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

FIRST SECTION

DECISION

Application no. 3018/20
B.G.
against Croatia

The European Court of Human Rights (First Section), sitting on 11 January 2022 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 3018/20) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 December 2019 by a Croatian national, Mrs B.G., who was born in 1978 and lives in Petrčane ("the applicant") who was represented by Mrs I. Bojić, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the right to a fair hearing and the right to respect for family life to the Croatian Government ("the Government"), represented by their Agent, Mrs Š. Stažnik, and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The case concerns custody proceedings regarding the applicant's son G., born in 2011. The applicant maintained that she had become pregnant as a result of rape by A.P. Her criminal complaint in that respect was dismissed as unfounded.

2. In 2012 A.P. sought contact with G., complaining that the applicant had unjustifiably denied him access to his son. His request was allowed, and a

first interim measure issued on 24 October 2012. From an expert report obtained from the Zagreb Child Protection Centre on 5 December 2013 it transpires that the applicant had been emotionally unstable and unable to separate the child's need for a father from her own negative feelings towards A.P. Psychiatric treatment and supervision of the exercise of parental authority were recommended in respect of the applicant. A.P. was found to be positively involved and interested in his parental role, without limitation of his parental skills.

3. At the hearing held on 11 November 2013, A.P., relying of the above expert opinion, requested custody of G. and proposed that the applicant be allowed contact.

4. The court appointed G. a guardian *ad litem*.

5. Following a proposal of the Zadar Social Welfare Centre, on 3 November 2015 the court issued a second interim measure, ordering that G. live with his father until the final conclusion of the court proceedings and that the applicant be allowed contact. That decision was quashed on appeal, and G. remained living with the applicant.

6. According to another expert opinion obtained in the resumed proceedings from the Rijeka Clinical Hospital Centre dated 28 December 2016, the applicant suffered from a delusional disorder (paranoid state) and G. had been psychologically and emotionally abused by the mother and her family. They were found to have, *inter alia*, forced G. to wet himself during his visits with the father so as to cut those contacts short. That report, which was accepted by the Zadar Social Welfare Centre, concluded that A.P. had been the more suitable parent and recommended that G. live with his father, while keeping regular contact with the applicant.

7. By a final judgment of 23 October 2017, the Zadar County Court ordered that G. live with A.P. and that the applicant had supervised contact twice a week. The court based its conclusion on the Rijeka Clinical Hospital's finding that the child was being abused by his maternal family and stated that it had been in G.'s best interest to begin living with his father even without an adaptation period. The court also ordered the applicant to hand G. over to A.P. within 15 days.

8. Since the applicant failed to hand G. over to A.P. and left her place of residence with him, criminal proceedings were instituted against her for abuse of the rights of the child, failure to comply with a child protection measure and child abduction. On 5 February 2018 the applicant was arrested in Zagreb in connection with the pending criminal proceedings. G. was taken from her and entrusted to the father, with whom he has lived ever since.

9. The applicant complained, under Article 6 of the Convention, that the domestic court judgment awarding custody to the father had been arbitrary. She also complained, under Article 8 of the Convention, about a violation of her right to respect for family life.

THE COURT'S ASSESSMENT

10. The general principles concerning custody proceedings have been summarised in *G.B. v. Lithuania*, no. 36137/13, 19 January 2016; *Petrov and X. v. Russia*, no. 23608/16, 23 October 2018; and *Antonyuk v. Russia*, no. 47721/10, 1 August 2013.

11. Having examined the final judgment complained of (see paragraph 7 above), the Court finds no reason to doubt that it was based on the best interests of the child. The court established that G., who had lived with the applicant since birth, had been abused by her and her family in that they effectively sabotaged his relationship with his father. At the same time, A.P. was found to be more stable as a parent than the applicant. The court particularly stressed the need to remove G. from the abusive environment he had lived in with his maternal family as soon as possible, so as to reduce development of psychological problems. There is nothing to indicate that the findings reached by the Zadar County Court within its competence were unreasonable and thus fell outside the wide margin of appreciation afforded to the domestic authorities in this area. Given that the national authorities are in principle better placed than an international judge to evaluate the evidence before them, it is not the Court's task to take their place in establishing and assessing the facts and deciding what is in the best interests of the child in the present case (see *Leonov v. Russia*, no. 77180/11, § 72, 10 April 2018).

12. The Court furthermore notes that the decision at issue was reached following adversarial proceedings, throughout which the applicant, represented by counsel, had the opportunity to present – both in writing and orally – all arguments in support of her claim. The domestic authorities also obtained several expert opinions from different qualified institutions and recommendations of the competent social welfare centres who had followed the family circumstances for years. The fact that the last expert opinion had not been obtained from the particular expert indicated by the appeal court had been the consequence of that expert not responding to the court's call for a quote. In such circumstances, it was understandable that the court turned to another qualified expert institution against which the applicant objected only once she received its negative assessment of her.

13. As regards the applicant's allegation that G. had been removed from her to live with his father without any preparation or adaptation period, the Court notes that the child is not an applicant in the present case, and that in reality his interests might not fully correspond to those of the applicant (see, *a contrario*, *C. v. Croatia*, no. 80117/17, § 56, 8 October 2020). Moreover, the Zadar County Court explained that it would be more harmful for G. to continue living with his mother and her family than to begin living with his father without an adaptation period (see paragraph 7 above).

14. In so far as the applicant claimed that not hearing G. in the custody proceedings might have adversely impacted her legal situation in the

proceedings (see, *mutatis mutandis*, *Vujica v. Croatia*, no. 56163/12, § 102, 8 October 2015), the Court considers that this particular complaint falls to be considered as an issue pertaining to the overall assessment of evidence in the case (see, *mutatis mutandis*, *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII). In this connection, the Court observes that G. had been involved in the various expert assessments and was thus able to express his attitude towards both parents in a manner corresponding to his age and maturity. What is more, if a court were to base its decision on the views of children who are palpably unable to form and articulate an opinion as to their wishes – for example, because of a loyalty conflict or their exposure to the alienating behaviour of one parent – such a decision could run contrary to Article 8 of the Convention (see *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). In such circumstances, the Court is satisfied that not hearing G. – who was five years old at the end of the custody proceedings – in court could not have so prejudiced the applicant's case as to render it unfair.

15. The Court concludes from the above that the decision-making process was fair since it allowed the applicant to present her case fully and that the reasons advanced by the domestic courts were relevant and sufficient. Accordingly, by rendering a custody order in favour of the father, the domestic courts did not overstep their wide margin of appreciation.

16. In so far as the applicant complains about the manner in which G. had been taken away from her, the Court notes that at the material time there had been a final domestic judgment ordering the applicant to hand the child over to his father. The applicant not only failed to comply with that order but left her place of residence along with G., upon which criminal proceedings were instituted against her for child abduction (see paragraph 8 above). In such circumstances, it cannot be said that acts by the authorities aimed at enforcing the final court order had been unlawful or disproportionate in the circumstances.

17. Finally, in so far as the applicant complains about the insufficiency of contact with her son as determined by the impugned court decisions, the Court notes that the applicant is able to see G. at regular intervals twice a week. It is true that G. lives in a town about 150 kilometres away from the applicant's place of residence. However, their supervised meetings are scheduled once a week at G.'s place of residence and once a week at the applicant's. Moreover, as rightly pointed out by the Government, under the domestic legislation the applicant may at any time request the court to amend the decision on parental care and contact between her and G. if the circumstances so justify. In view of all of the materials before the Court, it cannot be said that the national courts in the present case failed to ensure that the applicant was able to effectively exercise her right to contact with G. (see, by contrast, *Gluhaković v. Croatia*, no. 21188/09, § 79, 12 April 2011).

18. It follows that this application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 February 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President