

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

FOURTH SECTION

DECISION

Application no. 34931/08
Izabela DOBRZYŃSKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 April 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 July 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Izabela Dobrzyńska, is a Polish national who was born in 1969 and lives in Warszawa. She is represented before the Court by Mr G. Zawada, a lawyer practising in Warszawa.

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 10 November 2004 the Warsaw Regional Court gave a judgment in divorce proceedings. It held that both parents of twins M. and M., born in 1999, were to retain parental rights over them, with their place of permanent residence being with their mother, the applicant. Having regard to the lack of co-operation between the parents, it restricted both of them in the exercise of their parental rights and decided that they should be supervised by a court-appointed guardian. The guardian was to report to the court once a month on the exercise of the parties' parental rights and on the situation of the family. This judgment was later upheld by the Warsaw Court of Appeal.

4. On 16 May 2007 the Warsaw Regional Court, upon a petition submitted by the children's father, changed the manner in which the parties' parental rights should be exercised.

5. The court established that since 2002 the children, who before had had a harmonious and spontaneous relationship with their father, had started to react negatively and even hysterically to his presence.

6. The court had regard to three expert opinions. They had stated that the children and their mother as a family had been affected by Gardner syndrome (Parental Alienation Syndrome), consisting in a strong emotional link with one of the parents, in this case – the mother. This entailed the children's complete submission to her, and in their perceiving the father, as a result of the mother's hammering this into her daughters, as an enemy. This resulted in a total severance of all emotional links with him.

7. The court heard as witnesses a number of experts, two of the children's teachers, a psychologist who had talked with the mother for the purposes of making a diagnosis of the situation and a number of other persons.

8. It refused to admit evidence from psychologist B., proposed by the applicant, and refused also her request for additional expert opinions of another psychologist, paediatrician and psychiatrist. The court found that ample expert evidence was already available in the case file.

9. The court accepted the conclusion that the family was affected by Gardner (PAS) syndrome, caused mostly by the applicant's emotional pressure on the children in order to make them perceive their father in a negative light. There was no evidence to indicate that the children's father had committed any reprehensible acts and the children had not accused him of any. In particular, no incidents of domestic violence had been established. He was interested in the children's development, co-operated with the authorities and had been complying with the court's decisions on contact with the children and the court guardian's suggestions. The children were deeply disturbed. They were overly excitable and often aggressive, verbally denigrated their father and their paternal grandparents, referred to alleged episodes of ill-treatment which had never been confirmed and of which they had received information from their mother, showed undue fear and reacted hysterically when spoken to about their father and when seeing him.

10. The court was of the view that the children's best interest dictated that they should be given appropriate treatment. The applicant was unable to draw a line between her own negative view of her former husband and the conduct which she should have adopted in the children's best interests. Her behaviour was dictated entirely by her own emotional relationship to her former husband, with no due regard to the need to show restraint for the sake of the children's development, well-being and psychological balance. The court noted that it was well aware of the necessity of keeping the measures to be applied within limits, having regard to the proportionality principle. It was of the view that the children should be placed in a children's home and temporarily change their environment. The applicant should be allowed to see her children in the home, supervised by psychologists, and ordered to undergo therapy suitable for persons affected by PASyndrome. The same obligation had to be imposed on the children's father.

11. The applicant appealed. She requested that the decision be quashed in its part concerning the placement of her children in the institution. She submitted that the measures were not in the children's best interests. The court had failed to examine whether less invasive measures would also have achieved the aim sought.

12. By a decision of 14 January 2008 the Warsaw Court of Appeal amended the contested decision. It deleted the description of an alleged disorder affecting the applicant and her daughters from the description of the facts of the case. It observed that the opinions of specialists had not given rise to any doubt that the children were indeed deeply disturbed and that their separation from the mother, together with therapy, would help them. It maintained the order to place the children in a children's home with a view to therapy and maintained the obligation for the parents to undergo therapy aimed at ameliorating their contacts, due regard being had to the children's best interests.

13. The court observed that already in the divorce judgment the court, having regard to the conflict between the former spouses, had imposed on the latter supervision measures intended to facilitate their contacts and to ensure respect for the children's best interests. As the parties had subsequently failed to co-operate and their relationship had steadily deteriorated to the point where they were unable to ensure compliance with the custody and access arrangements without acrimony, the decision of the lower court was justified and should be upheld.

14. On 8 April 2008 the Warsaw District Court, acting *ex officio*, set aside the placement order of 16 May 2007.

15. Subsequently, the applicant and the children's father had a number of conversations with the assistance of specialists of the Centre of Assistance to the Family. The court was informed of them.

16. On 20 May 2008 the court decided again to place the children in a children's home.

17. On 24 July 2008 the court granted the applicant's request to stay the execution of that order. It appointed another expert with a view to determining the best possible therapy for the children. The court fixed five dates for the applicant and the children for therapy sessions. The applicant failed to attend these sessions without providing any justification.

18. On 15 July 2010 and 24 September 2010 the applicant contested the appointment of the expert. The court dismissed her motion.

19. On the latter date the court set the placement order aside and appointed a court guardian for the family. The court had regard to the children's health and found that the placement could have a negative effect on their health.

COMPLAINT

20. The applicant complained, in essence under Article 8 of the Convention, about the placement order. She argued that it had been unnecessary and excessive; that it would expose the children to unnecessary hardship; that they suffered from asthma and that it would be impossible for them to obtain adequate medical care in the institution and that the applicant and her children's right to respect for their family life had been violated by this decision.

THE LAW

21. The applicant complained that the placement order given in respect of her daughters breached Article 8 of the Convention, which in so far as relevant provides as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

22. The Government submitted that the applicant could not claim to be the victim of the alleged breach of the Convention. The order regarding the children's placement had never been executed. In its decision of 24 September 2010 the Warsaw District Court set that order aside.

23. The applicant disagreed.

24. The Court recalls that under Article 34 of the Convention it may receive applications from individuals and others "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto". The existence of a victim who was personally affected by an alleged violation of a Convention right is indispensable for putting the protection mechanism of the Convention into motion (see, for example, *Buckley v. the United Kingdom,* judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1288, §§ 56-59, *Valmont v. the United Kingdom* (dec.), no. 36385/97, decision of 23 March 1999, and *Thevenon v. France* (dec.), no. 2476/02, 28 February 2006).

25. Moreover, the Court recalls that Article 34 of the Convention requires that an individual applicant should be able to claim to be actually affected by the measure of which he or she complains (*Slivková v. Slovakia* (dec.), no. 32872/03, 14 December 2004; *Ichin and others v. Ukraine* (nos. 28189/04 and 28192/04), § 26, *mutatis mutandis*; 21 December 2010).

26. In the present case the crux of the applicant's complaint is about the alleged breach of Article 8 of the Convention as a result of the order concerning the placement of her daughters in a children's home.

27. However, the Court observes that the initial order, given on 16 May 2007, was never executed. It was subsequently set aside on 28 April 2008 by the Warsaw District Court acting *ex officio*.

Subsequently, on 20 May 2008 that court again gave an order on the children's placement, but on 25 July 2008 it granted the applicant's request to stay its execution.

28. Ultimately, by a decision of 24 September 2010, the Warsaw District Court set that order aside, finding that the placement would be detrimental to the children's health. That order is no longer in force. Moreover, at no time were the children taken away from the applicant and placed in a children's home.

29. Accordingly, the Court considers that the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention.

30. It concludes that the application is therefore incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President