



Annulment of adoption, 31 years after it had been approved, in the context of inheritance proceedings was not justified

In today's **Chamber judgment**¹ in the case of **Zaiet v. Romania** (application no. 44958/05) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention.

The case concerned the annulment of a woman's adoption, at the instigation of her adoptive sister, 31 years after it had been approved and 18 years after the death of their adoptive mother.

This was the first occasion on which the Court had to consider the annulment of an adoption order in a context where the adoptive parent was dead and the adopted child had long reached adulthood.

The Court found in particular that such a radical measure as annulling an adoption had to be supported by relevant and sufficient reasons; however, the annulment decision in this case had been vague and lacked justification. In any event, the Court considered that the annulment of an adoption should not even be envisaged as a measure against an adopted child and underlined that in legal provisions and decisions on adoption matters, the interests of the child had to remain paramount.

Principal facts

The applicant, Parasca Zaiet, is a Romanian national, who was born in 1955 and lives in Săvârşin.

She was adopted on 25 February 1972, at the age of seventeen by the woman she had been living with for eight years. Ms Zaiet's adoptive mother also had another adopted daughter, H.M.

After their adoptive mother died in 1986, the two sisters jointly inherited ten hectares of forest. Ms Zaiet brought an action for division of the land between her and H.M. While the proceedings were ongoing, H.M. sought the annulment of her sister's adoption, claiming that Ms Zaiet's only aim in agreeing to the adoption had been to obtain inheritance rights. Ms Zaiet submitted that her sister just wanted to prevent her from inheriting her share of land.

On 7 December 2004 Ms Zaiet's adoption was declared void, on the grounds that the only aim of her adoption had been the fulfillment of the patrimonial interests of the adoptive mother and the adopted child. This judgment was upheld by a decision of the Suceava Court of Appeal given on 15 April 2005. A dissenting opinion to that decision stated that the adoption had not been improper, as its main aim had been the welfare of Ms Zaiet, who had been born into a family with eight children and a difficult financial situation.

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.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Ms Zaiet̄ alleged that the annulment of her adoption had been an arbitrary and disproportionate intrusion into her family life, submitting that she had lived with her adoptive mother since the age of nine and that their relationship had been based on affection, responsibility and mutual support. Also relying on Article 1 of Protocol No. 1 (protection of property), she complained that, after the annulment of her adoption, she lost title to the five hectares of forest she inherited from her adoptive mother.

The application was lodged with the European Court of Human Rights on 14 October 2005.

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

Josep **Casadevall** (Andorra), *President*,

Luis **López Guerra** (Spain),

Ján **Šikuta** (Slovakia),

Dragoljub **Popović** (Serbia),

Kristina **Pardalos** (San Marino),

Johannes **Silvis** (the Netherlands),

Iulia Antoanella **Motoc** (Romania),

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court reiterated at the outset that the relations between an adoptive parent and an adopted child were protected by Article 8 and observed that the annulment of Ms Zaiet̄'s adoption, 31 years after it had been approved, had constituted an interference in her family life. The Court then turned to the question of whether this interference had been justified.

The Court was doubtful that the annulment of the adoption by the authorities had been in accordance with the law or that it had pursued a legitimate aim. Indeed, it had not been proved that H.M. had had an interest in lodging her application other than to inherit her adoptive mother's entire estate for herself. As a consequence of the courts' decision, Ms Zaiet̄'s family tie with her dead mother had been disrupted and she had lost her inheritance rights.

As to whether the authorities' decision had been "necessary in a democratic society", the Court first noted that, even assuming that they had a lot of room for manoeuvre (margin of appreciation) in assessing the need for such a measure, the annulment of Ms Zaiet̄'s adoption 31 years after it had been approved should have been supported by relevant and sufficient reasons. The role of the State was in principle to enable family ties to be maintained and splitting up a family was an interference of a very serious order.

Furthermore, the adoption had been annulled on the grounds that it had not been for the purpose of giving Ms Zaiet̄ a better family life, but for improving her patrimonial interests and her adoptive mother's. In the Court's view, the annulment of an adoption should not even be envisaged as a measure against an adopted child. As a general rule, legal provisions governing adoption were designed primarily for the benefit and protection of children and, if subsequent evidence revealed that a final adoption order was based on fraudulent or misleading evidence, the interests of the child had to remain paramount in dealing with the consequences of the wrongful order.

The Court, considering that the annulment decision was vague and lacking in justification for the taking of such a radical measure, concluded that the interference in Ms Zaiet̄'s family life had not been supported by relevant and sufficient reasons, in violation of Article 8.

Article 1 of Protocol No. 1

The Court, in view of its conclusion concerning Ms Zaiet's complaint under Article 8, found that there had also been a violation of Article 1 of Protocol No. 1, on the account of the disproportionate interference with the applicant's property right over the disputed land.

Just satisfaction (Article 41)

The Court held that Romania was to pay Ms Zaiet 30,000 euros (EUR) in respect of both pecuniary and non-pecuniary damage and 1,200 EUR in respect of costs and expenses.

The judgment 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.