

THE LAW

The applicant complains that she is unable to adopt a child. She alleges a violation of her right to respect for her private and family life, within the meaning of Article 8 of the Convention. In support of her complaint, the applicant also invokes Articles 3, 12, 16 para 3, 25 and 59 para 2 of the Universal Declaration of Human Rights and Article 6 of the Convention on the Adoption of Children signed in Strasbourg on 24 April 1967.

Article 8 of the Convention provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Commission must first examine whether the applicant can claim to be a victim of a violation of Article 8 of the Convention, within the meaning of Article 25 of the Convention.

Article 25 of the Convention provides, in so far as relevant:

"The Commission may receive petitions from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention."

In so far as the application mainly concerns Italian adoption law, the Commission recalls that Article 25 of the Convention entitles individuals to contend that a law violates their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it (see, *mutatis mutandis*, No 6959/75, Dec 19 5 76, D R 5, pp 103, 115, the *Marckx v Belgium* judgment of 13 June 1979, Series A no 31, p 13, para 27) In claiming that Italian adoption law is contrary to the Convention, the applicant is not requesting the Commission to comment on laws in the abstract, she is challenging a legal situation - that of unmarried persons wishing to adopt a child - which affects her personally Furthermore, she has brought proceedings in the domestic courts

In these circumstances, the Commission considers that the applicant can claim to be a victim of a violation of Article 8 of the Convention, within the meaning of Article 25 of the Convention

The Commission recalls that it is competent to apply only the European Convention on Human Rights and it is not competent to ensure the application of other international conventions as such (see *mutatis mutandis*, No 13258/87, Dec 9 2 90, D R 64, pp 138, 144)

Nevertheless, the Commission accepts that, in interpreting the provisions of the Convention, it may be useful to take into account provisions contained in other international legal instruments which may provide more far reaching protection for fundamental rights than does the Convention However, there can be no question of lending the provisions of the Convention a scope which the High Contracting Parties expressly intended to exclude (No 21072/92 Dec 16 1 95, D R 80, pp 89, 93)

The Commission notes that the Convention on Adoption of 1967 gave the signatories the option of incorporating into their legislation the possibility for unmarried persons to adopt

The Commission recalls that the right to adopt is not, as such, included among the rights guaranteed by the Convention and that Article 8 does not oblige States to grant to a person the status of adoptive parent or adopted child (No 6482/74, Dec 10 7 75, D R 7 pp 75, 77)

The Commission also recalls that Article 12 of the Convention, which recognises the right of man and woman at the age of consent to found a family, implies the existence of a couple and cannot be construed as including the right of an unmarried person to adopt (No 6482/74, Dec 10 7 75, D R 7, pp 75, 77) Moreover, Article 12 of the Convention does not guarantee a right to adopt or otherwise integrate into a family a child which is not the natural child (No 7229/75, Dec 15 12 77, D R 12, pp 32, 37)

Accordingly, the Commission considers that the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.