Table of Contents

Controversy about the adoption of a Muslim by a Christian family

Child adoption without taking account of the mother's wishes breached her human rights, the European Court says in the case Abdi Ibrahim v. Norway (application no. 15379/16)

Registrar of the Court (10.12.2021) - https://bit.ly/3ypS7ts - In today's **Grand Chamber** judgment in the case of Abdi Ibrahim v. Norway (application no. 15379/16) 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.

The case concerned the decision by the Norwegian authorities to allow the adoption of a child by a foster family against his mother's wishes. The mother, a Somali national who had moved to Norway, did not ask for her son's return as he had spent a long time with his foster parents, but wished for him to maintain his cultural and religious roots.

The Court decided to examine the applicant's wish to have her son brought up in line with her Muslim faith as an integral part of her complaint under Article 8, as interpreted and applied in the light of Article 9 (freedom of religion). It was not necessary to examine separately any alleged failures to comply with Article 9.

The Court pointed out that various interests had been taken into account when placing the applicant's son in care, not just whether the foster home would correspond to the mother's cultural and religious background, and that that had complied with her rights.

However, the ensuing contact arrangements between mother and son, which had been very limited and had culminated in adoption, had failed to take account of the mother's interest in allowing her son to retain at least some ties to his cultural and religious origins.

Indeed, there had been shortcomings in the overall decision-making process leading to the adoption, which had not given sufficient weight to the mother and child's mutual interest in maintaining ties.

Principal facts

The applicant, Mariya Abdi Ibrahim, is a Somali national born in 1993.

Her child, a son born in 2009 in Kenya before she moved to Norway, where she was granted refugee status, was taken into emergency foster care in late 2010. The parent-

child centre where the applicant had initially been staying in order to be assisted in caring for her son had advised the welfare services that the child was at risk.

He was subsequently placed with a Christian family, although the applicant had argued he should go to either her cousins or to a Somali or a Muslim family.

As to contact arrangements, in 2010 mother and child were allowed to meet for two hours, four times per year. This regime was then changed to one hour, six times per year in 2011. In 2013 the authorities applied to allow the foster family to adopt the child, which would lead to the applicant having no contact rights, and for the applicant's parental rights to be removed for that purpose.

She appealed: she did not ask for the child's return as he had spent a long time with his foster parents to whom he had become attached, but she sought contact so, among other things, he could maintain his cultural and religious roots.

The High Court ruled by a majority in May 2015 to dismiss the applicant's appeal and allow the adoption. The decision was largely based on the child's attachment to his foster home and his negative reaction to contact with the applicant. Moreover, her son was a vulnerable child in need of stability. Adoption would mean that the applicant would not be able to request her son's return in the future and would remove potential conflict between her and the foster parents. The court also examined issues arising from his being adopted by a Christian family, such as ethnicity, culture and religion.

Between 2013 and the High Court's decision in 2015 the child and the applicant met twice. The applicant was refused leave to appeal to the Supreme Court in September 2015.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 March 2016.

The applicant complained about the withdrawal of her parental rights and the authorisation for adoption, relying on Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

In its Chamber judgment of 17 December 2019, the Court, deciding to consider the applicant's complaints under Article 8 of the European Convention alone, held, unanimously, that there had been a violation of that Article.

On 11 May 2020 the Grand Chamber Panel accepted the applicant's request that the case be referred to the Grand Chamber.

Before the Grand Chamber she argued in particular that, throughout her case, she had been vocal about her religious identity and her specific wishes for her son's upbringing. The adoption had severed all ties to her religion as the foster family had baptised the child.

She also argued that the Court should indicate to the Government measures to be taken under Article 46 (binding force and enforcement), such as reopening the adoption proceedings.

A Grand Chamber hearing on the case was held in the Human Rights Building, Strasbourg, on 27 January 2021.

The Governments of the Czech Republic, Denmark and Turkey, as well as the non-governmental organisation AIRE Centre and the child's adoptive parents were granted leave to intervene in the written proceedings as third parties.

Judgment was given by the Grand Chamber of 17 judges.

Decision of the Court

The principal reason behind the applicant's request to refer her case to the Grand Chamber was that, in the Chamber's decision, all her arguments had been examined under Article 8, rather than in part under Article 9. The Court considered, however, that the applicant's wish to have her son brought up in line with her Muslim faith could be examined as an integral part of her complaint under Article 8, as interpreted and applied in the light of Article 9. It was not necessary to examine separately any alleged failures to comply with Article 9.

The Court went on to note that finding a foster home which corresponded to the applicant's cultural and religious background had not been the only possibility for complying with the applicant's rights under Article 8, as interpreted in the light of Article 9. The domestic courts had taken various interests into account throughout the whole process, and in particular the applicant's son's psychological stability. Moreover, there was a relatively broad agreement in international law that, in such cases, the authorities were not obliged to place a child in a family sharing his/her religious, ethnic, cultural and linguistic identity or that of his/her parents, but that they did have an obligation to take those factors into account.

In any case, the authorities had made efforts, although ultimately unsuccessful, to find a foster home culturally similar to the applicant but it had not been possible because of a shortage of foster parents from minority backgrounds.

However, the Court found that the contact arrangements after the applicant's son had been taken into care, culminating in the decision to allow adoption, had failed to take due account of her interest in allowing her son to retain at least some ties to his cultural and religious origins.

Indeed, the overall decision-making process leading to the adoption had not been conducted in such a way as to ensure that all of the applicant's views and interests had duly been taken into account.

In particular, the key issue in the High Court's decision had been the child's attachment to his foster home and his reaction to contact sessions with the applicant; yet the applicant had had very little contact with her son from the outset.

Furthermore, the High Court had focused on the potential harm of removing the child from his foster parents, rather than on the grounds for terminating all contact with his mother. The High Court had apparently given more importance to the foster parents' opposition to "open adoption", which would have allowed contact, than to the applicant's interest in continuing to have a family life with her child.

Nor was the Court convinced by the High Court's emphasis on the need to pre-empt any future challenges by the applicant with regard to the care order or her visiting rights.

The Court therefore considered that it had not been shown that there had been such exceptional circumstances as to justify a complete and definitive severance of the ties between the child and the applicant, or that the overriding requirement behind that decision had been the child's best interests.

The Court was not satisfied that in depriving the applicant of her parental responsibility in respect of X and authorising his adoption by the foster parents, the domestic authorities had attached sufficient weight to the applicant's right to respect for family life, in particular to the mother and child's mutual interest in maintaining their family ties.

There had accordingly been a violation of Article 8.

Article 46 (binding force and enforcement)

The Court decided not to indicate any measures, either individual or general, to the Norwegian Government.

Individual measures could ultimately entail an interference with the child and his adoptive parent's current family life, and lead to new issues on the merits.

As for general measures, the Court noted that the State was making efforts to implement the judgments against it concerning child welfare measures and was in the process of enacting new legislation to address any systemic issues.

Article 41 (just satisfaction)

The Court held, unanimously, that Norway was to pay the applicant 30,000 euros (EUR) in respect of costs and expenses. It dismissed, by 14 votes to three, the remainder of the applicant's claim for just satisfaction.

Separate opinions

Judges Lemmens and Motoc expressed a joint partly dissenting opinion. Judge Serghides expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

Photo : European Court in Strasbourg

Jehovah's Witnesses: A strange Norwegian decision

A Norwegian court "annulled" an ecclesiastical decision disfellowshipping a woman—a clear violation of religious freedom.

By Massimo Introvigne

Bitter Winter (06.08.2021) - https://bit.ly/3s0Yy2W - Last month, anti-cultists posted on social media news that a woman had been disfellowshipped by the Jehovah's Witnesses

in Norway, and accused of immorality for having been raped, but happily a Norwegian court had ordered the Witnesses to take her back into their fold and pay an exorbitant sum in damages and expenses.

The story sounded immediately very strange. Later, a former Jehovah's Witness published in a scholar's mailing list an account still hostile to the Witnesses but that made somewhat more sense. However, only when I received from the lawyers involved the voluminous decisions of the case at all stages, with the names of the persons involved redacted for reasons of privacy, I was able both to understand what happened and to realize that the Norwegian court had indeed produced one of the most dangerous decisions for religious liberty in recent years.

The case concerns a married woman from a provincial Norwegian town, who was a Jehovah's Witness from 1987 to 2018. In 2018, she accepted to have dinner with a male Jehovah's Witness, himself divorced, in a restaurant in Oslo, after which they went to the man's hotel room. Of what happened there, two versions exist. According to the Jehovah's Witnesses who were part of the judicial committee that examined the case, the woman told them that in the hotel room they drank more alcohol with respect to what they had already drunk in the restaurant, engaged in "kissing and fondling," and lied on a bed together. The woman didn't remember what happened next, except that she woke up naked with the man on top of her.

In the court case, the woman told the judges that they went to the hotel room to recover a coat she had left here, denied that they had drunk more alcohol or engaged in kissing or fondling in the room, and stated that she took a nap there because she was tired, from which she woke up more than 12 hours later when she found the man on top of her and realized she was naked.

In both versions, the two then separated (in the elders' version, she told them they still had a friendly breakfast before going their separate ways), but the woman was later told by the man that he had started engaging in oral sex with her while she was asleep.

What the two versions have in common is that the woman was repeatedly asked whether she had felt raped, and she repeatedly said no, and the Witnesses' judicial committee found that the woman and the man were "obviously not enemies," as they still "had contacts" after the incident. She testified that she had realized that what happened might legally be described as rape only several months later, and after she had been disfellowshipped. However, she did not take any action against the man at the time, including going to the police, and in fact has never done so.

It was the woman herself who had moral scruples that she might have been guilty of sexual immorality, a ground for being disfellowshipped among the Jehovah's Witnesses. A judicial committee was convened, found that she had indeed behaved immorally, and disfellowshipped her in 2018. She appealed, but an ecclesiastical appeal committee confirmed the judicial committee's decision. Before the ecclesiastical appeal committee, she also denied having been raped.

Considering also that the public announcement, which normally follows such decisions, that she was no longer one of the Jehovah's Witnesses, exposed her to the risk that relatives and friends who remained in the congregation would no longer associate with her (because of the so-called "shunning" practiced by the Witnesses), she went to see a lawyer and first challenged her local congregation of the Jehovah's Witnesses before a

Conciliation Board. The Board rendered its decision on June 5, 2019. It concluded that the woman had been disfellowshipped for having been "assaulted," and declared the decision to disfellowship her invalid. It also ordered the Jehovah's Witnesses to pay NOK 100,000 ($11,365) as damages, plus the woman's legal costs.

The Jehovah's Witnesses took the case to the Follo District Court, located in Ski, arguing, first, that secular courts had no jurisdiction on internal congregational matters, and second, that the judicial committee and the appeal committee had correctly applied the rules about immorality of the religious organization. On February 27, 2020, the District Court found in favor of the Jehovah's Witnesses. It stated that "freedom of religion" implies that "Courts cannot review the decisions of a religious community that require an assessment of religious issues." Assessing what constitutes, or does not constitute, sexual immorality within the context of Jehovah's Witnesses' theology is a religious issue. It cannot be determined by secular courts through secular criteria, the District Court said, and "falls outside what a court can review."

The woman appealed the District Court's decision before the Borgarting Court of Appeal, which rendered its decision on July 9, 2021. Two out of three judges found in favor of the woman. The third wrote a dissenting opinion, where he explained why he believed the District Court's decision to be correct. The majority opinion stated that § 10 of the Religious Communities Act of 1969 should apply in this case, which was in force in 2018 although omitted in the new Act on Religious and Life Stance Communities of 2020, which came into force on January 1, 2021. The old § 10 stated that "no one must use improper arguments, promises or threats, or proceed by other questionable means for the purpose of persuading another person to join or resign from a religious community." According to the Court of Appeal, both § 10 and general principles of Norwegian law that survived its repeal allow secular courts to examine and eventually annul decisions of exclusion of members by ecclesiastical bodies when they have been rendered by violating their own rules or based on incorrect descriptions of facts, and when their consequences seriously affect the welfare of the persons involved. Some legal decisions rendered abroad, which stated that pronouncements of exclusion by judicial committees of the Jehovah's Witnesses cannot be annulled by secular courts as they are internal matters of a religious body, were examined, but the Borgarting court concluded that they referred to different cases, where there had been no factual or procedural errors.

Based on these principles, the court concluded that what had happened to the woman was rape under the definition of Norwegian law, that the relevant elder's manual of the Jehovah's Witnesses states that "one who was raped would not be guilty of *porneia* [sexual immorality]," and that consequently the judicial and appeal committees misinterpreted the facts and did not faithfully apply the Jehovah's Witnesses' own internal rules. The decision caused to the woman considerable distress, considering the policies of the Jehovah's Witnesses towards disfellowshipped members. The judge stated that "it would be offensive to the general sense of justice if someone is excluded from a religious community on the basis of something that it is possibly a rape," and ordered the Jehovah's Witnesses to readmit the woman within their fold, and pay to her NOK 100,000 in damages, NOK 512,063.50 as expenses for the Court of Appeal case, and NOK 386,082 for the expenses before the District Court, i.e., a total bill of NOK 998,145.50, equivalent to $113,440.

An appeal will be sought before the Supreme Court. I believe the verdict to be a catastrophic assault on religious freedom, and I hope it will be overturned. I understand that there is today a special sensitivity when rape or "possible rape" of vulnerable women is involved. I agree that tolerance for sexual abuse of women has been a plague of our societies for centuries, and that religious liberty may never be an excuse for sexual

abuse. This, however, refers to causes of action the woman may have against the man who took advantage of her sleep in the Oslo hotel. What we are discussing here is the different matter whether a secular court can second-guess a decision by an ecclesiastical body, and order a religious organization to readmit a member it has excluded.

I believe the decision is wrong on three different counts. First, it seems to me that the (repealed) § 10 of the Religious Communities Act of 1969 has nothing to do with decisions by ecclesiastical bodies excluding a member from a religious organization. It clearly seems to refer to cases where citizens are compelled to leave their religion or join another one through physical violence or fraud. I would have been reluctant to interpret Norwegian law, of which I am not an expert, had it not be for the circumstance that Judge Agnar A. Nilsen, Jr., one of the judges of the Appeal Court, came to the same conclusion after a detailed analysis of the legislative history of the provision. He noted that § 10 was never applied to allow secular courts to review a decision of exclusion by an ecclesiastical body or authority. Judge Nilsen also criticized the comment that this review remains permissible in Norwegian law after § 10 was repealed, and stated that "the view that under the current law one can establish a legal norm of 'offensive to the general sense of justice' as barrier to a religious community's right to exclude persons they do not want as a member, is also not legally rooted in any source."

Second, it seems to me that the facts were reconstructed tendentiously and one-sidedly by the majority in the appeal case. Unlike the District Court, they took for granted that the woman's account of what happened in that fateful night before the secular judges was true, and the earlier one she gave to the Jehovah's Witnesses' judicial committee was either false, or misinterpreted by the committee. Based on this questionable reconstruction, the majority embarked in a dissertation about *porneia*, a word used 24 times in the New Testament, and whose exact meaning has been a bone of contention between Christians for centuries, as it has consequences inter alia on whether divorce is permissible or not, a question on which Catholics have different opinions from most Protestants. The centuries-old question about what is and is not *porneia* is a typical theological matter, solved differently by different Christian denominations and organizations, and a textbook example of issues on which secular courts should not interfere.

Interpreting the elder's manual of the Jehovah's Witnesses (which is not the only source on which the judicial committees base their decisions) is also a religious matter, on which secular courts have no competence nor jurisdiction. At any rate, sleeping in a room with a man who is not a woman's husband, and drinking a significant quantity of alcohol with him, not to mention "kissing and fondling" if it happened, may already amount to "sexual immorality" according to the standards of the Jehovah's Witnesses.

Third, and perhaps most importantly, the argument that ecclesiastical decisions excluding members from a religious organization can be annulled by a secular court when the latter believes that they are based on factual or procedural mistakes is wrong, inconsistent with the European Convention on Human Rights, and also with the international decisions on the Jehovah's Witnesses that the court of appeal quoted but misinterpreted.

It is clear, and understandable, that in this case the sympathy of the two judges who ruled in her favor was with a woman they regarded as a victim of rape. But, as Judge Nilsen said in his dissenting opinion, believing that a "general sense of justice" may be invoked when a decision of exclusion from a religion appears as unfair means that all such decisions may be overturned by secular courts. If the latter are authorized to interpret the procedural rules of a religious organization in a different way from the

religious body itself, or even revisit theological interpretations (such as in the question of whether the woman's acts might be defined as *porneia*), this simply means that secular courts operate as courts of appeal authorized to re-examine any and all decisions of ecclesiastical bodies.

It seems also bizarre that they can "annul" a decision of exclusion by an ecclesiastical body, nor is it clear what legal or practical effects this is supposed to have. If what is asked is that the Jehovah's Witnesses take back the woman into their fold, this would be tantamount to order to a husband or a wife who has ceased the cohabitation with his/her spouse to start living together again, if the court believes that the decision to separate was based on an incorrect assessment of facts that the judges presume to know better than the parties involved.

That states may interfere with the internal activities of a religious organization is precisely what the international decisions quoted by the Jehovah's Witnesses in the Norwegian case tried to prevent. The Norwegian decision is an example of an alarming reductionist trend considering religious liberty as a right vested on the individual believer, and ignoring the collective freedom of religious organizations. One hopes the Norwegian Supreme Court will accept to hear the appeal, and render a decision consistent with the case law of the European Court of Human Rights and high courts worldwide.

Photo: The Old Building, the Borgarting Court of Appeal, Oslo, Norway (*credits*).

Significantly fewer churches are burning in Norway

Satanists set fire to many churches in Norway in the 1990s. Now churches are not attacked as often as they used to, and smaller denominations hardly ever experience church fires.

By STEIN GUDVANGEN

Evangelical Focus (24.06.2021) - https://bit.ly/3y7duOL - 1992 was an *annus horribilis* for church fires in Norway. That year alone self proclaimed satanists set fire to at least five churches.

During the next few years several more attempts of arson were made by young men belonging to or identifying with the black metal wave.

One key figure spearheaded the so-called Satanic metal movement, a young man whose birth name was Kristian Larsson Vikernes. He later called himself ***Varg Vikernes*** – *Varg* meaning wolf – and was also nicknamed The Count. By 1994 he was convicted of both murder and arson of three churches. He served 15 years in prison before moving to France adopting the legal name Louis Cachet.

There were a total of **25 church fires in Norway in the 1990s**, not all of them caused by arsonists, and not all of the arsonists identifying with satanism. Some fires were caused by electrical failures or lightning. Still two dozen fires or attempted arsons have

been attributed to the black metal scene, although several incidents never proved to be connected to people from those circles.

Fewer fires since 2000

At the turn of the millennium the picture changes significantly. **Between the year 2000 and 2010 there were only eight church fires** in Norway. The next ten years only seven.

A vast majority of the church fires have been in buildings belonging to the former state church, the **Church of Norway**. A bit less than 70 percent of the Norwegian population are member of Church of Norway, and their many local parishes own about 1,630 church buildings.

While the Church of Norway was hit by fire around 35 times between 1990 and 2020, not including failed attempts of arson, there were **only two major fire incidents in so-called free churches** during the same three decades.

On Christmas Day in 1992, the Methodist Church in Sarpsborg, built in 1857, went up in flames. A smoke diver died in the attempt to extinguish the fire making this the only church fire with a deadly outcome in Norway in modern times. A well known satanist was suspected to have set the building on fire, but was never convicted.

On 4th June, 1995 Moe Church in Sandefjord, owned by Det evangelisk-lutherske kirkesamfunn (DELK), was burned to the ground. The investigation concluded that the fire started because of an electrical malfunction.

Since then there have been no fires in Norwegian free churches. A conservative estimate is that there are **700 to 800 free church buildings in the country**, but still the number of fires is very low as compared to the number of fires in Church of Norway houses of worship.

Police superintendent Kenneth Didriksen has taken part in **investigations of church fires** for many years. He confirms that free churches are seldom targeted by arsonists, and he thinks he knows the reason.

"**Free churches are not considered typical power symbols** like Church of Norway houses of worship, since the Church of Norway has been so closely connected to the state. The free churches have not represented the authorities in the same way", explains Didriksen.

Paying money back

The overall picture however is that the number of fire incidents is going down. This is also reflected by the fact that **the insurance company KA Kirkeforsikring** is now paying money back to the parishes after several years with fewer fires.

After summing up last year KA Kirkeforsikring, who are dominating this segment of the market, paid back more than 890,000 euros in insurance premium, an equivalent of 29 percent of the total premium last year, according to figures presented to Christian press agency *KPK*. After 2019, **430,000 euros were paid back to the policyholders**.

"When there isn't much damage, the insurance money is not being used, so then we return some of the premium to our customers", says director Knut Are Hole.

Photo : Karmøy kirkelige fellesråd.