CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11223/04
by X
against Croatia

The European Court of Human Rights (First Section), sitting on 18 May 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 25 February 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, X, is a Croatian national.

A. The circumstances of the case

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

1. Proceedings concerning the applicant's capacity to act

On 9 December 1998 the Welfare Centre (*Centar za socijalni rad,* "the Centre") issued a decision placing the applicant temporarily under the custody of her mother. On 15 December 1998 the same Centre instituted proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) with a view to depriving the applicant of her capacity to act (to perform acts with legal effect; *poslovna sposobnost*). The Centre based its request on the notice from the V. Psychiatric Hospital of 27 October 1998 in which it was stated that the applicant suffered from schizophrenia.

On 4 June 1999 the applicant was heard by the Municipal Court's judge for the first time. In view of the opinion given by the medical expert and the fact that the applicant was undergoing psychiatric treatment, the court stayed the proceedings.

In November 2000 the court resumed the proceedings and again heard the applicant who confessed to drug abuse. An expert witness gave her opinion on the applicant's condition, classifying it as schizophrenia.

On 14 May 2001 the Zagreb Municipal Court gave a decision depriving the applicant of the capacity to act. The applicant did not appeal against that decision, and it became final on 8 October 2001. The court appointed her mother as her guardian.

Following a request made the applicant's mother, on 27 December 2001 the applicant was placed under the custody of an employee with the Centre.

On 16 February 2004 the applicant filed a request with the Zagreb Municipal Court in order to revert her capacity to act.

On 23 April 2004 the court entrusted V. Psychiatric Hospital to give an opinion on the applicant's mental condition. Conclusion of the expert witness was that the applicant suffered from a chronic mental illness and drug addiction.

At the hearing on 12 October 2004, the applicant objected to the expert opinion and requested a new one. The second expert opinion given by the Psychiatric Clinic of the Zagreb Medical School supported the first one.

On 10 March 2005 the court denied the applicant's request to revert her capacity to act. The applicant did not appeal against that decision.

2. Proceedings concerning the adoption of the applicant's daughter

Meanwhile, on 25 December 1999 the applicant gave birth to her out-of-wedlock daughter A.

On 13 July 2000 A. was placed under the custody of the applicant's mother.

On 22 November 2001 the Centre issued a decision depriving the applicant of the right to live with her daughter, ordering that she be placed in SOS – Children's Village L., under the custody of one of their employees.

The applicant continued to visit her daughter on a regular basis.

In 2003 the Centre instituted proceedings for the adoption of A. without the applicant's knowledge.

On 21 August 2003 the A.'s guardian, gave her consent to the adoption.

On 2 September the Centre issued a decision authorising that A. be adopted. That decision became final on 11 September 2003.

Under the domestic legislation in force, the applicant was not a party to the adoption proceedings, nor was she informed that they took place. Only subsequently did the applicant find out that her daughter had been adopted.

3. The applicant's stays in hospital

Since 1998 the applicant has been hospitalised on several occasions. According to the applicant, during her stays in psychiatric hospital, she was deprived of her liberty and subject to degrading treatment. The applicant provided no further details in this respect.

B. Relevant domestic law

The Family Act (*Obiteljski zakon*, Official Gazette no. 116/2003 of 22 July 2003), insofar as relevant, read as follows:

Section 125(1)

"Adoption may be established if it is in the interest of the child."

Section 129(1)

"Establishment of the adoption shall require the consent of both parents, unless provided otherwise."

Section 130

"Establishment of the adoption shall not require approval of a parent, who is...

2. Deprived of the capacity to act..."

Section 135(1)

"The adoption proceedings shall be carried out *ex officio* by the competent welfare centre..."

Section 138(3)

"The parent whose consent is not required for the establishment of the adoption shall not be a party to the adoption proceedings."

Section 139

"If necessary, the competent welfare centre shall hear the child's other relatives about the circumstances relevant for the establishment of the adoption."

Section 144(1)

"Once the adoption has been established, all rights and obligations between the child and his blood relatives shall cease."

C. Relevant international law

The UN Convention on the Rights of the Child of 20 November 1989, which entered into force in respect of Croatia on 8 October 1991 (Official Gazette - International Agreements 15/1990), insofar as relevant reads as follows:

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. "

"2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

Article 21

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary..."

The European Convention on Adoption of Children of 24 April 1967, insofar as relevant, reads as follows:

Article 5

1. "...an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

a. the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place to exercise their parental rights in that respect;

b. the consent of the spouse of the adopter.

2. The competent authority shall not:

a. dispense with the consent of any person mentioned in paragraph 1 of this article, or

b. overrule the refusal to consent of any person or body mentioned in the said paragraph 1,

save on exceptional grounds determined by law.

3. If the father or mother is deprived of his or her parental rights in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent. "

COMPLAINTS

1. Without relying on any particular provision of the Convention, the applicant complains about the adoption of her daughter. In particular, she complains about the fact that she was not a party to the adoption proceedings, that she never gave her consent to the adoption and that she was never even informed that such proceedings had been instituted. Moreover, none of the child's other relatives were heard in those proceedings. In this connection, the applicant also complains that her guardian has been employed with the same Centre that carried out the adoption proceedings, claiming that she influenced the initiation of the adoption proceedings, instead of protecting the applicant's rights.

2. The applicant further complains under Article 13 that she was deprived of the right to an effective remedy in that she could not appeal against the decision on the adoption.

3. The applicant also complains under Article 3 of the Convention that she was subjected to torture and inadequate therapy at the psychiatric hospital; under Article 4 that her daughter has been held in slavery by the adoptive parents; and under Article 5 of the Convention that her rights to liberty and security were violated during her numerous stays in psychiatric

hospitals. Finally, the applicant complains under Article 14 of the Convention that she was discriminated against in that her child was adopted because she was poor and the adoptive parents apparently well off.

THE LAW

1. The applicant complains about several facts concerning the adoption of her daughter. In particular, she complains about the inability to take part in those proceedings. She also submits that the employee of the same Welfare Centre conducting the adoption had been her own guardian, who should have protected her interests.

The Court considers that this part of the application falls to be examined under Articles 6 § 1 and 8 of the Convention, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

Article 8

"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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complains about a lack of an effective remedy to challenge the decision on the adoption of her child. She relies on Article 13 of the Convention, the relevant part of which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant also complains of the infringement of her rights under Articles 3, 4, 5 and 14 of the Convention, which provide, respectively, for prohibition of torture, inhuman or degrading treatment, prohibition of slavery and forced labour, right to liberty and security and prohibition of discrimination in the enjoyment of Convention rights.

The Court observes that the applicant did not substantiate any of the above complaints. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court considers that the present case does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the respect for her family life, the access to court and the existence of an effective remedy;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President