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

FIFTH SECTION

DECISION

Application no. 17842/16
Snežana GLAVACKA
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 23 May 2017 as a Committee composed of:

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 4 April 2016,

Having regard to the decision of 7 April 2016,

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 Snežana Glavacka, is a Latvian national who was born in 1977 and lives in Riga. She was represented before the Court by Ms J. Averinska, a lawyer practising in Riga.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

A. The circumstances of the case

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

4. In 2005 the applicant, a Latvian national, moved to Ireland, where in 2008 she gave birth to a son D.A., also a Latvian national. The applicant was not married but in October 2011 she signed a statutory declaration that

R.A., an Irish national, was D.A.'s father. By signing the declaration both parents agreed on joint guardianship. It appears that from 2012 the applicant and her son lived apart from R.A., who occasionally visited the child.

1. Proceedings under the Hague Convention in Latvia

5. In February 2015 the applicant lost her job in Ireland. After unsuccessful attempts to find other employment, she moved to Riga with D.A. in December 2015.

6. On 3 February 2016 the Riga City Ziemeļu District Court upheld an application by R.A. to return the child to Ireland under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention").

7. R.A. also asked the Irish authorities to institute criminal proceedings against the applicant for wrongful removal of the child. The Court has no further information about those proceedings.

8. On 21 March 2016 the Riga Regional Court upheld the order requiring the applicant to return the child to Ireland by 20 April 2016.

9. In applying the Hague Convention and the Council Regulation (EC) No. 2201/2003 on jurisdiction in family-law matters, the domestic courts established that the parents had joint custody of D.A., whose place of residence before the removal had been Ireland.

10. The domestic courts at both levels assessed and dismissed the applicant's argument that returning to Ireland would cause immediate psychological harm to the child. They noted that the applicant did not have the means to reside in Ireland and that R.A. had not financially supported the child, but concluded that those arguments fell outside the scope of the proceedings in question. In that regard, the Riga Regional Court observed that R.A. had a three-bedroom house in Ireland and a job.

11. In reply to the applicant's argument that R.A. was an alcoholic, the courts noted that he had started treatment and that, in any event, the Hague Convention proceedings did not envisage ordering the child's return to his father. The domestic courts noted that if she received any threats the applicant had the right to ask the Irish authorities to intervene. Noting statements by the child to the custodial authorities (*bāriņtiesa*) that he wished to stay with his mother and a recommendation from the child's psychologist that the child not be separated from her, the domestic courts reiterated that the Hague proceedings were aimed at returning the child to his habitual place of residence and that the above issues fell to be examined within the custody proceedings.

2. Request for a stay of enforcement of the return order

12. In April 2016 the applicant lodged an application with the Riga City Ziemeļu District Court for a stay of enforcement of the return order. She

argued that the child's return to Ireland was impossible due to a significant change of circumstances. She stated that the child's psychological health had deteriorated and that the father had not provided any guarantees related to her return.

13. During the subsequent court hearing the applicant stated that she had been granted legal aid in the custody proceedings in Ireland and that she had not experienced any legal or other restriction in that country.

14. On 13 June 2016 the Riga City Ziemeļu District Court, acting as a court of first instance, dismissed her application. The court considered that no significant change in circumstances, as set out in section 620^{16} of the Civil Procedure Law (see paragraph 18 below), had been established.

15. Neither party submitted an appeal and the above decision became final.

3. Further developments

16. On 27 July 2016 both parents agreed that the child would continue to live in the everyday care of the applicant in Latvia, with the father having contact rights. In addition, the agreement set out arrangement concerning the child's travel to Ireland and visiting his father and grandparents.

17. On the same day the District Court of Dundalk (Ireland) in the course of the custody proceedings granted joint custody and made the applicant the primary carer of the child. The decision was based on the above agreement reached by the parties.

B. Relevant domestic law and practice

18. Section 620^{16} of the Civil Procedure Law regulates the stay or refusal of enforcement of a return order. It provides, in particular, that a claimant can apply to the lower court for a stay or refusal of enforcement of a return order if there has been a significant change of circumstances (*būtisku apstākļu maiņa*).

The following are considered as being significant changes of circumstances within the meaning of the section: where the return of the child is not possible due to the child's health or psychological condition, as certified by a hospital or psychiatrist; owing to objections from the child to being returned, as certified by a psychologist; or where the requesting parent does not demonstrate any interest in renewing contacts with the child.

Such an application is examined at a court hearing after notification thereof to the parties.

The lower court's decision is subject to appeal but an appeal does not stay enforcement of the decision.

COMPLAINT

The applicant complained under Article 8 of the Convention about the judicial decision ordering the return of her son D.A. to Ireland. She argued, in particular, that the Latvian courts had disregarded the fact that the psychologist had recommended avoiding the separation of the mother and the child, and that she had had no practical means of accompanying the child to Ireland as she had had no work there and nowhere to live.

THE LAW

19. The applicant claimed to have been a victim, on account of the decision by the Latvian courts to order her son's return to Ireland, of an infringement of her right to respect for her family life within the meaning of Article 8 of the Convention, which provides

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

1. The parties

20. The Government invited the Court, *inter alia*, to strike the application out of its list of cases pursuant to Article 37 § 1 (b) of the Convention. They argued that the alleged separation of the applicant and her child had never occurred and under the present circumstances cannot occur. Furthermore, the Government contended that the dispute under the Hague Convention had ceased to exist on the grounds that the matter had been resolved, and the Latvian authorities had duly respected the decision adopted by the Irish courts according to which the child was authorised to stay in Latvia with the applicant.

21. The applicant objected to the Government's request to strike out the application. At the same time, the applicant confirmed that the child had not been returned to Ireland and he continued living with her in Latvia.

2. The Court

22. In order to ascertain whether Article 37 § 1 (b) applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still pertain and, secondly, whether the effects of a possible violation of the Convention on

account of those circumstances have been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007‑I).

23. With regard to the first question, the Court notes that the applicant complained in essence that enforcement of the return order would entail a risk of psychological harm to her son. The Court observes that following the agreement reached between both parents in the custody proceedings (see paragraphs 16-17 above), the Irish court ordered that the child D.A. should stay in the day to day care of the applicant in Latvia. The Court concludes therefore that the situation complained of no longer pertains.

24. Next, on the question of whether the measures taken by the authorities constituted sufficient redress for the applicant's complaint, the Court observes that it does not derive from the case-file that the contested return order was at any time enforced. Some weeks after the final domestic decision on the child's return to Ireland, which was the child's place of residence before its wrongful removal to Latvia (see paragraph 14 above), both parents reached an agreement according to which the child's new place of residence was Latvia. In these circumstances there were no grounds to continue the enforcement of the return order, and the applicant does not allege the contrary. It follows that the applicant has no restrictions to exercise freely in Latvia her rights to respect for her family life together with her child within the meaning of Article 8 of the Convention.

25. It follows that the application should be struck out of the list.

26. Having regard to its findings above, the Court considers that it is dispensed from the task of examining the other arguments of the Government as to the inadmissibility of this application under Article 8 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the case out of the list.

Done in English and notified in writing on 15 June 2017.

Anne-Marie Dougin
Acting Deputy Registrar

André Potocki
President