EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 45322/21
A and B
against Ireland

The European Court of Human Rights (Fifth Section), sitting on 11 April 2024 as a Committee composed of:

Carlo Ranzoni*, President*,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 45322/21) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 September 2021 by an Irish national and a Nigerian national, A and B ("the applicants"), who were born in 2019 and 1995 respectively, reside in Mullingar, and were represented by Mr B. Burns, a lawyer practising in Dublin;

the decision to give notice of the application to the Irish Government ("the Government"), represented by their Agent, Mr B. Lysaght of the Department of Foreign Affairs;

the decision not to have the applicants' names disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants are a child, A, and her mother, B. Both complain under Article 14 taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 that the refusal of Irish social welfare authorities to accord them child benefit, on the grounds that they could not be considered under national law to be habitually resident in Ireland, amounted to discrimination contrary to the Convention.

2. The applicant mother (B) is a national of Nigeria who arrived in Ireland on 16 September 2016 and sought international protection. On 9 June 2017, the Minister for Justice and Equality denied her application for international protection. B's appeal against this decision was rejected on 22 February 2018. On 18 December 2018, the Minister for Justice and Equality issued a deportation order against her. That order was never enforced, B having failed on various occasions to comply with the instruction to present herself to the authorities for the purpose of removing her from the State.

3. Meanwhile, B entered into a relationship with a naturalised Irish citizen. The first applicant was born of this relationship, on 20 September 2019. According to the applicants, at this time they came under Ireland's system of direct provision of accommodation and material support to asylum seekers ("direct provision", see further *X and Others v. Ireland*, nos. 23851/20 and 24360/20, 22 June 2023, § 49).

4. On 1 November 2019, B applied for child benefit in respect of A. By letter of 13 January 2020, the Deciding Officer informed her that as it had not yet been established that she had the right to reside in the State, she could not satisfy the condition of habitual residence and was therefore not entitled to the benefit (Section 246 (5) of the Social Welfare Consolidation Act 2005; see also *X and Others v. Ireland*, cited above, § 45). B appealed that decision. By a letter dated 16 March 2021, the Social Welfare Appeal Office informed her that her appeal had been dismissed. She did not challenge this decision as she considered that the relevant legal issues had already been decided in the Supreme Court case of *M. v Minister for Social Protection*, [2019] IESC 82 (summarised in *X and Others v. Ireland*, cited above, §§ 26-39) and that such a challenge would therefore have no reasonable prospects of success.

5. On 3 February 2022, the second applicant formally requested the lifting of the deportation order. On 4 March 2022 the deportation order against her was revoked. On 8 March 2022 she was granted permission to remain in the State for one year on the ground of her being the parent of an Irish citizen child, subject to conditions and review after the initial one-year period. She then re-applied for child benefit and has been in receipt of it with effect from March 2022.

THE COURT'S ASSESSMENT

6. The applicants contended that child benefit came within the ambit of Article 8 of the Convention, since it was a means by which the respondent State demonstrated its respect for family life. Relying on Article 14 in conjunction with that provision, the second applicant complained that the basis for the refusal of her application for child benefit was discriminatory. She argued that even though at the material time she had not yet been formally granted permission to remain in the State, as a matter of EU law (see further below) she already had residence rights deriving from A's EU citizenship.

This placed her in an analogous position to Irish citizens and other categories with a right residence in Ireland and she should have been deemed eligible for child benefit. By failing to take this into account, the authorities had treated her differently without any justification. It was further argued that the first applicant had been discriminated against on the basis of her status as a child of a third-country national.

7. The Government raised two preliminary objections. Firstly, they contended that the applicants had not suffered a significant disadvantage in view of the fact that they had both been able to benefit from direct provision pending the resolution of the second applicant's immigration status and that, as soon as that had been resolved, child benefit had been paid to her immediately. Secondly, as the applicants had not challenged the refusal of child benefit, they had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. The Court does not consider it necessary to reach a conclusion on these objections as the case is in any event inadmissible for the reasons set out below.

8. Applying the criteria set down in *Beeler v. Switzerland* [GC], no. 78630/12, § 72, 20 October 2020, the Court held in *X and Others* that child benefit in Ireland did not fall within the scope of Article 8 (see § 74). In so finding, it stated that it did not consider that the benefit would or could have been of such significance that the applicants in that case would have organised the key aspects of their daily life, at least partially, on the strength of it. The Court also had regard to the assessment by the Supreme Court of the statutory basis, nature and purpose of the benefit. It further noted that the applicants' wait to qualify for child benefit had been relatively short, and that they had received accommodation and material support from the State until their immigration status had been positively determined, allowing them to qualify for child benefit. In the present case, the second applicant's immigration status was positively determined approximately two and a half years after the birth of her daughter. During that time, they were eligible to receive support via direct provision. According to the information available to the Court, the second applicant did not apply for the right to remain in the State until July 2020, and formally requested the lifting of the deportation order against her only on 3 February 2022. Her immigration status was regularised the following month, rendering her eligible for child benefit. The Court considers that the circumstances of this case are not such as to distinguish it from *X and Others*. It therefore follows that, insofar as they seek to link it to Article 8, the applicants' complaint under Article 14 is incompatible *ratione materiae* with this provision.

9. The applicants raised the same complaint of discrimination under Article 14 in conjunction with Article 1 of Protocol No. 1. The Court recalls that, as a matter of Irish law, child benefit vests in the parent rather than the child. Accordingly, as far as the first applicant is concerned this complaint is

inadmissible *ratione personae* (see *X and Others v. Ireland*, cited above, § 70).

10. The second applicant submitted that she had been subjected to differential treatment on account of her residence status. Irish citizens and other categories of persons with a right to reside in Ireland could satisfy the habitual residence test. She maintained that she too had had a right to reside in the country as from the birth of A, on the basis of the *Zambrano* case-law of the Court of Justice of the European union (judgment of 8 March 2011, *Ruiz Zambrano*, C 34/09, EU:C:2011:124; see *X and Others*, cited above, §§ 50-51). However, the Irish authorities had failed to recognise this. In this specific respect, the Court refers to the position adopted in *X and Others* setting out the limits of its competence with respect to the application of EU law (see §§ 91-93). It finds no reason in the circumstances of the present case to adopt a different position with respect to this particular argument. Nor does it see any basis to view the applicant's situation differently to that of the applicant parents in *X and Others* who, for the period prior to the granting of permission to remain in the State, were found not to be in a relevantly similar situation to persons who already had the status of legal resident in Ireland (ibid., §§ 94-100). Moreover, as noted by the Government, it was not merely that the second applicant did not have residence status; for virtually the entire period in question, she was the subject of a deportation order that was lifted relatively quickly after the second applicant formally requested this. It follows that this complaint is manifestly ill-founded.

11. In light of the foregoing, the current application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 May 2024.

Martina Keller Deputy Registrar	Carlo Ranzoni President