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

FOURTH SECTION

DECISION

Application no. 31253/18
P.V.
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 8 December 2020 as a Committee composed of:

Armen Harutyunyan, *President,*
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*

and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 June 2018,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr P.V., is a Portuguese national who was born in 1980 and lives in Mangualde. He was represented before the Court by Ms P. Guimarães Pires, a lawyer practising in Viseu.

2. The Committee decided of its own motion to grant the applicant anonymity and case-file confidentiality under Rules 33 and 47 § 4 of the Rules of Court.

A. The circumstances of the case

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

4. The applicant is the father of G. (born in 2006), B. (born in 2009) and A. (born in 2011).

1. The first phase of the proceedings

5. After the birth of A., in May 2011, the family started being monitored and supported by the Commission for the Protection of Children and Youth (*Comissão de Proteção de Crianças e Jovens* – CPCJ) of Mangualde, after

an alert given by the Tondela Viseu Hospital Centre (*Centro Hospitalar Tondela-Viseu*) where A. was born.

6. In the light of the lack of parental abilities demonstrated by the parents, on 18 June 2012 the Judicial Court of Mangualde (*Tribunal Judicial de Mangualde*) applied a six-month precautionary measure for the promotion and protection of the children's interests (*medida cautelar de promoção e proteção de apoio junto dos pais*).

7. On 14 November 2012 an oral hearing took place before the Judicial Court in which the applicant, the children's mother and representatives of a temporary accommodation centre (*Centro de Acolhimento temporário*) (CAT) in Gouveia signed an agreement on the raising and protection (*acordo de promoção e proteção*) of the three children. Under the agreement, until the parents improved their living conditions, the children were to be placed in the temporary care of the CAT; the parents would have access to their children at weekends.

8. After successive failures on the part of the parents to comply with the commitments they had made to the CPCJ, the public prosecutor requested the Viseu Family Court to order the placement of G., B. and A., in care with a view to their adoption.

9. The Viseu Family Court ordered that both parents of the children and their grandmother be submitted for psychiatric evaluation.

10. An adversarial hearing (*debate judicial*) was held before the Viseu Family Court on 15 October 2015. It continued on 21 October 2015 and again on 12 December 2015. The applicant, who was represented by a lawyer, was heard. His partner was also heard, as well as the paternal grandparents and several social workers and counsellors who had been in contact with the family over the years.

11. By a judgment of 5 January 2016 the Viseu Family Court ordered that the children of the applicant be taken into care with a view to their adoption, withdrew the applicant's parental responsibility and forbade all contact between the parents and the children, pursuant to Articles 1978 and 1978-A of the Civil Code (see paragraph 29 below).

12. In its judgment the court concluded that the testimony from the applicant, the mother of the children and the parental grandparents had contradicted both the testimony of other witnesses heard in court, and reports from the social services, and that none of them had displayed true affection towards the children.

13. On 18 January 2016 the applicant appealed against that judgment, arguing that placing the children in the care of the paternal grandparents would constitute a more proportionate measure.

14. On 5 May 2016 the Coimbra Court of Appeal upheld the judgment of the Viseu Family Court.

15. Following a further appeal by the applicant, on 16 December 2016 the Supreme Court quashed the judgment on the grounds that the children had not been heard. It then remitted the case to the Viseu Family Court.

2. The second phase of the proceedings

16. On an unknown date the adversarial hearing was reopened before the Viseu Family Court.

17. On 9 February 2017 the children G., B. and A. were heard.

(a) The Viseu Family Court Judgment of 16 February 2017

18. By a judgment of 16 February 2017, the Viseu Family Court ordered that the children be taken into care with a view to their adoption, withdrew the applicant's parental responsibility and forbade all contact between the parents and the children, pursuant to Articles 1978 and 1978-A of the Civil Code. It relied on witnesses' statements (including those of G., B. and A.) and psychiatric reports on both parents.

19. In the reasoning of its decision, the court took into consideration the slight mental disability of both parents, the occurrence of physical and psychological violence between the applicant and his partner and also towards their children, the fact that the parents were unemployed and dependent on a minimal income allowance, their inability to assume their parental roles, the addiction to alcohol of some members of the family, the fact that the paternal grandmother suffered from anxiety and the grandfather from depression, and the fact that [the paternal grandparents] had a limited source of income and did not seem to have the capacity to assume parental responsibilities with regard to G., B. and A.

20. Assessing the children's statements, the court noted that the children indicated that they missed having a home and having parents taking care of them, but that B. and A. had no recollection of how it had been to live with their parents, while the eldest child, G., had explained that when he had lived with his parents, things would "go wrong" (*as coisas corriam mal*).

21. The court furthermore considered that, pursuant to Article 1978 § 2 of the Civil Code, the best interests of a child should prevail over the parents' interests and their integration into their biological family.

22. It found that the conditions of paragraph 1 (e) and (d) of Article 1978 of the Civil Code were met, as the parents had shown a lack of interest in the children and could not guarantee sufficient conditions to accommodate them and provide them with a safe family life. Furthermore, both parents overtly dismissed the possibility of their taking the children into their own care.

23. The Viseu Family Court also emphasised that there was no possibility of the parental grandparents taking G., B. and A. into their own care. It considered the following to constitute relevant established facts:

"...

54. On December 2013 the paternal grandfather manifested a state of profound lethargy.

55. The paternal grandmother displayed a state of great anxiety, manifested by recurrent weeping.

...

72. The paternal grandmother, born on 12 July 1955, who underwent a psychological examination between January and February 2015, revealed a much lower cognitive ability than the average [person] in her age group; [she required] supervision in moments of stress [and] displayed a high degree of anxiety, as well as an inability to adapt to new situations or to stress-inducing situations, and was unable to describe the main characteristics of her grandchildren's personality traits.

...

88. The paternal grandfather is depressed (for which he takes medication) and is unemployed.

...

90. In the paternal grandparents' house live [the grandparents] together with [their] three adult children, [who are] all without regular work and financially dependent on their parents, which leads to conflict within the family.

91. The paternal grandfather receives unemployment benefit of 440,90 euros [a month].

92. This sum is insufficient to cover all the basic needs of the household.

...

94. The paternal grandparents were aware of the difficulties in which the children had lived while residing with their parents ...

...

96. [Despite] knowing these facts, they did nothing to [mitigate] the dangers to which the children were exposed.

...."

The court therefore concluded that:

"The grandparents could never be seen as an alternative to the placement of the children in an institution, having never been taken care of or protected the children when the latter were in peril and residing close to the grandparents, having always displayed a dismissive attitude, having only emerged at a late stage in the matter (after the prolonged placement of the children in an institution), as if in a last 'bid" [to acquire] 'a possession', [despite having previously not provided] any protection or care or created the conditions for the integral development and protection of the children, when the dangers they faced were clear and hence led to their placement in an institution."

(b) The judgment of the Coimbra Court of Appeal of 1 March 2017

24. On 1 March 2017, the applicant appealed against the judgment of the Viseu Family Court to the Coimbra Court of Appeal, contesting the facts deemed to have been established, alleging they did not adequately describe the existing family ties between the children and the parents, and requesting the court to grant custody to the paternal grandparents under section 35 § 1 (b) of the Law on the Protection of Children and Young Persons in Danger (*Lei de protecção de crianças e jovens em perigo*) (see paragraph 30 below).

25. On 3 May 2017, the Coimbra Court of Appeal dismissed the appeal. Although the court agreed that G. had displayed signs of affection towards his parents and had asserted that he would rather live with his parents than in an institution or with his grandparents, it took the view that the judgment at issue had been extensively reasoned, both factually and legally.

(c) The judgment of the Supreme Court of 22 December 2017

26. On 18 May 2017, the applicant appealed against that decision to the Supreme Court, citing the same arguments.

27. On 22 December 2017 the Supreme Court upheld the previous judgment, holding that a comprehensive analysis of the established facts, which related to an extended period of time, had resulted in the conclusions reached by the lower-instance courts and the application to the present case of Article § 1 (d) 1978 of the Civil Code.

28. That decision was served on the applicant on 3 January 2018.

B. Relevant domestic law

29. The relevant provisions of the Civil Code, as in force at the relevant time, read as follows:

Article 1978
Placement with a view to adoption

"1. Within the context of proceedings relating to the promotion and protection [of the rights of a child], a court may place a child in care with a view to future adoption if the emotional ties characteristic of a parent-child relationship do not exist or have been seriously undermined, subject to any of the following circumstances:

...

d) if the parents, by a willful act or omission – even if owing to manifest inability by reason of mental illness – seriously endanger the safety, health, upbringing, education or development of the child;

e) if the parents of a child taken into care by a person, an institution or a family have displayed a manifest lack of interest in their child in such a way that the quality and continuity of those ties are compromised for a period of at least three months preceding the request for placement in care.

2. The court shall take into consideration primarily the rights and interests of the child when assessing the above-mentioned circumstances.

3. A child is considered to be in danger if any of the circumstances indicated in the legislation on the protection and promotion of the rights of children prevail."

Article 1978-A
Effects of judicial placement ... in an institution with a view to adoption

"Once placement ... in an institution has been ordered with a view to adoption, parental responsibility is withdrawn from the parents."

30. Section 35 of Law no 147/99 of 1 September 1999 on the protection of children and young persons in danger reads as follows:

Article 35
Measures

"1 – Measures of promotion and protection are the following:

a) Family support measures (*apoio junto dos pais*);
b) Measures to support the child placed with another family member (*apoio junto de outro familiar*);

..."

COMPLAINTS

31. Under Article 8 of the Convention the applicant complained that the placement of his children in care with a view to adoption and the withdrawal of his parental responsibility towards them had breached his right to personal and family life. He alleged that the domestic court had failed to consider the option of awarding custody of the children to the paternal grandparents, which would have allowed him to stay in touch with his children.

THE LAW

32. The applicant complained that the domestic court's decision to place G., B., and A. in care with a view to their adoption and to refuse to grant his parents' custody rights over his children had breached his right to private and family life, as provided in Article 8 of the Convention, which in the relevant part reads as follows:

Article 8

"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."

A. Whether the interference was "in accordance with the law" and pursued a legitimate aim

33. The Court observes that by a judgment of the Viseu Family Court of 16 February 2017, which on 3 May 2017 and on 22 December 2017 was upheld by the Coimbra Court of Appeal and the Supreme Court, respectively, G., B., and A. were placed in care with a view to their adoption, and the applicant was deprived of his parental responsibility, which entailed a prohibition on his contacting all three children (see paragraphs 18, 25 and 27 above).

34. The measures taken in respect of G., B., and A. thus amounted to an interference with the applicant's family life. Such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues one of the legitimate aims enumerated in Article 8 § 2 and can be regarded as "necessary in a democratic society" (see *Saviny v. Ukraine*, no. 39948/06, § 47, 18 December 2008). Considering that the measures were provided for by Articles 1978 and 1978-A of the Civil Code, such interference was "in accordance with the law" (see paragraph 29 above). The Court furthermore finds that the interference pursued a legitimate aim – namely the protection of the "rights and freedoms" of G., B., and A. It will now examine whether the impugned decisions were "necessary in a democratic society" for the achievement of that aim.

B. Whether the interference was necessary in a democratic society

1. General principles

35. In determining whether an impugned measure was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of Article 8 § 2. According to the Court's established case-law, the notion of necessity implies that the interference in question corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance that has to be struck between the relevant competing interests (see, by way of a recent authority, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 203, 10 September 2019).

36. As regards the extreme step of severing all parental links with a child, the Court has taken the view that such a measure would cut a child from its roots and would only be justified in exceptional circumstances by the overriding requirement of the child's best interests (see *R. and H. v. the United Kingdom*, no. 35348/06, § 81, 31 May 2011). That approach,

however, may not apply in all contexts, depending on the nature of the parent-child relationship (see, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 118, ECHR 2002-VI). Where the decision is explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established (see *A.D. v. Portugal* (dec.), no. 57789/17, § 44, 13 February 2018; and, *mutatis mutandis*, *Haase v. Germany*, no. 11057/02, § 99, ECHR 2004-III (extracts), 8 April 2004).

37. In evaluating the quality of a decision-making process that leads to the separation of a family, the Court will assess, in particular, whether the conclusions of the domestic authorities were based on sufficient evidence (including, as appropriate, statements by witnesses, reports by the relevant authorities, psychological and other expert assessments, and medical notes), and whether the interested parties (in particular the parents) had sufficient opportunity to participate in the procedure in question (see *Pontes v. Portugal*, no. 19554/09 § 76, 10 April 2012; *Saviny*, cited above, § 51; and *Strand Lobben and Others*, cited above, § 212).

38. Furthermore, the Court has repeatedly found that in cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, given the risk that the passage of time may result in a *de facto* determination of the matter. This duty is decisive in assessing whether a case concerning contact with a child was heard within a reasonable time, as required by Article 6 § 1 of the Convention, and also forms part of the procedural requirements implicit in Article 8 (see, *inter alia*, *Strand Lobben*, cited above, § 208, and *Hoppe v. Germany*, no. 28422/95, § 54, 5 December 2002).

2. Application of those principles in the present case

39. At the outset, the Court observes that the main complaint brought by the applicant before the Court is that the domestic courts failed to assign the care of the children to the paternal grandparents.

40. It also notes that at the domestic level the applicant did not appeal against the domestic court's findings regarding his own unsuitability to be the main carer of the children. He did not express a wish to have custody of the children himself, but instead requested that his parents be the main carers (see paragraphs 13, 22 and 24 above). On this particular point, it appears that the domestic courts carefully considered the possibility of giving G., B., and A. into the care of their parental grandparents and that the rejection of this option was sufficiently grounded. In that respect, the domestic courts referred to the psychological imbalance of the grandparents, the instability in their own family home, their lack of income, and their lack of an affectionate bond with the children or even of any long-term display of interest and care towards them (see paragraph 23 above).

41. In view of the above observations, the Court considers that the domestic courts weighed a series of factors – in particular of a factual, emotional, psychological, material and medical nature – and struck a fair balance between the interests of all those involved, with a constant concern for determining the best interests of the children. Regard is had to the fact that the applicant did not show any desire to be the main carer of the children. Instead, he requested that the children be placed in the care of his own parents, who have not themselves taken any stance on this point. The measure was thus proportionate to the legitimate aim pursued and necessary in a democratic society.

42. Turning to the decision-making process, the Court observes that it can be seen from the material in the case-file that the applicant was assisted by a lawyer at least since the first set of proceedings in January 2016 and that he participated in the adversarial hearings (see paragraph 10 above) (contrast *Haddad v. Spain*, no. 16572/17, § 72, 18 June 2019 and *Soares de Melo v. Portugal*, no. 72850/14, §§ 36 and 116, 16 February 2016). He was therefore involved in the decision-making process, seen as a whole, to a degree sufficient to afford him the requisite protection of his interests.

43. The Court furthermore notes that in delivering their decisions, the domestic courts relied not only on experts' reports but also on the views of all the parties involved, including those of the applicant (see paragraphs 7, 10 and 12 above), of the children (see paragraphs 20 and 25 above) and of the paternal grandparents (see paragraphs 10 and 12 above). The Viseu Family Court, having held oral hearings, benefited from direct contact with the parties and was able to hear the witnesses and thus make a clear assessment of the issues before it. Moreover, the Coimbra Court of Appeal reviewed questions of fact and gave a reasoned judgment upholding the Viseu Family Court judgment (see paragraph 25 above).

44. In view of the foregoing, the Court considers that the decision-making process satisfied the requirements of Article 8 of the Convention.

Conclusion

45. It follows from the above observations that there is no appearance of a violation of the applicant's rights under Article 8 of the Convention. The application is therefore manifestly ill-founded 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.

Done in English and notified in writing on 14 January 2021.

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Ilse Freiwirth
Deputy Registrar

Armen Harutyunyan
President