CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 50510/99
by Anna and Marian SCHULTZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 January 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Court of Human Rights on 15 January 1999 and registered on 24 August 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants, Anna Schultz and Marian Schultz, are Polish nationals, a married couple who were born on 20 February 1960 and 18 October 1956 respectively and live in Pątnów.

A. The circumstances of the case

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

The first applicant is a mother of nine children: Em. K., born 1981, Ew. K., born in 1982, Dor. K., born in 1984, Dom. K., born in 1985, M. K., born in 1987, A.K., born in 1988, K. K., born in 1989, U. K., born in 1991 and M. M., born in 1994.

On 24 February 1989 the Konin District Court divested the first applicant of her parental rights in respect of her then six children: Em. K., Ew. K., Dor. K., Dom. K., M. K. and A. K. Later on, M. K. and A. K. were adopted by another family, and for Em. K., Ew. K., Dor. K. and Dom. K. the court established a foster family, the first applicant's parents, the grandparents of the children.

On 20 January 1993 the first applicant's first husband R. K., the father of four of her children: Dom. K., M. K., A. K. and K. K., died.

On 6 February 1993 the Konin District Court restricted the exercise of the applicant's custody rights in respect of the other two children, K. K. and U. K., in such a manner that the court appointed a guardian to monitor the family. In both decisions, given in 1989 and in 1993, the court considered that the mother had been manifestly neglecting her parental duties towards the children and abused alcohol.

In 1994 M. M. was born. Later on, S. Miel. was established to be the father of this child in a judgment of the Konin District Court of 24 April 1995.

In May 1998 Z. S. and F. S., the first applicant's parents, requested the Konin District Court to divest the first applicant of her parental rights and establish them grandparents as a foster family also for K. K., U. K and M. M.

By a decision of 8 May 1998 the court divested the first applicant of her parental rights in respect of K. K., U. K and M. M., decided to place them in public care and appointed guardians for all three children. The court also refused to appoint the grandparents as the foster family.

The court first recalled the decisions of 1989 and 1993 as the background of the case. The case-files of these two sets of the proceedings were before the court. It further noted that even after the decision of 1993 had been given, the first applicant exercised her parental rights in a manner open to

criticism - she abused alcohol, was promiscuous and did not take proper care of the children, who were dirty and did not have adequate clothes. The efforts of the guardians, the local social assistance worker and the police to make the applicant comply with her parental obligations had proved successful only for short periods of time, after the talks they had with her.

After S. Miel., the father of M. M., had died on an unspecified date, the applicant began a relationship with another man, S.M. At the beginning she slightly improved her ways towards the children, but later on they started to drink alcohol together, S.M. battered the first applicant and her children, and on several occasions the police intervened.

It further noted that on 6 December 1997 the first applicant left home without leaving any contact address. S.M. and her parents took care of the three children. The grandparents had been unable to take proper care of the older four children, in respect of whom they had been appointed foster parents in 1989. The flat was dirty and they lacked basic personal hygiene habits. The flat was also relatively small and disorderly and the children did not have any table on which to do their homework. Despite the fact that the foster family had an income of 3200 PLN, which could not be considered small, this was not reflected in the quality of material conditions of the children's lives. The grandparents also had a certain tendency to abuse alcohol, and did not deny, when asked by the court, that from time to time they liked to drink. They were unwilling to co-operate with the guardians appointed by the court. In particular the first applicant's mother had tried to hide from the guardians the educational problems she had with the eldest daughter Em., whose behaviour had begun to resemble that of her mother. They also failed to comply with the guardian's suggestions to try to isolate the children from the pathogenic influence of the mother.

Since the three children had been placed in public care, their older siblings, grandparents and mother visited them very often. These children were nervous, seriously retarded in their emotional and intellectual development and wet their beds during the night.

It further considered that the conduct of the first applicant towards her children was such as to justify the conclusion that she had been consistently neglecting them. This was highlighted by, *inter alia*, the fact that in December 1997 she had left home - not for the first time - for several months, leaving no contact address and leaving the children under the care of her then partner, who had beaten them in the past. The court observed that the first applicant must have had strong sexual urges, as shown by the number of children she had by different men. She had often and casually taken up new relationships with men and was entirely absorbed by her personal life, to the detriment of the children. This demonstrated that she lacked the responsibility and maturity which were necessary for ensuring a proper care for her children and for ensuring that they were brought up in an atmosphere of love and stability. The court stressed that it had been the first

applicant's parents themselves who had requested that she be divested of her parental rights. The first applicant, in the light of her consistent conduct, had not given any guarantees that she would mend her ways. The prior decisions of the courts to divest her of parental rights were proved to be correct, and the same decision in respect of the further three children was called for.

The court further considered the request of the first applicant's parents to appoint them as a foster family. The court referred to the best interest of the three younger children, who, in view of their state needed conscientious professional care. The ageing grandparents were clearly unable to ensure such care for them, as shown by the fact that their care in respect of the older children had already proved inadequate. They limited their role to ensuring basic living conditions, but their educational skills left much to be desired.

The court acknowledged that the first applicant's parents loved their grandchildren, but the emotional state of the younger children and the delays in normal development warranted their placing in public care. This solution was dictated by their best interests: they should be permanently separated from their mother so that she would not have any detrimental influence on their education. Thus, the placing of the children in public care, with a view to a possible adoption, would ensure their normal and healthy development.

The following evidence was relied on: the testimony of the first applicant's parents, her own testimony, the case-files of the previous proceedings, the testimony of the guardian appointed to monitor the family, the reports she had prepared from the monitoring exercise and the report on the children drafted by the staff of the local emergency public care centre in which the three children had been placed.

The court relied on Article 111 and 109 §§ 1 and 2, item 5, of the Family and Custody Code.

The first applicant and her parents appealed against this decision.

On 7 August 1998 the Konin Regional Court upheld the contested decision. The court observed that the lower court, when taking its decision, had primarily had regard to the best interests of the children and had carefully reasoned its decision. It had had regard to the opinion prepared by the local public care centre as to the children's state, which certified that they had been badly neglected. It had also questioned the guardian, who stated, in particular, that the first applicant's parents used to drink occasionally, as they had themselves confirmed before the court. The lower court had further taken into consideration that the first applicant's parents lacked parenting skills as shown by the difficulties they had with the older children: Em. had schooling problems and was very often absent, Dor. was in a school for retarded children and therefore needed special attention, Dom. was neglected, dirty, and also had school problems and was, as a result, ostracised by other pupils.

It was stressed that the placing of the children in a public care did not mean that all contacts with their family would be cut. It remained open to them to visit the children at the children's home, and to take them for holidays, if the family court decided that this was appropriate.

It further examined the first applicant's appeal. It noted that she had stated that she had a new partner whom she wished to marry. This, in the court's opinion, did not amount to a convincing argument that she would mend her ways: in the past it was primarily the applicant's new relationships with her successive partners which had made her focus entirely on her personal life and neglect her mothering obligations. Thus, the fact that she had a new partner did not guarantee in itself that she would take adequate care of her children. It also noted that the new partner, the second applicant, did not himself provide any guarantees in this respect, given that he had allowed her to live with him for four months and had disregarded the fact that she left her children for several months without any information about her whereabouts.

The court concluded that the decision of the lower court, upheld by the Konin Regional Court, was lawful and justified.

B. Relevant domestic law

The Family and Custody Code (*Kodeks Rodzinny i Opiekuńczy*) of 1964 provides:

> Article 109
>
> "1. If the interests of a child are in danger, the court shall issue a relevant order.
>
> 2. In particular, the court may:
>
> 5) decide that the child should be placed in the custody of a public care institution (...)"

Pursuant to Article 111, if parental rights cannot be exercised due to a permanent obstacle, or if parents abuse their rights, or neglect their children in a flagrant manner, the family court shall divest them of their parental rights. If the grounds on which the parental rights had been withdrawn, cease to exist, the court may restore the rights to the parents.

Under Article 112.1 of the Code, the duties and rights connected with carrying out the day-to-day care and educational obligations in respect of the children who have been placed in a public care institution or with a foster family, are carried out by the institution or by the foster family.

According to Article 113 of the Code, the family court shall, if the best interest of the child so requires, prohibit access to the child by parents who have been divested of their parental rights.

COMPLAINTS

The applicants complain in substance under Article 8 of the Convention that the three children were taken into public care and that the first applicant's parents were not appointed as a foster family. The second applicant complains that he was deprived of the possibility of taking care of the children, whereas he should have had such a possibility, being married to the first applicant, the mother of the children.

The applicants complain that the national courts, by taking the decisions about taking the children into public care, violated their right to respect for the family life.

THE LAW

1. The applicants complain under Article 8 of the Convention, that the decisions of the national courts depriving them of the parental rights with respect to the three children violated their rights to respect for the family.

The Article 8 of the Convention in its relevant part 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."

The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 (see, *inter alia*, the McMichael v. the United Kingdom judgment of 24 February 19995, Series A no. 307-B, p. 55, § 86). Such interference constitutes a violation of this provision 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". The Court must also determine whether, having regard to the particular circumstances of the case and notably the importance of the decisions to be taken, the applicants were involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests (see, e.g., the W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 29, § 64, and the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 55, § 87).

In the present case the Konin Regional Court deprived the applicant of her parental rights in respect of her three children and placed them in public

care. The court also refused to appoint the first applicant's parents as foster family. These measures constituted an interference with the first applicant's right to respect for her family life as ensured by Article 8 §1 of the Convention and falls to be justified under Article 8 § 2.

The Court notes that the courts, when giving the contested decisions, relied on Article 111 and 109 §§ 1 and 2, item 5 of the Family and Custody Code. According to these provisions if the interests of a child are in danger the court may make relevant orders, and decide, *inter alia*, that the child should be placed in the custody of a public care institution or placed with a foster family. If the parents persistently fail to comply with their parental obligations and neglect the children, the Court is required to divest them of their parental rights. The interference was therefore "in accordance with the law".

The Court further considers that the decisions at issue pursued the legitimate aim of the "protection of health and morals", and of "the protection of the rights and freedoms" of the children concerned within the meaning of Article 8 § 2 of the Convention.

The Court must next determine whether the interference was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

The Court observes that the Konin District Court in its decision of 8 May 1998 referred to the previous decisions given by the family courts, which had divested the first applicant of her parental rights in respect of her first six children, and to the case-files of these cases. The courts considered in the light thereof that the first applicant had manifestly and consistently failed to take adequate care of her children, not only the three children concerned in the present case, but also the other six children, in respect of whom she had already been divested of her parental rights.

In the present case, in the proceedings before the Konin District Court, the first applicant and both her parents were questioned. The Court notes that it is not alleged that the first applicant was not sufficiently involved in the decision-making process. The court also questioned the guardian who had been monitoring the family, and took into consideration the relevant reports prepared by her. It had also regard to the opinion about the state of the three children, prepared by the staff of the local emergency public care centre, where they had been placed.

The court noted that it was the parents of the first applicant who had lodged the motion that she be divested of her parental rights with the court. The Court observes that they must have had a direct knowledge about the way in which she had complied with her parental obligations and had clearly strongly disapproved of the first applicant's behaviour.

It is further noted that the courts had regard to the family's past, which constituted a relevant background to the present case and reinforced the courts' conclusions. They also referred to the first applicant's repeated

disappearances and to her tendency to focus on her personal life with the successive partners, to the detriment of the children. In the court's opinion, the evidence unequivocally indicated that the mother was emotionally immature, lacked parental skills and had persistently disregarded her obligations.

The domestic courts emphasised the children's state, found that they were seriously neglected and retarded in their normal development, and therefore needed conscientious care.

The Court observes that the courts did not prohibit the first applicant from access to the children. It was stated in the decision that the family, including the first applicant, were visiting the three children at the local public care emergency centre. No measures were taken or suggested to be taken in the future to limit or prohibit access to the children after they had been placed in the public care institution.

As to the decision to refuse to appoint the first applicant's parents as a foster family, the Court notes the arguments relied on by the domestic courts. Their home conditions were found to seriously endanger the children's stable development and their overall health. The manner in which the grandparents had exercised their custody rights over the children was considered questionable as well, in particular in the light of the situation of the older children. The courts referred to Em.'s schooling problems and absenteeism, Dor.'s need for special attention in view of her development deficiency and Dom.'s overall state and social problems. The evidence presented in the case file indicated, in the Court's view, that the grandparents were not able to ensure attention and care of a standard which the children required. They were of advanced age and the quality of care which they could afford to the children deteriorated with age. The courts concluded that they did not give a guarantee that they would comply with the obligations of a foster family in respect of the three younger children in a satisfactory manner.

The Court is of view that the national courts carefully balanced the interests of the children against those of the first applicant. There are, in the Court's opinion, no grounds on which to consider that the decisions concerned in the present case were arbitrary or were taken following a superficial assessment of the evidence, or on the basis of inadequate evidence.

The Court therefore considers that the interference with the first applicant's right to respect her family life was justified under Article 8 § 2 of the Convention in that it could reasonably be considered “necessary in a democratic society” for the “protection of health and morals” and for “the protection of the rights and freedoms of others”.

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

2. The Court notes that the second applicant, the first applicant's husband, has also submitted his application to the Court.

Under Article 35 of the Convention, the Court cannot examine the application before the applicable domestic remedies have been exhausted. The court notes that the second applicant was not a party to any of the domestic proceedings concerned in the present case. Nor did he raise the complaints, which he now raises before the Court, in any domestic proceedings instituted on his own behalf. Therefore he failed to exhaust the remedies available under Polish law.

It follows that this part of the application must be rejected, in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President