



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

Information Note on the Court's case-law No. 159

January 2013

A.K. and L. v. Croatia - 37956/11

Judgment 8.1.2013 [Section I]

Article 8

Article 8-1

Respect for family life

Authorities' failure to ensure legal representation of mentally disabled applicant in proceedings divesting her of parental rights and to inform her of adoption proceedings in respect of her son: *violation*

Facts – The first applicant is the mother of the second applicant L., who was born in 2008. Soon after his birth, L. was placed, with his mother's consent, in a foster family in another town, on the grounds that his mother had no income and lived in a dilapidated property without heating. In May 2010 the first applicant was divested of her parental rights in respect of L., on the grounds that she had a mild mental disability and was not able to provide proper care to him. She applied for legal aid to lodge an appeal, but was only assigned a lawyer after the time-limit for appealing had expired. In October 2010 her lawyer applied to a municipal court for an order restoring the first applicant's parental rights, but the application was dismissed because in the meantime L. had been adopted by third parties. The first applicant was not a party to the adoption proceedings and was not informed of them, as her consent was not needed because she had been divested of her parental rights.

Law – Article 8

(a) *Standing of the first applicant to act on behalf of L.* – In respect of any issues concerning the facts after the adoption became final, L.'s only representatives under national law were his adoptive parents. However, all issues concerning the severing of his ties with his biological mother before his adoption should be examined by the Court. It was in principle in a child's interest to preserve its ties with its biological parents, save where weighty reasons existed to justify severing them. In the present proceedings, owing to his tender age, L. was not in a position to represent his interests. The first applicant was the only person able to argue on his behalf that severing the ties between them had also affected L.'s right to respect for his family life. The Government's objection as regards the *locus standi* of the first applicant to represent L. in the proceedings before the Court had to be dismissed.

(b) *Applicability* – Although the child had been placed in a foster family soon after birth, the first applicant had continued to visit him. In the Court's view there existed a bond between the first applicant and her son that amounted to "family life". Article 8 was therefore applicable.

(c) *Merits* – The measures taken by the State amounted to interference with the applicants' right to respect for their family life. The interference had a basis in domestic

law and had been aimed at protecting the best interests of the child. The Court was not called upon to determine whether the adoption of the first applicant's child was justified as such. Nor did it have to rule on the compliance with Article 8 of legislation which did not allow a parent divested of parental rights to participate in the adoption proceedings. Instead, the Court examined whether sufficient safeguards for the protection of the applicants' private and family life had been provided at every stage of the process. The domestic legislation provided adequate safeguards as regards the interests of parents and their children in proceedings. However, despite the legal requirement and the authorities' findings that the first applicant suffered from a mild mental disability, she had not been represented by a lawyer in the proceedings divesting her of parental rights. Given that she could not properly understand the full legal effect of such proceedings and adequately argue her case and given the importance of such proceedings for her right to respect for her family life, the national authorities should have ensured that the interests of both the first applicant and L. were adequately protected, in particular from the standpoint of preserving ties between them. While the Court could accept that the consent of the first applicant, who had been divested of her parental rights, was not necessary in the adoption proceedings, it nevertheless considered that where, as in Croatia, a national system allowed for parental rights to be restored, it was indispensable that a parent be given an opportunity to exercise that right before the child was put up for adoption. However, by not informing the first applicant about the adoption proceedings the national authorities had deprived her of the opportunity to seek restoration of her parental rights before the ties between her and her son had been finally severed by his adoption. She had thus been prevented from enjoying her right guaranteed by domestic law and had not been sufficiently involved in the decision-making process.

Conclusion: violation (unanimously).

Article 41: EUR 12,500 to the first applicant in respect of non-pecuniary damage.

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