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

FIFTH SECTION

DECISION

Application no. 31656/22
Babatope Rahmon ODU and Hameedah Beatrice ODU
against Ireland

The European Court of Human Rights (Fifth Section), sitting on 1 February 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. 31656/22) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 June 2022 by two Irish nationals, Mr Babatope Rahmon Odu and Ms Hameedah Beatrice Odu, who were born in 1978 and 2016 respectively and live in Co. Meath ("the applicants") and were represented by Ms C. Stamatescu, a solicitor practising in Dublin;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants have raised complaints under Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 14 of the Convention in conjunction with either or both of the aforesaid provisions. The case concerns the ineligibility of the first applicant for child benefit in relation to the second applicant, who is his daughter. His application was refused for the reason that the child lived mostly with her mother. The latter is a non-national who, at the relevant time, was awaiting a decision on her application for international protection in Ireland. In such circumstances, the mother was not eligible to apply for child benefit, as she had not yet been granted permission to remain in the State and so could not satisfy the criterion of lawful and habitual residence (see in this respect *X and Others v. Ireland*, nos. 23851/20 and

24360/20, 22 June 2023). Under domestic law (section 220(1) of the Social Welfare Consolidation Act, 2005), if the parents do not live together, child benefit is paid to the parent with whom the child normally resides. The result was that neither parent was eligible for child benefit. The applicants challenged both the rejection of their application and the relevant legal provisions, invoking various provisions of the Constitution and the Convention. The High Court dismissed the case, holding that there was nothing arbitrary or irrational about limiting payment to the parent with whom the child normally resides – it was a rational and objectively justifiable policy. The Supreme Court declined to examine the case, noting that while it differed from the leading case it had decided in 2019 (see *X and Others*, cited above, §§ 27-39), it did not consider that there was any further issue to be determined.

THE COURT'S ASSESSMENT

2. The applicants contended that the respondent State had a positive obligation under Article 8 of the Convention to assist families, including through the payment of family benefits. They further submitted that the refusal of benefit on account of the living arrangements the family had decided upon in the interests of the second applicant represented a breach of family autonomy and the best interests of the second applicant. In addition, they alleged that the child benefit system was discriminatory, invoking Article 14 of the Convention in conjunction with Article 8.

3. The Court observes that the first argument above represents a far-reaching proposition unsupported in the Convention case-law. Furthermore, the Court has found in the *X and Others* case that child benefit in Ireland does not come within the ambit of Article 8 of the Convention (ibid., §§ 73-74). It follows that the complaint raised under Article 8 of the Convention must be rejected as inadmissible *ratione materiae*. The same applies to the applicants' complaint of discrimination under Article 14 in conjunction with Article 8 (ibid., § 75).

4. The applicants also complained that in their circumstances child benefit should be regarded as a pecuniary right for the purposes of Article 1 of Protocol No. 1 to the Convention, and that its refusal represented a breach of that right. The Court refers to its well-established case-law to the effect that where the person concerned does not satisfy the legal conditions laid down in domestic law for the grant of any particular form of benefit, there is no interference with the rights under Article 1 of Protocol No. 1 (see *P.C. v. Ireland*, no. 26922/19, § 46, 1 September 2022).

5. Relying on Article 14 in conjunction with Article 1 of Protocol No. 1, the applicants complained that the denial of benefit was discriminatory. The Court recalls, as noted in *X and Others* (at § 70), that as a matter of domestic law the right to child benefit vests in the parent rather than the child.

Therefore, as far as the second applicant is concerned this complaint is inadmissible *ratione personae*.

6. With respect to the first applicant, the Court recalls its well-established case-law to the effect that where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. A complaint of discrimination can therefore be raised by a person who has been denied such a benefit on a ground covered by Article 14 (see *P.C.*, cited above, at §§ 52-55 and the authorities cited therein). In the present case, the Court does not consider that the refusal of child benefit can be linked to any of the grounds covered, explicitly or implicitly, by Article 14 of the Convention. The first applicant submitted that he had been discriminated against on the basis of his status as a father who resides separately from his child. Although a person's "place of residence" has been recognised in the case-law as an aspect of personal status for the purposes of Article 14 (e.g., *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 70-71, ECHR 2010), the reason why benefit was refused in this case was because of the fact, which was the result of parental choice, that B mainly resides with her mother. The Court cannot discern any element of discrimination in the legislature's choice to attach the right to benefit to the parent who is, as a matter of fact, mainly responsible for a child's upbringing. It cannot be said that this choice relates to an aspect of personal status. It appears to the Court that the applicant's complaint is tantamount to seeking a waiver in his case of a general condition of entitlement, something that cannot be derived in these circumstances from Article 14 of the Convention. It follows that in this final respect the complaint under Article 14 is manifestly ill-founded.

7. In light of the foregoing, the 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 22 February 2024.

Martina Keller Deputy Registrar	Carlo Ranzoni President