



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

Information Note on the Court's case-law 251

May 2021

Jessica Marchi v. Italy - 54978/17

Judgment 27.5.2021 [Section I]

Article 8

Article 8-1

Respect for private life

Termination of pre-adoption foster placement “with a legal risk” in applicant’s home and child’s transfer to another family on grounds of child’s best interests: *no violation*

Facts – After the child was declared abandoned as a baby and available for adoption, a foster placement with the applicant and her husband was ordered. This was a temporary measure on account of an ongoing appeal in the case, so no final declaration had been issued and it was thus referred to as a pre-adoption placement “with a legal risk”. Nine months later, the applicant’s husband was accused, then declared guilty, of sexual offences against children. The authorities then examined the temporary placement and, even though the applicant had confirmed her wish to live apart from her husband and to continue looking after the child, the Juvenile Court took the view that it was in the child’s best interests to find another placement elsewhere.

Law – Article 8:

(a) Admissibility –

(i) *Family life* – The existence or non-existence of “family life” was essentially a question of fact depending upon the existence of close personal ties (*K. and T. v. Finland* [GC]).

There was no biological relationship between the applicant and the child. The Court had found in previous cases that the relationship between a foster family and a foster child who had lived together for many months had amounted to family life within the meaning of Article 8 § 1, despite the lack of a biological relationship between them. It had taken into account the fact that a close emotional bond had developed between the foster family and the child, similar to that between parents and children, and that the foster family had behaved in every respect like the child’s parents such that *de facto* “family” ties” existed between them (*Moretti and Benedetti v. Italy*, *Antkowiak v. Poland* (dec.) and *V.D. and Others v. Russia*).

It was therefore necessary to examine in this case the quality of the ties, the role assumed by the applicant in relation to the child and the period in which they had lived together. The applicant, who had fostered the child, pending adoption, in the context of a placement “with a legal risk”, had developed a parental project and had assumed her role as a parent *vis-à-vis* the child. She had established strong emotional ties with the child in the tender years of the child’s life.

The child had lived with the applicant for approximately one year. It would admittedly be inappropriate to define a minimal duration of shared life which would be necessary to constitute *de facto* family life, given that the assessment of any situation must take account of the “quality” of the bond and the circumstances of each case. However, the duration of the relationship with the child was a key factor in the Court’s recognition of the existence of family life (*Wagner and J.M.W.L. v. Luxembourg*, more than ten years; *Nazarenko v. Russia*, more than five years; *Antkowiak v. Poland* (dec.), about six years, *V.D. and Others v. Russia*, nine years).

Given the absence of any biological relationship between the child and the applicant, the short duration of their shared life, the existence of a legal risk which the applicant had accepted when she received the child, and despite the existence of a parental project and the quality of the emotional ties that had been established between them, the conditions for a finding of *de facto* family life were not satisfied.

(ii) *Private life* – The applicant had developed a genuine parental project, having applied for and obtained pre-adoption approval, and had fostered the child in the context of a placement with a “legal risk”. At issue therefore were the right to respect for the applicant’s decision to become a parent and her self-development through the parental role she wished to assume in relation to the child. The facts of the case therefore fell within the sphere of the applicant’s private life.

(b) *Merits* – The foster placement “with a legal risk” was a temporary measure in the context of a policy to move away from institutionalised childcare provision, with a shift from institutional to community-based services.

The applicant had been affected by the court decision which had led to the termination of the child’s placement with her. The measures adopted in respect of the child, namely removal and placement with another family with a view to adoption, had amounted to an interference with the applicant’s private life. The termination of the placement had been in accordance with the law and had pursued the legitimate aim of protecting the child’s interests.

The domestic courts had established that it was not in the child’s interest to continue living with the applicant’s family. That decision had been based on relevant and sufficient grounds, namely a deterioration of the family environment, which was detrimental to the child, due to a criminal investigation against the applicant’s husband. The need to protect the child by placement in another family, where two parents would moreover be present, had been self-evident.

In addition, it was clear from the reasoning of the various decisions that the judges had reached their conclusions after a careful and thorough examination of the situation of the applicant’s family and of the child. It was objectively clear that the applicant’s situation had changed since the child’s placement.

The authorities had therefore been faced with the difficult and delicate task of striking a fair balance between the competing interests at stake in a complex case. They had been guided by the best interests of the child, including the latter’s particular need for security within a foster family.

The applicant 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 interference with the applicant's private life had complied with the requirements of Article 8.

Conclusion: no violation (unanimously).

(See also *K. and T. v. Finland* [GC], 25702/94, 12 July 2001, [Legal summary](#); *Wagner and J.M.W.L. v. Luxembourg*, 76240/01, 28 June 2007, [Legal summary](#); *Moretti and Benedetti v. Italy*, 16318/07, 27 April 2010, [Legal summary](#); *Nazarenko v. Russia*, 39438/13, 16 July 2015, [Legal summary](#); *A.H. and Others v. Russia*, 6033/13 and al., 17 January 2017, [Legal summary](#); *Paradiso and Campanelli v. Italy* [GC], 25358/12, 24 January 2017, [Legal summary](#); *Antkowiak v. Poland* (dec.), 27025/17, 22 May 2018, [Legal summary](#); *V.D. and Others v. Russia*, 72931/10, 9 April 2019, [Legal summary](#))

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)