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

FIRST SECTION

DECISION

Application no. 36319/19
Nektarios KOULIZAKIS
against Sweden

The European Court of Human Rights (First Section), sitting on 24 October 2024 as a Committee composed of:

Péter Paczolay*, President*,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 36319/19) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 July 2019 by a Greek national, Mr Nektarios Koulizakis ("the applicant"), who was born in 1972, lives in Chania, Greece, and was represented by Ms P. Janné, a lawyer practising in Stockholm;

the decision to give notice of the application to the Swedish Government ("the Government"), represented by their Agents, Mr A. Engman and Ms K. Fabian, both of the Ministry for Foreign Affairs;

the decision by the Greek Government not to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns proceedings regarding custody and contact between the applicant and his child, X, born in 2009.

2. The applicant, X and X's mother lived together in Greece until 2012, when they decided that the mother and X should move to Sweden. Thereafter, X and the mother visited the applicant in Greece and he visited them in Sweden.

3. During the period from 2014 to 2016 three child welfare investigations were conducted by the Swedish social services (*socialtjänsten*) due to reports of violent or abusive behaviour by the applicant towards X and the child's mother. As a result of these investigations X was offered counselling, but no other measures were taken by the social services. The applicant was only informed of, and heard during, the second of these investigations. He was not informed of the first and third investigations.

4. In November 2016 the mother and X were placed in protected accommodation and granted protected identities, which, *inter alia*, meant that their address became confidential. The applicant was also issued with a non-contact order, valid for one year, prohibiting him from visiting or contacting the mother. Police reports were made regarding alleged violence of the applicant towards the mother and X, but the criminal investigations were subsequently discontinued.

5. In 2017 the applicant and the mother initiated custody proceedings. During these proceedings the social welfare committee (*socialnämnden*) conducted a custody and contact investigation (*vårdnads-, boende- och umgängesutredning*) at the request of the District Court (*tingsrätten*). The persons conducting this investigation heard the applicant and the mother and had regard to written materials. Since X was undergoing treatment at the Child and Youth Psychiatric Clinic (*barn- och ungdomspsykiatrin*) and had been heard during earlier investigations and counselling as well as by the police, they considered that it was not appropriate to subject him to another interview, and therefore did not hear him. In the final report by the social welfare committee the assessment was made that the mother should be granted sole custody and that it was currently not possible to propose any contact between X and the applicant.

6. The applicant requested that the District Court order the social welfare committee to supplement the custody and contact investigation by hearing X and other persons who had been in contact with X, such as staff at his new school and at the Child and Youth Psychiatric Clinic. He argued that hearing those persons was important since he could not call them as witnesses as he did not know their identities. The District Court refused his request.

7. In a judgment of 3 October 2018 the District Court, following an oral hearing, decided that the mother should have sole custody of X and that the applicant should not be granted any contact rights. The court found that the mother's claims that she and X had been subjected to violence and abusive behaviour by the applicant were credible and supported by other evidence. The court also took note of the content of a certificate from the Child and Youth Psychiatric Clinic which, *inter alia*, stated (i) that X was showing symptoms of post-traumatic stress disorder (PTSD) and clear signs of having been subjected to physical and mental violence and of living in a situation of domestic violence, (ii) that X could not benefit from his trauma treatment if he met his father and (iii) that, in the current situation, X should not have

contact with his father since this was deemed harmful to his psychological health and development. Considering these factors, as well as other circumstances in the case, the court concluded, in an overall assessment, that it was in X's best interests that his mother be granted sole custody. Considering the negative impact that contact could have on X's treatment, X's need for stability, continuity and calm, and the fact that X and his mother had protected identities, the court also found that contact between X and the applicant was currently not appropriate.

8. On 14 November 2018 the Parliamentary Ombudsman (*Justitieombudsmannen*), following a complaint by the applicant, criticised the authorities responsible for the child welfare investigations, mainly for not having attempted to contact the applicant during the third investigation.

9. The applicant appealed against the District Court's judgment. Leave to appeal was refused by the Court of Appeal (*hovrätten*) and, on 17 January 2019, by the Supreme Court (*Högsta domstolen*).

10. Relying on Articles 6 and 8 of the Convention the applicant complained about the custody and contact proceedings. He claimed, in particular, that he had not been involved in the decision-making process to a sufficient degree since (i) he had not been involved in the earlier child welfare investigations, (ii) the certificates from a school psychologist and the Child and Youth Psychiatric Clinic, which were relied on as evidence, had not included the names of the persons who had written them and (iii) his request to supplement the custody and contact investigation had been refused. Moreover, he argued that the reasons for the District Court's judgment were not relevant or sufficient, in particular in regard to the decision not to grant him any contact.

THE COURT'S ASSESSMENT

11. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant's complaints should be examined only under Article 8 of the Convention.

12. The general principles concerning disputes between parents about custody and contact with their children were summarised in *Petrov and X v. Russia*, no. 23608/16, §§ 98-102, 23 October 2018, and *Širvinskas v. Lithuania,* no. 21243/17, §§ 92-97, 23 July 2019 (see also *Sommerfeld v. Germany* [GC], no. 31871/96, §§ 62-66, ECHR 2003-VIII (extracts), and *Sahin v. Germany* [GC], no. 30943/96, §§ 64-68, ECHR 2003-VIII).

13. The decision to grant sole custody to X's mother and not to grant the applicant contact entailed an interference with the applicant's right to respect for his family life. That interference was in accordance with domestic law,

namely the provisions in Chapter 6 of the Children and Parents Code (*föräldrabalken*, 1949:381), and pursued legitimate aims, in particular protecting the health and morals and the rights and freedoms of others. It remains to be determined whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

14. The Court 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 his claim and to submit his evidence. He was heard in person during the custody and contact investigation, as well as before the District Court. Thus, while the applicant had not been sufficiently involved in all the child welfare investigations during the period from 2014 to 2016, the same cannot be said about the proceedings leading to the impugned decision on custody and contact. Moreover, while the earlier child welfare investigations formed part of the evidentiary material before the District Court and were also referred to in the report from the custody and contact investigation, they were not the sole evidence on which the District Court relied.

15. The District Court based its decision on a comprehensive analysis of all the relevant aspects of the dispute and on evidence which included the disputed investigations, but also other written evidence submitted by the parties, as well as testimony from the parties and several witnesses, including eight witnesses called by the applicant. The District Court also took note of the applicant's criticism of the investigations and assessed the evidence in this light.

16. Furthermore, the District Court's refusal to supplement the custody and contact investigation was duly reasoned. Having regard, among other things, to the available material in the case and, in particular, a certificate from the Child and Youth Psychiatric Clinic, the court found that there was no need to supplement the investigation and that such supplementation would not be in X's best interests. In this connection the Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts, and that it would be going too far always to require that domestic courts hear a child in court on the issue of access to a parent (*Sahin*, cited above, § 73). This is in particular so where the courts can base their decisions on the opinion of a psychological expert who, on his or her part, had the benefit of direct contact with the child and where experts have concluded that the child should not be repeatedly questioned (see, for example, and *mutatis mutandis*, *R.M. v. Latvia*, no. 53487/13, § 117, 9 December 2021).

17. As to the fact that certain certificates did not include the names of the persons issuing them, there were valid reasons for this, considering the interest in maintaining the confidentiality of X's and his mother's whereabouts. Moreover, the applicant did not question that the certificates

were issued by a school psychologist and professionals working at the Child and Youth Psychiatric Clinic who had been in contact with X. Nor did he request that this evidence be rejected. Under these circumstances the Court cannot find that this element would be sufficient to render the decision-making process unfair. The authorities did not fail to disclose any relevant documents to the applicant (contrast *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 73, ECHR 2001-V (extracts)). He had access to all the material relied on by the District Court.

18. Turning to the reasons adduced to justify the decision on custody and contact, it follows from the materials before the Court, and in particular the District Court's judgment, that the domestic authorities, who had the benefit of direct contact with the persons concerned and who are better placed than the Court to evaluate the evidence before them and to weigh the different interests at stake, carefully examined the case and placed the child's best interests first, as is required by Article 8 as well as by domestic law and international instruments. The District Court conducted an in-depth examination of the entire family situation and of a whole series of factors and made a balanced and reasonable assessment with constant concern for what was in the best interests of the child.

19. The District Court, *inter alia*, considered the interest of maintaining contact between X and his father but concluded that it would currently not be in X's best interests. The court, among other things, relied on a certificate from the Child and Youth Psychiatric Clinic which, *inter alia*, stated that, in the current situation, contact between X and his father would prevent X from benefiting from his treatment and harm X's psychological health and development. The Court reiterates in this connection that a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sommerfeld*, § 64; *Sahin*, § 66; and *Petrov and X*, § 100, all cited above).

20. The Court also notes that a decision not to grant custody or contact does not mean that the legal relationship between parent and child has been terminated and that such decisions are not irrevocable. The applicant could at any time request a revision of the custody and contact arrangements. By use of the expression "currently" (*för närvarande*), the District Court also emphasised that it ruled on the question of contact in the light of the circumstances that prevailed at that time.

21. Having regard to the foregoing, and taking into account the domestic authorities' margin of appreciation, the Court is satisfied that the reasons adduced to justify the decision in question were relevant and sufficient and that the applicant was involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests.

22. 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 21 November 2024.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President