



A ban on contact between the applicant and her children during adoption proceedings breached the applicant's right to respect for private life

In today's **Chamber judgment**¹ in the case of [A.I. v. Italy](#) (application no. 70896/17) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the inability of the applicant, a Nigerian refugee the mother of two children who had been a victim of trafficking and was in a vulnerable position, to enjoy access rights owing to a court-ordered prohibition on contact, in a situation where the proceedings concerning the children's eligibility for adoption had remained pending for over three years.

The Court found in particular that the appeal court, as a specialised court composed of two professional judges and two lay judges, had not taken into account the expert conclusions recommending that ties be maintained between the applicant and the children, and had not explained why it had chosen not to do so. Given the seriousness of the interests at stake, the authorities ought to have carried out a more detailed assessment of the applicant's vulnerability during the proceedings.

The Court considered that insufficient weight had been attached to the importance of a family life for the applicant and her children in the proceedings which resulted in the cessation of contact between them. Thus, the proceedings had not been accompanied by safeguards that were proportionate to the seriousness of the interference and the interests at stake.

Principal facts

The applicant, A.I., is a Nigerian national who was born in 1981 and lives in Rome. She arrived in Italy as a victim of trafficking in human beings, and is the mother of two children, J. and M., who were born on 17 January 2012 and 20 May 2014 respectively.

From April 2014 A.I. and her daughter, J., were given accommodation in a reception centre. On 19 June 2014 her younger daughter M. was hospitalised with chickenpox; she was found to have an HIV infection. On 25 June 2014 the public prosecutor at the youth court asked it to order that the applicant's parental authority be suspended in respect of her daughter M. The court granted the prosecutor's request, appointed the Mayor of Rome as the child's guardian and ordered him, on the child's release from hospital, to place her in a children's home, with a prohibition on removing or relocating her without the court's permission. It asked the prosecutor's office to identify the other child, J., and to verify whether she was in danger. M. was placed in a children's home.

On 18 July 2014 the prosecutor asked the judge to impose a protection measure in respect of J., the applicant's elder daughter.

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 27 November 2014 the court decided to suspend A.I.'s parental responsibility in respect of her elder daughter, J. It appointed the Mayor of Rome as the child's provisional guardian and instructed him to place her, with her mother if she agreed, in an adapted care facility, with a prohibition on removal by any person without prior court authorisation. It ordered a health check for J. and instructed the Centre for Assistance to Abused Children to carry out an urgent assessment of A.I.'s personality and parental skills and whether she had the necessary resources to look after the children, and to evaluate J's level of mental and physical development. The applicant and J. were transferred to another care facility. J. was hospitalised from 27 February to 10 March 2015.

On 11 June 2015 the court instructed the guardian to place both girls, and their mother, in an appropriate care facility.

On 18 March 2016 the court ordered that proceedings be opened to establish whether the children were in a state of abandonment, confirmed the order suspending parental authority for A.I. and for J.'s father, and ordered that the children be placed in a children's home; their mother was permitted to visit them once a week. On 23 May 2016 the court commissioned an expert report and granted the applicant visiting rights for two hours per week.

On 9 January 2017 the court, relying on the expert report, held that the children had been abandoned and were eligible for adoption. In order to address the children's situation, it confirmed the guardianship arrangement, ordered that the children be placed in a children's home and prohibited any contact between the children and their mother.

On 1 March 2017 A.I. lodged an appeal against the judgment. She also applied, under Article 700 of the Code of Civil Procedure, to have the prohibition on contact suspended.

At a hearing on 7 November 2017, A.I. was informed that her children had been placed in care, with two different families, with a view to their adoption. Examining the urgent request for a suspension of the ban on contact, the appeal court held that it was in the girls' interest to maintain the ban on contact throughout the appeal proceedings. It did, however, order a new expert report.

By a judgment of 2 October 2018, the appeal court upheld the lower court's judgment. It noted that the expert report had shown that A.I. lacked parental skills and that she was not fully aware of her illness, her daughters' illness or her psychological difficulties. The appeal court dismissed her request for suspension of the ban on contact with her children.

A.I. applied on points of law.

On 13 February 2020 the Court of Cassation quashed the appeal court's judgment and remitted the case to a different division of the appeal court. It noted that, once a child had been declared eligible for adoption, he or she was placed with a family. The cessation of contact between the biological parent and the child was a consequence of adoption and not of the declaration of eligibility for adoption. The legal ties between biological parents and the child ended with the declaration of eligibility for adoption in preparation for full adoption, given that these ties were incompatible with continuing a relationship that would have to be ended (with the biological parent) once the adoption order had been made.

However, the Court of Cassation noted that the appeal court had not taken into consideration the section of the expert report emphasising that, in order for the children to construct their identity, the ties with their mother had to be maintained. It further noted that the court of appeal had not assessed whether, in the present case, a different adoption model could have been applied, in the children's interests. The Court of Cassation held that the appeal court ought to have examined whether the applicant's interest in maintaining ties with her children took precedence over her lack of sufficient parental skills.

The case is currently pending before the court of appeal.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for family life), the applicant complained about the automatic cessation of her contact rights following the judgment finding that the children had been abandoned and were thus eligible for adoption, in a situation where the proceedings had remained pending for over three years. She also complained about the fact that the children had been separated with a view to their adoption by different families.

The application was lodged with the European Court of Human Rights on 13 October 2017.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

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

Decision of the Court

Article 8

It was not disputed between the parties that the contested decisions amounted to an interference in the applicant's right to respect for her private life, one that was in accordance with the law and pursued legitimate aims.

The Court was fully aware that in all decision-making processes concerning children their best interests had to be the primary consideration.

The Court acknowledged that, although there were no indications that the children had been subjected to violence or abuse, and contrary to the expert's recommendations, the applicant had been deprived of any access rights, although the adoption proceedings were still pending. The Court also noted that the national courts had placed the children in two different families, which prevented sibling ties from being maintained. The measure had triggered not only the break-up of the family, but also separation of the siblings; it had therefore been contrary to the best interests of the children.

The Court also noted that the applicant had been the victim of human trafficking. The authorities had provided her with health care and welfare assistance; in contrast, the courts had not taken into consideration her vulnerable position when assessing her parental skills and her request to maintain contact with her children. In the case of vulnerable persons, the authorities were required to show particular vigilance and afford increased protection.

The Court considered that, in view of the gravity of the interests at stake, the authorities ought to have carried out a more detailed assessment of the applicant's vulnerability during the proceedings. It was also clear from the decisions of the first-instance and appeal courts that the domestic courts had assessed the applicant's parental skills without taking into consideration her Nigerian origins or the different model for parent-child attachment that was to be found in African culture, although this factor had been clearly highlighted in the expert report.

The Court concluded that, In the course of the proceedings which had led to the cessation of contact between the applicant and her children, insufficient weight had been attached to the possibility of enabling the applicant and the children to have a family life. Thus, the proceedings in issue had not

been accompanied by safeguards that were proportionate to the seriousness of the interference and the interests at stake. It followed that there had been a violation of Article 8 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Italy was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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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.