CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34745/97
by Irene M. SCOTT
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 8 February 2000 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve, *judges*,

and Mrs S. Dollé, *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 10 April 1995 by Irene M. Scott against the United Kingdom and registered on 4 February 1997 under file no. 34745/97;

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

Having regard to the observations submitted by the respondent Government on 30 October 1998 and the observations in reply submitted by the applicant on 21 March 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British national, born in 1953 and living in Reading.

She is represented before the Court by Mr L. Clements, a solicitor practising in Hereford.

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

I. THE BACKGROUND

On 28 March 1991 the applicant, who had in the past sought professional help concerning her alcohol consumption, gave birth to a girl, A. As the applicant was not married to A's father, she was the only one to have parental responsibility at the time.

Following the birth the applicant suffered from post-natal depression. On 28 May 1991 she was admitted to the mother and baby unit of the Park Prewitt Hospital.

II. THE FIRST *INTERIM* CARE ORDER

On 3 June 1992, after the applicant had been found drunk on the floor of the hospital where A had been admitted with gastro-enteritis, the Berkshire County Council placed A's name on a register of children “at risk”. As a result, visits by workers from the social services were to take place every month.

On 4 August 1992 the applicant had a miscarriage.

On 12 August 1992 A's father handed her into the care of the local authority, the Berkshire County Council. A was placed with foster parents.

On 13 August 1992 the applicant was visited by a social worker, who told her that the social services of the local authority would try to assist her in assuming the care of A; if, however, the applicant attempted to remove A from the foster home, the social services would apply for an emergency protection order. The applicant agreed that she had an alcohol problem and that A should be accommodated by the local authority.

On 14 August 1992 the local authority held the first of a long series of planning meetings concerning A. Both parents were invited but only the father attended.

On 19 August 1992 there was a second planning meeting. A's parents informed the local authority that they wished her to return home immediately.

On 27 August 1992 there was a third planning meeting, which both parents attended. The question of contact was discussed, which at the time was taking place four times a week.

On 28 August 1992 A's case was examined by the Reading and Sonning Family Proceedings Court. A guardian *ad litem* had just been appointed. The court made an *interim* care order. It also granted leave for A to be assessed by a paediatrician and for the family by a psychiatrist.

III. THE RENEWAL OF THE *INTERIM* CARE ORDER

The *interim* care order was renewed by the courts on 14 September 1992, 5 October 1992, 2 November 1992, 30 November 1992, 21 December 1992, 18 January 1993, 1 February 1993, 1 March 1993, 4 March 1993, 30 March 1993 following a contested hearing, 27 April 1993 and 18 May 1993. The courts also granted leave for the applicant and A to be assessed by professionals on several occasions.

Parallel to the above court orders, there were the following developments in A's case:

On 8 September 1992 the applicant and A's father made an agreement by virtue of which the father also acquired parental responsibility.

The applicant started attending a programme run by the community alcohol service. She was found to be physically dependent on alcohol.

On 21 September 1992 the local authority held another planning meeting, which both parents attended.

On 25 September 1992 Dr Boon, a consultant paediatrician, found that A showed little response to stimulation and that she must have been emotionally deprived and frightened at home. On 5 October 1992, Dr Blackstock, a consultant psychiatrist, assessed the applicant as having a problem with severe alcohol dependence.

On 11 October 1992 the applicant, who had by that time separated from A's father, was admitted to the psychiatric unit of a hospital.

On 12 October 1992 the court ordered that contact should be supervised and take place at the local authority's discretion.

The applicant was discharged from hospital on 20 October 1992.

On 30 October 1992 the applicant started visiting Greenham House, a unit for assessment and family therapy.

On 9 November 1992 there was another planning meeting, which both parents attended.

On 19 November 1992 the applicant's father died. The applicant had a serious drinking episode.

On 14 January 1993 the local authority held with the parents a statutory review meeting, i.e. one of the meetings required under section 26 of the Children Act 1989.

On 20 January 1993 there was another planning meeting attended by the applicant.

On 29 January 1993 Ms Henley from the community alcohol service concluded that the applicant's problem was under control. However, Dr Wilkins, a consultant psychiatrist, expressed scepticism.

On 8 and 17 February 1993 the applicant attended two more planning meetings.

On 25 February 1993 A's father stated that the best thing for the child would be to be adopted.

On 1 March 1993 the Family Proceedings Court decided to transfer the case to Reading County Court because of its complexity and the conflict in relation to the expert evidence.

On 9 March 1993 Greenham House issued its report. It found A to be a child meeting all her milestones. In the experts' view, she must have received adequate parenting before being taken into care. The report recommended that A be returned to the applicant and that the local authority should have a supervision order.

Following the completion of the report the applicant stopped attending Greenham House, although the project manager there expressly requested the local authority to allow her to do so.

On 29 March 1993 Dr Baker, a consultant child and family psychiatrist, considered that the applicant was very likely to relapse. As a result, he was of the view that A would be at serious risk of neglect if she was returned to the full-time care of the applicant before steps were taken to ensure that the risks could be managed and her welfare maintained adequately.

On 30 March 1993 the County Court rejected the applicant's application for staying contact.

On 25 April 1993 the local authority held a planning meeting, which the applicant attended. An informal meeting was held three days later at which the terms of rehabilitation were discussed.

In May 1993 the social services recommended that a care order needed to be made even if there was to be rehabilitation of the child with the applicant. Dr Glatt, another consultant psychologist instructed on behalf of the applicant, prepared a favourable report for the applicant.

On 18 May 1993 the County Court refused an application by the applicant for extended contact.

IV. THE CARE ORDER

In June 1993 the applicant relapsed. She was found unclothed except for a blouse, her house being soiled with urine and excrement. She was barely able to speak or walk without assistance.

On 14 June 1993 the County Court renewed the *interim* care order once more.

On 17 June 1993 Dr Baker recommended that a care order should be made and that the option of rehabilitation should be pursued subject to stringent conditions.

On 21 June 1993 the County Court made a care order in favour of the local authority.

V. THE LOCAL AUTHORITY'S ACTIONS AFTER THE CARE ORDER

On 24 June 1993 the social services of the local authority held an internal meeting concerning A.

On 1 July 1993 the applicant was admitted to hospital for detoxification.

On 12 July 1993 there was a meeting between the applicant and the social services. The applicant agreed to enter Barely Wood, a clinic for alcoholics, at the expense of the local authority. She was told that there would be a further consideration of the situation at the end of the placement in the clinic.

On 28 July 1993 the applicant was admitted to Barley Wood, which was situated in Weston-upon-Mare at a considerable distance away from Reading. She was visited there twice by A.

On 29 July 1993 the local authority held a child protection conference, which the applicant did not attend, although she had been invited to do so. On 19 August 1993 there was a review meeting. The applicant was again invited but was not informed of its precise nature. She did not attend but sent her views in writing. It was then decided that long-term plans for A's future needed to be made urgently.

On 9 September 1993 Ms Henley visited the applicant and informed her of the decision taken at the last meeting. She also informed her that a further meeting would take place on 22 September 1993, which the applicant could not attend. The applicant became very angry and refused to engage in discussion.

The applicant was subsequently sent the minutes of the meetings of 29 July 1993 and 9 September 1993.

The meeting of 22 September 1993 went ahead as planned. The applicant's views were conveyed to those in attendance by Ms Henley. The latter, relying *inter alia* on information gathered at Barley Wood, described the applicant as very demanding and manipulative, in denial of the consequences of her alcoholism and lacking in co-operation. The local authority decided to abandon the rehabilitation option and pursue that of adoption.

On 4 October 1993 the applicant was visited by representatives of the local authority who asked her to sign the forms for adoption. She declined.

The applicant left Barley Wood on 25 October 1993. On 26 October 1993 she was told on the telephone by a local authority representative that rehabilitation was no longer an option. The applicant had a drink.

On 5 November 1993 there was a planning meeting at which the representatives of the local authority indicated to both parents that they could no longer support the reunification of the applicant with A.

On 6 December 1993 the applicant, who used to have monthly meetings with A at the social services office, applied to the County Court for increased contact.

During Christmas 1993 the applicant relapsed.

On 8 April 1994 the applicant asked the County Court to adjourn the examination of her contact application. When the court refused to do so, she withdrew it.

On 19 April 1994 the local authority officials following A's case held an internal meeting at which it was decided to present an application for a freeing order to West Berkshire Adoption Panel.

On 28 April 1994 the adoption panel approved the local authority's plan to make an application for A to be freed for adoption. The applicant was notified formally by letter dated 1 June 1994. The statutory meeting due to take place on 28 April 1994 was cancelled.

On 4 May 1994 the applicant lodged a fresh application for increased contact, which the County Court decided to examine together with the freeing for adoption application.

On 27 May 1994 A was diagnosed as having foetal alcohol syndrome.

Between July and September 1994 the applicant visited A at the foster home on at least four occasions.

On 13 September 1994 the applicant applied to the County Court for the discharge of the care order.

VI. THE DECISION DISPENSING WITH THE APPLICANT'S CONSENT FOR FREEING HER CHILD FOR ADOPTION

In October 1994 the County Court examined the application to dispense with the applicant's consent for freeing the child for adoption and the applicant's various applications. The court heard evidence for nine days. Dr Baker suggested that the applicant's chances of overcoming her problem were slim since she had not faced up to the underlying psychological problems. Dr Glatt opined that the child should not be returned to its mother before six months and that even then the risks would remain considerable. Mr Taylor from Barley Wood testified that his views concerning the applicant's attitude had been misrepresented by Ms. Henley at the meeting of 22 September 1993.

In a decision given on 31 October 1994 the court considered that the outcome of the proceedings could not turn on whether the applicant had been unjustifiably excluded from the meeting of 22 September 1993. The court held that the child was “not to be awarded to (the applicant) as damages for an alleged procedural flaw, nor (was) she to be freed for adoption merely because the decision was procedurally correct, if it was. The decision of the meeting on the 22nd of September was an agreement to pursue an aim, and it was for (the applicant) to challenge it if she so wished, by refusing her consent, by putting forward an alternative plan for her child and by applying to discharge the care order”. The applicant had not done so earlier because she was not able to point to a substantial period of time during which she had remained sober. The court could not accept in this connection that the local authority's handling of the rehabilitation plan was responsible for the applicant's relapses.

At the time of the hearing the applicant had kept off drink for about ten months and the court had formed a favourable view of her. Moreover, the court was in favour of the child being brought up by her natural parent if possible. However, according to all the experts, the applicant was not ready to have the child returned to her immediately. Dr Heller, a consultant child psychiatrist, had suggested that the court should wait for another six months; this was unlikely to cause the child any more harm than what had already been done. However, the court thought that it was cruel to leave the child with the foster carers for another six months. The court stressed that the child, who was suffering from foetal alcohol syndrome, had waited for two years in temporary placement and had developed strong ties with the foster carers. Unfortunately, those ties had to be broken and the sooner this was done the better it was for the child.

In any event, the court was of the view that there was no assurance that the applicant would remain alcohol-free in the future. It was, therefore, unacceptable to expose the child to the risk of suffering serious harm if the applicant relapsed after the child had been returned to her six months later. The only course of action that would be compatible with the child's welfare was to take a decision immediately.

The court also considered that the applicant had a tendency to conceal or minimise her problems and to deny responsibility for her actions. She also had a tendency not to maintain satisfactory relationships with social workers and other professionals whose duty was to intervene in order to safeguard the welfare of the child. The applicant was a very angry person. Although a couple were prepared to accept her and the child in their home indefinitely, they were in their mid-sixties and they could be expected soon to have problems of their own. Moreover, the court had no confidence in their ability to resist the applicant's manipulations and pressures if she started drinking again.

In the light of all the above, the court found that adoption was in the child's best interests if she was not to suffer very severe long-term emotional harm. Moreover, no reasonable parent would withhold his or her consent to the adoption. As a result, the court decided to dispense with the applicant's consent to the application to free the child for adoption.

The court also decided to dismiss the application of 13 September 1994 for the discharge of the care order. Finally, it gave the applicant leave to apply for contact with the child in the adoption proceedings.

On 21 November 1994 A was moved to her adoptive parents.

VII. SUBSEQUENT DEVELOPMENTS

The applicant sought counsel's advice about her prospects of success in appealing against the County Court's decision of 31 October 1994. In an opinion handed in on 22 November 1994, counsel recalled that the Court of Appeal would not interfere with the court's conclusions unless it could be shown that it had reached a decision which no reasonable court, properly applying the law, could have come to. In cases like the applicant's, which did not revolve around questions of law but involved the exercise of the court's discretion, the Court of Appeal would not interfere unless the court was plainly wrong. In counsel's opinion, this had not happened in the applicant's case.

Among other things, counsel considered that the Court of Appeal would agree that the fact that the local authority failed to pursue the rehabilitation plan in July 1993, when it was still a viable option, was not a basis for saying that rehabilitation should be tried at the time when counsel's advice was tendered. Counsel advised the applicant against lodging an appeal.

On 28 April 1994 the applicant applied for direct contact.

At a later stage the applicant, having been informed that on 1 July 1996 there would be a hearing on adoption, sought counsel's advice again on the prospects of appealing out of time against the decision of 31 October 1994. The applicant wished to rely on certain new grounds, namely that the diagnosis of foetal alcohol syndrome, which had been accepted by the court in October 1994, might have been mistaken and that the care which had been given by the foster carers had been less satisfactory than previously understood. However, counsel advised her against appealing out of time.

On 1 July 1996 the Reading County Court decided to free A for adoption. It also decided that there would be no direct contact between the applicant and A. The only contact that was permitted was via a letterbox scheme.

The applicant had the benefit of legal aid for all the above proceedings.

On 28 May 1997 the applicant complained to the local authority. On 10 November 1997 an external investigator reported the following:

Rehabilitation of the applicant and A was the local authority's plan up to the care hearing of June 1993. With hindsight it could be said that the applicant might not have suffered a relapse at the time of that hearing if she had continued her sessions at Greenham House. The period up to the care hearing was very traumatic for the applicant. She felt under a microscope, was apprehensive about what Dr Baker would recommend at that hearing and was “clearly pushed to the limits of her endurance by the length and complexity of the court proceedings”. However, the applicant had not been left without support during that critical period. The meeting that took place on 22 September 1993 should have been delayed until after the applicant's return from Barley Wood. Ms Henley should not have acted as the applicant's advocate at that meeting, because she was also supposed to convey the views of Barley Wood and act as a specialist in alcoholism. A representative from Barley Wood should have been present at the meeting of 22 September 1993. The applicant should have been advised of the change of thinking that had occurred after the June 1993 relapse.

COMPLAINTS

1. The applicant complains under Article 8 that “the failure to look at her case properly” in September 1993 and the lack of consultation thereafter resulted in the decision of October 1994 dispensing with her consent to free the child for adoption.

2. She also complains under Article 13 that the actions of the local authority after the care order escaped the court's supervision.

PROCEDURE

The application was introduced on 10 April 1995 and registered on 4 February 1997.

On 21 May 1998 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 30 October 1998, after an extension of the time-limit fixed for that purpose. The applicant replied on 21 March, after three extensions of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

1. The applicant complains under Article 8 that "the failure to look at her case properly" in September 1993 and the lack of consultation thereafter resulted in the decision of October 1994 to dispense with her consent for freeing her daughter, A, for adoption.

Article 8 of the Convention provides 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 Government accept that the care order of 21 June 1993 and the order of 31 October 1994 dispensing with the applicant's consent for freeing her daughter for adoption amounted to an interference with the applicant's rights under Article 8 of the Convention. However, they do not accept that there was an interference as a result of the local authority's actions between September 1993 and October 1994.

In this connection the Government point out that the aim of the meeting of 22 September 1993 was for the local authority to decide on the course it should advocate in relation to A. The meeting did not bring about any change in the situation of A, who was and remained in the care of the local authority. Under English law it remained open to the applicant to apply for the care order to be discharged. The applicant did so on 13 September 1994. A's situation changed on 31 October 1994 when the County Court decided to dispense with her mother's consent for freeing her for adoption and dismissed the application for the discharge of the care order. The applicant was represented at the relevant court hearing.

In any event, the interference with the applicant's rights under Article 8 was in accordance with the law and its aim was to protect A's health and rights. It was also necessary in a democratic society.

The Government point out in this connection that until the applicant's relapse in June 1993 the local authority had been working actively with the applicant to achieve rehabilitation. However, the relapse caused the authority to reassess the position. When the care order was made on 21 June 1993 the applicant was plainly incapable of caring for A. The applicant was invited to attend the child protection conference and the child care review meetings in July and August 1993. It was normal practice that the applicant should not be invited to the meeting of 22 September 1993. However, her views were known, as this was just one of a series of meetings forming part of the planning process in which she had been greatly involved. Moreover, the applicant was promptly informed of their outcome.

The court took the decision of 31 October 1994 to dispense with the applicant's consent for freeing A for adoption after hearing evidence for nine days. This decision was in the best interests of the child who could not be returned to the applicant immediately or six months later. A further stay with foster parents would have been unacceptable and cruel to A. The delay between September 1993 and October 1994 acted in the applicant's interests. The applicant could have challenged the care order during this period of time but chose not to do so because she was not in a fit state to care for A.

The applicant alleges that her effective exclusion from the decision-making process following the care order on 21 June 1993 led inevitably to the freeing of her daughter for adoption and the severing of all links with her. As a result there was an interference with her right under Article 8 § 1 of the Convention to respect for her family life.

The applicant accepts that the authorities acted in accordance with the law, and pursued a legitimate aim under Article 8 § 2 of the Convention, namely the protection of the rights of A. However, the applicant contends that the interference was not necessary in a democratic society.

The applicant points out in this connection that, as a result of her exclusion from the post-care planning, she was unable to challenge incorrect and highly prejudicial assertions, and her views were not taken into consideration when the decision was taken to disregard the care plan and pursue adoption. Moreover, the freeing of her daughter for adoption and the termination of contact were wholly inappropriate and disproportionate.

The applicant argues that the procedural requirement under Article 8 of the Convention that parents be involved in the decision-making process includes involvement in non-judicial decisions that have a material impact on their rights, especially where there is no effective judicial remedy. The care order of 21 June 1993 was made on the basis of a plan anticipating rehabilitation. Once the care order was made the court had no control over how the plan was being implemented. In addition to the wide powers local authorities have to decide whether or not to abandon rehabilitation, they have control over most of the resources that enable the achievement of such an outcome. The Government provided no explanation as to why rehabilitation was abandoned in September 1993. Moreover, the authority was hostile to her. They did not support her at Greenham House. They also prolonged the proceedings and decided to pursue the adoption option while she was undergoing detoxification. The choice of the timing of an application for a freeing for adoption order may also be of strategic importance.

The Court notes that the applicant's complaint concerns exclusively the decision of 31 October 1994 effectively freeing her child for adoption and the authorities' conduct

following the care order of 21 June 1993. It does not concern the care order itself. Nor does it concern the conduct of the authorities prior to the making of the care order and the *interim* care orders.

The Court further notes, while the Government recognise that the decision dispensing with the applicant's consent to free the child for adoption constituted an interference with the applicant's right to respect for her family life under Article 8 § 1 of the Convention, they do not accept that there was such interference as a result of the local authority's actions between September 1993 and October 1994. However, the Court also notes that the applicant does not complain about the conduct of the authorities in isolation. Her argument is in essence that between June 1993 and October 1994 the authorities acted in such a way as to render the making of the adoption order inevitable, and that she did not have any chance of influencing the course of events because she was excluded from the decision-making process which, moreover, escaped the courts' supervision. As a result, the Court considers that it must look at the situation as a whole, which indeed amounts to an interference with the applicant's right to respect for her family life under Article 8 § 1 of the Convention.

The Court recalls that, according to its case-law, such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under the second paragraph of the provision and can be regarded as "necessary in a democratic society" (see, among other authorities, the Bronda v. Italy judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1489, § 52).

The Court notes that both parties accept that the authorities and the court acted in accordance with domestic law and that the interference pursued at least one legitimate aim, the protection of the rights of the applicant's child. What is contested by the parties is whether the interference was necessary in a democratic society.

The Court recalls that, according to its case-law, in determining whether a measure is necessary in a democratic society, it has to consider whether, in the light of the case as a whole, the reasons adduced to justify it were relevant and sufficient for the purposes of paragraph 2 of Article 8. Undoubtedly, consideration of what is in the best interests of the child is always of crucial importance. In these circumstances, it must also be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to take the place of the competent national authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see the above-mentioned Bronda v. Italy judgment, p. 1491, § 59).

The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. Thus, the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, stricter scrutiny is required for any further limitations, such as restrictions placed by those authorities on parental rights and access, or on the legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life, where such further limitations might entail the danger

that the family relations between the parents and a young child are effectively curtailed (see the Johansen v. Norway judgment of 7 August 1996, *Reports 1996-III*, p. 1004, § 64).

Given the nature of the applicant's complaints, the Court will first have to examine the decision-making process and then the merits (see the above-mentioned Johansen v. Norway judgment, pp. 1004-1010, §§ 65-85).

As regards the decision-making process, the Court notes that the applicant, who had the benefit of legal aid, was legally represented before the Reading County Court, which on 31 October 1994 decided to dispense with her consent for freeing her child for adoption after having examined her complaint that she had not been allowed to participate at the meeting of 22 September 1993 and other complaints concerning that meeting. The Court recalls that, among the matters raised by the applicant before it, the County Court's decision dispensing with the applicant's consent was the only measure formally affecting the applicant's rights. Moreover, the Court notes that the applicant took part in or was invited to a series of meetings organised by the local authority concerning her child's future. Not an insignificant number of those took place after June 1993. As a result, the Court considers that, overall, the applicant was given a proper opportunity of making her views known to the authorities.

The Court recognises that the meeting of 22 September 1993, which the applicant was not invited to attend, was of special significance since it was on that occasion that the local authority decided to abandon the rehabilitation option. However, the applicant had been invited to, but did not attend, the previous meeting of 19 August 1993 when it was decided that long-term plans needed to be made urgently for the child's future. Moreover, between the two meetings, a community worker visited the applicant with the intention to discuss the matter with her and convey her views to those attending the meeting of 22 September 1993. Most importantly, the meeting in question was an administrative internal meeting, the aim of which was to formulate the local authority's strategy. Other such meetings occurred in the applicant's absence both before and after 22 September 1993. Moreover, the strategy decided at that meeting was not legally irrevocable. Finally, the applicant was promptly informed of the outcome of the meeting and had ample opportunity to attempt to change the course of events by making appropriate representations to the local authority and having resort to the domestic court that had been seized of the matter.

In the light of all the above, the Court considers that it has not been established that the decision-making process was unfair or that it failed to involve the applicant to a degree sufficient to provide her with the requisite protection of her interests (see the above-mentioned Johansen v. Norway judgment, pp. 1004, § 66).

As regards the merits of the measures concerned, the Court, having regard to the applicant's history, considers that it cannot be questioned that the applicant could not cope with caring for A as long as she did not rid herself of her problem with alcohol. It is true that, when the County Court heard the application for dispensing with the applicant's consent for freeing A for adoption, the applicant had remained free from alcohol for a considerable period of time. However, according to all the experts heard by the court, it was not yet safe to return A to the applicant because of the risk of relapse.

Moreover, the domestic court, having heard the experts, came to the conclusion that it would have been detrimental for the child to continue in temporary placement. On another occasion the Court has itself considered that in a situation where a child is forced to live in a

state of uncertainty as to whether she would have to live with her natural family or foster parents, “the passage of time may have irreversible effects on the child's mental equilibrium” (see the above-mentioned Bronda v. Italy judgment, p. 1492, § 61). In the light of the above, the Court considers that, even if the definitive nature of the measure concerned militates in favour of allowing the national authorities only a narrow margin of appreciation, the domestic court in the present case cannot be criticised for deciding to pronounce on the freeing for adoption question immediately. Moreover, the domestic court cannot be criticised for reaching the conclusion that the only option available at the time was to free the child for adoption.

The Court, therefore, finds no evidence to suggest that the decision to free the applicant's daughter for adoption was flawed on the merits or was taken prematurely.

The Court recalls that the applicant's complaint is not limited to the decision dispensing with her consent to free A for adoption. The applicant also complains that the authorities, by deciding not to pursue rehabilitation, seriously limited her chances of obtaining the child back. The Court notes in this connection that the Government have not provided an explanation as to why the local authority, contrary to what it had indicated to the applicant on 12 July 1993, decided to abandon the rehabilitation option while the applicant was still in Barley Wood.

However, the Court also considers that the applicant is not correct in asserting that national law did not give her the chance to challenge the actions of the local authority during the period in question. The Court notes that the applicant could have applied for the discharge of the care order. If, as the applicant argues, the national judge made the care order on the assumption that the local authority would pursue the rehabilitation option, the Court cannot see any reason why the effective abandonment of this option could not have been taken into consideration by the same judge when examining an application for the discharge of the order.

Moreover, the Court considers that there is no indication that the authorities contributed to the applicant's not being able to overcome her problem. The Court recalls in this connection that the domestic authorities are allowed a wider margin of appreciation when assessing whether to take a child into care than when they decide to impose further limitations on the enjoyment of family life. Although the proceedings were found by the independent investigator to be protracted, the Court, nevertheless, taking the domestic margin of appreciation into consideration, cannot criticise the local authority for considering that it needed to have all the necessary elements at its disposal before making decisions of great impact on the life of the applicant and her daughter. Moreover, the Court, allowing the authorities the appropriate margin of appreciation, does not consider that the applicant was not provided with adequate support in the particular circumstances. Although the independent investigator found that the applicant should have stayed longer in Greenham House, the Court notes that this conclusion was reached with the benefit of hindsight. There is nothing, in the Court's view, to indicate that at the material time the local authorities could have foreseen that the applicant's departure from this family therapy unit would have caused her relapse.

The Court, therefore, considers that it has not been established that the authorities acted in such a way as to render the applicant unable to influence a course of events that ineluctably led to her being alienated from her child.

In the light of all the above, the Court considers that the interference with the applicant's right to respect for her family life was necessary in a democratic society, being proportionate to the aim of protecting the rights of the daughter. It follows that the present case does not disclose any appearance of a violation of Article 8 of the Convention. Consequently, the Court concludes that this part of the application is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Article 13 that the actions of the local authority after the care order escaped the courts' supervision.

Article 13 of the Convention provides the following:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government claim that the applicant had an effective remedy in respect of her complaints. She could have at any time applied to the court to have the provisional or final care order discharged. Moreover, she could have appealed against the decision of 31 October 1994 freeing the child for adoption. That the local authority's strategy decision of 22 September 1994 was not subject to judicial review was normal, since this was an administrative internal matter that had no legal consequences for the applicant.

The applicant submits that an application to have the care order discharged and an appeal against the freeing order do not constitute adequate remedies in the circumstances of her case. Her complaint under Article 8 of the Convention concerns her exclusion from the post-care planning. The applicant points out, first, that the Government accept that she did not have a remedy in this respect and, secondly, that such a remedy existed prior to the Children Act 1989.

The Court recalls that, according to its case-law, the right to an effective remedy can only be claimed by someone who has an arguable claim to be the victim of a violation of a right guaranteed under the Convention (the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52). The Court considers that the applicant does not have an arguable claim that the actions of the authorities after the care order amounted to a lack of respect for her family life. It follows that there is no appearance of a violation of Article 13 of the Convention.

As a result, the Court concludes that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J.-P. Costa
President