CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27145/95
by Tiziana PIPOLI
against Italy

The European Court of Human Rights (Second Section) sitting on 30 March 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 14 March 1995 by Tiziana Pipoli against Italy and registered on 27 April 1995 under file no. 27145/95;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1959 and residing in Genoa; she is unemployed. Before the Court, she is represented by Mr Paolo Bordonaro, lawyer in Genoa.

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

Particular circumstances of the case

In 1983 the applicant married G.L.; they had four children: L, born in 1983, F., born in 1985, S., born in 1986 and G., born in 1988.

Since 28 May 1987, L. has been looked after by his paternal grandmother.

The applicant used to live with her husband and the three children in a small apartment with no electricity and no heating.

On a date which has not been specified, the applicant's husband abandoned her and the children; he declared that he did not intend to take care of his children anymore.

In 1988 the social assistants informed the Juvenile Court of Genoa of the critical condition in which the applicant's children had to live.

S., F. and G. were taken into public care on 23 March 1989 and 29 July 1989 respectively.

On 14 November 1989 the applicant and her husband were given instructions by the Genoa Youth Court as to the way in which to raise the children. They failed to follow these instructions. As a consequence, on 10 August 1990 proceedings were opened with a view to declaring the children's state of abandonment.

The applicant, her husband and her father were summoned to appear before the youth court at the hearing of 27 October 1990, with the warning that, if they failed to appear, the children would be declared available for adoption. They did not appear before the court, and they did not provide any explanation or justification for their absence.

By decisions delivered on 21 December 1990, the court ruled that F., S. and G were available for adoption and appointed a guardian for them. This decision was filed with the court’s registry on 29 December 1990.

Following the father's appeal against these decisions, on 10 April 1991 the Genoa Youth Court acknowledged that the applicant had always taken care of her children, insofar as it had been possible for her, and that she was willing to co-operate in order to improve her children's living conditions. It considered therefore that the best solution in the children’s interests was to maintain the bonds of affection between the children and their mother. Accordingly the court suspended the proceedings for six months, confirmed the children’s placement into public care and ordered that a family be found which could take care of the three children or that an adequate children’s home be found. The court further allowed the appointment of an expert with a view to establishing whether the applicant or other relatives were fit to assume their parental responsibility.

On 3 July 1991, the children were placed in a children's home.

On 28 October 1991 the youth court ordered a psychological report on the applicant and her husband, and on the links between them and the children.

In her report, filed on an unspecified date in January 1992, the psychiatrist stated that the applicant was unfit to assume her parental responsibility and that she might jeopardise the children's future emotional development.

By a decision delivered on 31 January 1992, the Genoa Youth Court dismissed the father's appeal against the declaration that the children were available for adoption and suspended any contact between the applicant and the children.

The applicant did not appeal against the declaration of availability for adoption as in fact she consented thereto.

The children were subsequently placed for adoption and apparently the three children were adopted by the same family. The applicant has not seen her children or received any information about them since January 1992.

On 31 January 1996 the applicant filed with the Genoa Youth Court a request that proceedings be opened with a view to informing her children about her life and situation. She invoked Article 8 of the Convention and Article 20 of the European Convention on Adoption and pointed out that she did not request to be given the address of her children, but that her children be given her address and information about her life and situation.

In a decision delivered on 18 March 1996 and filed with the registry on 21 March 1996, the Genoa Youth Court recalled that Article 73 of Law no. 184/83 prohibits anybody from divulging any information concerning adopted persons, with the exception, according to the interpretation of the doctrine and jurisprudence, of cases where there is a concrete interest, legally protected, in having access to secret information. The court explained that such concrete interest must be proven to exist in respect of the adopted persons and must be invoked by their guardian or legal representative. The court, noting that the request had been made by the mother who had lost her parental rights over the children, and that there was no evidence of the children's concrete interest, refused the request.

Relevant law

Article 27 of Law no. 184 of 4 May 1983 (hereinafter referred to as "the Adoption Act") provides that "with the adoption, the rights and obligations between the adopted person and its original family cease to exist".

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.

Under Article 10 of that Convention, the family rights and obligations between the adopted person and his/her father and mother cease to exist.

Article 20 § 4 of that Convention provides that "public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a

legitimate interest from learning the fact that a person has been adopted or, if that is disclosed, the identity of his former parents."

The relevant part of the explanatory report states that "the purpose of this Article is to avoid difficulties which may arise from:

- the natural parents' knowledge of the adopter's identity;
- publicity of adoption proceedings or public records relating to adoption."

COMPLAINTS

1. The applicant complains in the first place that the Italian Law on Adoption prohibits that, after the adoption, the biological parents be informed of the whereabouts of their children and vice versa. She complains that, as a consequence, she has been erased from her children's life and memory, which is unfair irrespective of whether she committed mistakes in raising her children.

She points out in particular that, under Article 73 of Law no. 184/83, whoever divulges information on an adopted person can be prosecuted, unless he or she has been authorised by the competent youth court. She claims however that it is essential for an adopted child's education and emotional development to be informed about its origin, particularly when the child reaches majority. It must thus be left open for the child to look for its biological parents if it so wishes.

She invokes Article 20 of the Convention on adoption as well as Article 8 of the Convention.

2. The applicant further maintains that her children have the right to grow up together and to keep in touch with each other, and complains under Article 8 of the Convention that she is not allowed to control whether this right of her children has been respected.

3. The applicant finally complains under Article 13 of the Convention that she does not dispose of any domestic remedy against the above alleged violations.

THE LAW

1. The applicant complains in the first place that, after her children were put up for adoption, they were not provided with any information or news about her, so that she has been erased from their memory, which she considers unfair irrespective of whether she committed mistakes in raising her children. She further complains that she is prevented from verifying that her children are growing up together and are allowed to keep in touch with each other. She alleges a violation of Article 8 of the Convention in this respect.

Article 8 of the Convention reads as follows:

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 Court recalls at the outset that it is only competent to apply the European Convention on Human Rights and not also to ensure the application of other international conventions as such (see Eur. Comm. H.R., no. 31924/96, dec. 10.07.97, D.R. 90, pp. 134, 139).

The Court notes that in principle adoption definitely separates the adopted child from its original or natural family, as provided for under Article 27 of the Italian Adoption Act. The Court further notes that the applicant did not oppose to the adoption, and that she must have been aware that resumption of family life would in future be impossible. In these circumstances, the Court considers that the respondent State is not under any obligation to take positive actions to restore family life, given that the latter had been upset through the applicant's action (cf., *a contrario*, No. 7626/76, dec. 11.07.77, D.R.11, pp. 160, 166). Accordingly, to the extent that the applicant complains that she has been erased from her children's memory, the Court considers that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under § 4 of the same Article.

The applicant also complains that the authorities refuse to tell her whether her three children have been adopted by the same family or are at least allowed to keep in touch with each other. The Court notes however that, even assuming that the Italian authorities have a positive obligation in this respect within the meaning of Article 8 of the Convention, the authorities' refusal was in accordance with the applicable law. The Court considers that the refusal can be considered necessary in a democratic society to protect the health and interests of the children and is thus justified under Article 8 § 2 of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under § 4 of the same Article.

2. The applicant complains further about the impossibility for her children to receive information about their natural mother after their adoption. She alleges an interference with her children's right to a balanced education and emotional development.

The Court must examine in the first place whether the applicant can claim to be a victim of a violation of Article 8 within the meaning of Article 34 of the Convention, which provides as follows:

> The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

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The Court notes that the applicant's children were put up for adoption and that she has not had parental authority over them since 1989.

The Court recalls that, in principle, a person who does not have the right to represent a person under domestic law may nevertheless, in certain circumstances, represent this person before the Commission (cf., e.g., Eur. Court H.R., Nielsen v. Denmark judgment of 28 November 1988, Series A no. 144). However, the representative should normally submit evidence showing that he is empowered to appear before the Convention organs on an applicant's behalf. If this condition is not met, the Court can only consider the application in so far as the representative himself claims to be a victim, either in his direct or indirect capacity (cf., *mutatis mutandis*, No. 8612/79, Dec. 10.5.79, D.R. 15 p. 259).

In the present case, the applicant has not been authorised to act on her children's behalf in the Convention proceedings.

It is true that in certain circumstances there may exist conflicts of interests between the holder of parental authority or the guardian and the minor, so that there may be a risk that certain interests of the latter might never be brought to the attention of the Court and the minor might be deprived of an effective protection of his rights under the Convention. In these cases, it is open for the minor to bring his/her case before the Court on his/her own, or to be represented by the non-custodial parent who criticises the conduct of the authorities or of the holder of parental authority or guardian (see report of the Eur. Comm. H.R. 2.12.98, No. 39221/98 and No. 41963/98, §109).

The Court must therefore examine whether in the present case such exceptional circumstances exist which would give the applicant the right to complain to the Court on behalf of her children.

The Court observes that the applicant criticises the Italian legislation to the extent that it imposes secrecy on the adoption proceedings, thus preventing an adopted child from obtaining information about its natural parents. The applicant argues that this is likely to affect adversely the emotional development of the child, who should be given the opportunity to look for its natural parents if it so wishes and whose memories of its natural parents should not be erased.

The Court observes that the risk of adverse effects on the applicant’s children’s development because of their adoption was weighed against their need for a stable and adequate family environment by the judicial authorities which decided that they should be made available for adoption. Furthermore, there is nothing to indicate that the applicant’s children’s emotional development has been adversely influenced by the lack of information about their natural mother. Nor is there anything to indicate that the children’s interests are not being duly taken into account by their adoptive parents.

The Court considers that in the present case there are not such exceptional circumstances which would justify that the applicant has the right to complain to the Court on behalf of her children.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected under § 4 of the same Article.

3. The applicant further complains that she does not dispose of any effective remedy within the meaning of under Article 13 of the Convention.

However, the Court recalls that this provision recognizes the right to an effective remedy before a national authority only in the case of an applicant who has raised "an arguable grievance" in terms of the Convention (see, for example, Eur. Court HR, Boyle and Rice v. the United Kingdom judgment of 17 April 1988, Series A no. 131, p. 23, § 52). The Court considers that this is not the case in relation to the complaints examined above.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under § 4 of the same Article.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President