



Eligibility of mothers awaiting decision on immigration status to receive child benefit for lawfully resident children

In its decision in the case of [X and Others v. Ireland](#) (application nos. 23851/20 and 24360/20) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken in conjunction with **Article 1 of Protocol no. 1 (protection of property)**.

The case concerns the rule that the payment of child benefit in Ireland can only be made to claimants who are lawfully resident in the State.

The Court found that the immigration status of the applicants (X and Y) at the time they had first applied for child benefit had not been similar enough to parents who had already had legal residency status in Ireland. Since the applicant mothers had not been in a comparable situation to eligible parents, they had not been discriminated against. The Court reiterated that it was acceptable to have a residency requirement in defining who may claim child benefit as social-security systems operated primarily at the national level.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal Facts

Application no. 23851/20

The applicants are a mother, X, and her daughter, E.

X is a national of Nigeria who arrived in Ireland in 2013 and applied for asylum a year later but had her application rejected by decisions in 2015. Her daughter, E, was born in 2014 and since her father is an Irish citizen, she has been an Irish citizen from birth.

In September 2015, X applied to the Minister for Justice and Equality for the right to reside in Ireland on the grounds that she was the mother of an Irish citizen child. While this application was pending, X applied for child benefit in respect of E. The application for child benefit was rejected because X had not yet been granted a right to reside in the country. As a result of the refusal of child benefit X brought judicial review proceedings in the High Court.

X was granted the right to reside in Ireland in January 2016 and has received child benefit since then. The case in the High Court concerned the time between E's birth and the Minister's decision, a period of just over 12 months.

Application no. 24360/20

The applicants are a mother, Y, and her son, M.

Y is a national of Afghanistan who arrived in Ireland in May 2008 with her husband and first child. She gave birth to three children in Ireland. The youngest is M, born in 2013. The Refugee Appeals Tribunal granted M asylum in December 2014 and when this was communicated to his family, they applied for reunification in January 2015 under the Refugee Act 1996.

While the decision about reunification was pending, Y applied for child benefit for her four children but was refused as she had not yet been granted a right to live in the country. Judicial review proceedings in the High Court were brought against this refusal.

The family was granted reunification in September 2015 and Y was granted child benefit from then on. The case in the High Court concerned the time between M being granted asylum and the grant of reunification, a period of eight months.

Domestic Proceedings

The High Court dealt with both sets of proceedings in the same judgment in January 2017. It found that due to the wording of the legislation, it was the residency status of the “qualified person” (that is to say the parent or guardian) that was relevant as regards child benefit. The High Court noted that the residency requirement to claim social-security benefits was not unfair or discriminatory. Therefore, the applicants’ rights under the Irish Constitution and the European Convention on Human Rights had not been breached. This decision was appealed against to the Court of Appeal.

The Court of Appeal judgment, delivered in 2018, differed from that of the High Court and took the approach that it was the residency status of the qualified child which the benefit was claimed for which was the relevant consideration. The Court of Appeal distinguished between the two cases as E was an Irish citizen with a right to reside in Ireland, while M was not a citizen and at the time had no right to reside in Ireland. The Court of Appeal said that X was entitled to receive child benefit from E’s birth, but that Y was only entitled to claim from when M had been granted asylum. This decision was appealed against to the Supreme Court.

In November 2019 the Supreme Court held that the approach of the Court of Appeal had been incorrect, finding that the relevant legislation referred to the qualified person and not the qualified child. The Supreme Court decided that a person whose immigration status had not yet been decided could not be treated as having a right to reside and therefore was not capable of satisfying the residency requirements needed to claim social-security benefits. The Supreme Court highlighted that the eligibility requirements for child benefit were non-discriminatory and that a wide range of residents from citizens to those granted asylum were eligible as long as they met the necessary residency requirement. Therefore, the State was not obliged to make child benefit payments until X and Y had been given permission to remain in Ireland.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 June 2020.

Relying on Article 8 (right to respect for private and family life), and Article 1 of Protocol No. 1 (protection of property), both read in conjunction with Article 14 (prohibition of discrimination), the applicants complained that the child-benefit policy discriminated against families in which the parents, although lawfully present in the State, were in the immigration process.

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

Lado **Chanturia** (Georgia), *President*,
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytschik**, *Section Registrar*.

Decision of the Court

Article 8

The Court rejected the argument that eligibility for child benefit should be treated as within the scope of Article 8 as it relates to family life, in accordance with its recent case-law.

Article 14 taken in conjunction with Article 1 of Protocol No. 1

The Court decided that since it was clear from the Supreme Court judgment that it is only the parent/guardian who is entitled to receive child benefit, the child applicants E and M had no proprietary interest in this case and therefore lacked standing to make the claim.

The Court stated that if not for the condition of entitlement about which the applicant mothers complained, they would have had a right to the benefit in question. Article 14 taken with Article 1 of Protocol No. 1 was therefore applicable.

The Court reiterated that in assessing discrimination under Article 14, it was important to compare applicants with individuals in a similar situation, and highlighted the detailed assessment of the Supreme Court in relation to the issues of comparability. It also referred to the essentially national character of social-security systems, it being accepted at the international level that States can limit entitlement to residents, and States were furthermore able to control entry onto their territory. In Ireland, child benefit was available to all categories of resident.

It went on to find that the applicants' situations at the time they had first applied for child benefit meant that they had not been in a comparable situation to people who had already had residency in Ireland. Neither X nor Y had had a status equivalent to residence at the relevant time. The Court therefore found that, in the circumstances of this case, no difference of treatment arose. The claim of discrimination in relation to eligibility for child benefit was therefore rejected, the Court concluding that there had been no violation of Article 14.

The decision is available only in English.

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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.