



Termination of temporary foster placement was in accordance with the law and pursued legitimate aim of protecting the child's interests

In today's **Chamber** judgment¹ in the case of [Jessica Marchi v. Italy](#) (application no. 54978/17) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the decision of the Juvenile Court to terminate the pre-adoption placement of a child that the applicant had temporarily fostered. The decision had been taken following the arrest of her husband on charges of child pornography and sexual abuse of minors.

After finding that the facts of the case fell within the sphere of the applicant's private life, the Court noted that the domestic courts had established that it was not in the child's interest to continue living in the applicant's family. The judicial authorities had been given the difficult and delicate task of striking a fair balance between the competing interests at stake in a complex case and had been guided by the child's best interests, in particular its individual need for security. The applicant had personally been able to take part in the proceedings, had been given access to all documents concerning her and thus had not been denied adequate participation in the decision-making process regarding the termination of the child's initial placement with her.

Principal facts

The applicant, Jessica Marchi, is an Italian national who was born in 1984 and lives in Trento (Italy).

On 18 April 2016 the District Court of Milan declared the child L. abandoned and available for adoption.

The procedure for declaring child L. adoptable having been initiated, on 20 July 2016 the District Court of Milan ordered, pursuant to section 10 of Law no. 184 of 1983, that the child, then eighteen months old, be fostered, on the basis of a placement "with a legal risk", by the applicant and her husband, who had filed an application for authorisation to adopt a child in 2014.

On 14 April 2017 the applicant's husband was arrested for child pornography and sexual abuse of minors. The applicant stated that she wished to live apart from her husband and continue to look after the child. On 29 May 2017 she applied to the court seeking to keep the child with her. The Milan District Court, finding that the conditions for keeping the child at the applicant's home were no longer satisfied, ordered the Trento Adoption Centre to put in place support measures aimed at creating, for both the applicant and the child, the best possible conditions for the child's integration into a new family.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 28 June 2017 the applicant applied to the District Court of Milan for the adoption of the child under section 25(5) of Law no. 184 of 1983.

On 21 July 2017 the Milan District Court issued two decisions. In the first, it rejected the adoption application. In particular, it observed that the procedure for declaring the child adoptable was still pending and that the child's placement with the applicant and her husband could not therefore be characterised as a pre-adoption placement. In the second decision, the court rejected the applicant's request to keep the child on the grounds that it would not be in the child's best interests in view of the loss of the father figure and the family environment resulting from the criminal investigation against the applicant's husband. The court thus terminated the child's temporary placement with the applicant and her husband and ordered the child's guardian and the social services to arrange for the child to be taken into care by a specialised institution. The court also ordered contacts to be arranged with the new foster family, then placement of the child in that family's home, together with the implementation of measures to support the applicant in her separation from the child.

On 26 July 2017 the child was placed with a new family.

On 31 July 2017 the applicant appealed against the decision to terminate the child's placement with her. She applied to the District Court of Trento for the adoption of the child under section 44 of Law no. 184 of 1983.

On 1 March 2018 the Milan Court of Appeal confirmed that a placement required a final decision of adoptability and that no such decision had been issued. It concluded that the applicant could not therefore apply for the adoption of the child. The Court of Appeal observed that, according to section 26 of Law no. 184 of 1983, only families who had fostered a child under a pre-adoption placement (*affidamento preadottivo*) and had been refused adoption were entitled to appeal against measures ordered by the court in respect of the child concerned. It also stated that a foster family could only appeal against a decision to terminate the placement in question if the duration of the pre-adoption placement had been longer than one year. The Court of Appeal explained that the law in fact reserved the power to appeal against a decision to terminate a pre-adoption foster placement only for the public prosecutor and guardian, as the decision in question did not concern subjective rights, but was aimed exclusively at protecting the child's interests.

The applicant asked the Court of Appeal to refer a question of constitutionality to the Constitutional Court, but her request was rejected. The Court of Appeal pointed out that the Trento District Court had found that, in view of the family context, it was not in the child's interest to remain with the applicant's family. On a request for a preliminary reference to the Court of Justice of the European Union for alleged infringement of the rules on access to the adoption procedure by the applicant, the Court of Appeal pointed out, firstly, that the applicant had no interest in the procedure and, secondly, that the documents in the file, to which the applicant had unsuccessfully sought access before the District Court of Milan, had been included in the file of the appeal proceedings, and that the applicant had therefore been able to consult all of them. The applicant had already been made aware of the personal data concerning her which the municipal authorities had collected and processed during the period in which the child had been placed in her home. She had been afforded an ample opportunity to consult the documents relating to the child's current situation as well as those concerning the child's integration into its new foster family.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing) and 8 (right to respect for private and family life), the applicant complained about the removal of the child she had fostered temporarily for one year in the context of a pre-adoption placement "with a legal risk". She further submitted that she was unable to challenge the court's decision and that she was not given access to the documents in the file concerning the child or to documents containing her own personal data. Relying on Article 13

(right to an effective remedy) taken together with Article 8, the applicant argued that she had no effective remedy by which to submit her complaints under Article 8.

The application was lodged with the European Court of Human Rights on 31 July 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 8

The Court reiterated that the concept of “private life” within the meaning of Article 8 of the Convention was a broad one which could not be defined exhaustively. In the present case, it noted that the applicant had developed a genuine parental project for the purpose of which she had applied for and obtained authorisation to adopt a child. She had then received the child in question on the basis of a placement with a “legal risk”. Since the right to respect for the applicant’s decision to become a parent was at stake, together with her self-development through the parental role she wished to assume, the Court concluded that the facts of the case fell within the sphere of the applicant’s private life.

As regards the authorities’ decision to terminate the child’s placement and the applicant’s participation in the proceedings, the Court observed that placement “with a legal risk” was a temporary measure in the context of a move away from institutionalised childcare and towards community-based services.

The Court noted that the applicant had fostered the child on a temporary basis, when it had not yet been declared adoptable by a final judgment. Following the opening of a criminal investigation against the applicant’s husband, the courts had considered that it was no longer in the child’s best interests to be placed with the applicant and thus terminated the placement. The Court observed that the termination had been in accordance with the law and had pursued the legitimate aim of protecting the child’s interests.

As regards the proportionality of the interference, the Court noted that the domestic courts had established that it was not in the child’s best interests to continue living with the applicant’s family. That decision had been based on relevant and sufficient grounds. The need to protect the child by placement in a new family, where two parents would moreover be present, had been self-evident. The judges who had given the successive decisions had done so after having carefully and thoroughly examined the situation of the applicant’s family and the child. It was objectively evident that the applicant’s situation had changed since the beginning of the temporary placement with her.

The Court emphasised that the authorities had been faced with the difficult and delicate task of striking a fair balance between the competing interests at stake in a complex case. The judicial authorities had been guided by the best interests of the child, including the particular need for security within the foster family. The applicant had been able to participate in the proceedings. She had been afforded the possibility of applying to the domestic court to keep the child in her home and she had been able to express before it her willingness to cooperate in order to facilitate the

child's integration into the new family. The applicant had also appealed against the court's decision and had requested that the child be placed in her home again as a foster child pending adoption. She had not therefore been deprived of adequate participation in the decision-making process concerning the termination of the foster placement or denied the requisite protection of her own interests.

Consequently, the Court concluded that the interference with the applicant's private life had complied with the requirements of Article 8 of the Convention and that there had therefore been no violation of that provision.

As regards the denial of access to the documents relating to the applicant contained in the adoption file, the Court noted that in the present case, as the domestic courts had admitted, the applicant had already been able to consult all the documents that had been disclosed during the appeal proceedings, as well as the documents that had been processed by the municipal authorities, the documents concerning the child's situation and the documents relating to the child's integration into the new family since August 2018. The Court therefore took the view that the applicant had been allowed access to all the documents that concerned her. Consequently, taking into account all the evidence before it, the Court found no appearance of a violation of the rights and freedoms guaranteed by the Convention or its Protocols.

There had therefore been no violation of Article 8 of the Convention.

Article 13 in conjunction with Article 8

Having regard to the conclusion reached by the Court under Article 8 of the Convention, it found that there was no need to examine separately the complaint under Article 13.

The judgment is available only in French.

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Denis Lambert

Tracey Turner-Tretz

Inci Ertekin

Neil Connolly

Jane Swift

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.