UKRAINE: State had no right to remove children of blind parents

Summary

The parents of the Saviny family, two blind adults raising seven children, argued that Ukrainian authorities were obliged to provide financial support to help them raise their children. In its ruling the European Court of Human Rights once again denied the widespread presumption that people with disabilities are not able to independently raise and educate their children.

Circumstances of the case

Sergiy Leonidovych Savin, and his wife, Valentyna Oleksandrivna Savina, lived in an apartment in Romny, Ukraine, provided by the State, which had no sewerage or gas. The Savinys, two blind parents raising seven children, had little in the way of income. Sergiy only worked a few days from 2001 to 2006 at the Ukrainian Society of the Blind, before he reached retirement age and was dismissed, while Valentyna had not worked since the 1990s.

Between 1998 and 2004, representatives of the city's Municipal Juvenile Service and the Trusteeship Council, in cooperation with several other municipal authorities, visited the family's apartment repeatedly to prepare reports on the suitability of living conditions for the upbringing of children. According to their reports, the conditions were extremely unsatisfactory.

The parents had previously appealed to the local authorities with several requests for financial help, in particular for the installation of gas in their apartment to improve heating and access to hot water. All these requests were ignored, as their neighbours categorically objected to gas installation, considering it dangerous due to the Savinys' visual impairments. Moreover, the Savinys applied for help with finding work, requests which were also ignored by the authorities.

National courts

In 1998, four children were removed from the family and placed in boarding homes across the city. Later, on 5 January 2004, the Romny district prosecutor filed a lawsuit to remove the three children who remained in the care of their parents.

The decision of the local court was almost immediate. According to the court's decision, living conditions were dangerous both for the children's physical and mental health. The court argued that the children were dirty, hungry and not dressed appropriately for the weather, noting that the eldest son was collecting bottles and begging in the street.

After the court's decision to remove the children, their parents immediately contacted a lawyer, Dmytro Menko, asking for help. The Savinys and Menko put together an appeal arguing that, according to the Family Code of Ukraine, children could be removed from the family for failure to provide for children, cruelty, chronic alcoholism or drug dependence of parents, exploitation of children, and also involving them in begging and vagrancy. They insisted that their situation had nothing to do with any of those criteria and contended that the conditions in which they raised their children were basic, but not dangerous. The applicants further explained they could not provide the best conditions for children as a consequence of their blindness and were victims of discrimination by government officials.

Despite the strength of their arguments the appeal was rejected, and the next step was to appeal to the Supreme Court of Ukraine. The family's attorney Dmytro Menko said: "We prepared a cassation appeal, in which again we referred to the European Convention on Human Rights, noting that the court's decision does not comply with these provisions. Moreover, my clients were not provided with any legal assistance at the court of the first instance. Being blind, they could not even get acquainted with the documents of the case."

On March 22, 2006, the Supreme Court of Ukraine dismissed the complaint. The decision of the first instance court was enforced and children were eventually removed from the family. The children themselves did not attend any court hearings and their opinions were never taken into account at any stage of the proceedings.

The eldest son was assigned to a boarding school in Romny, and the two other children were sent to a boarding school in the city of Sumy, around one hundred kilometers away from their home and their parents. Furthermore, the eldest Saviny child, who was placed in Romny orphanage, was not allowed to go home on weekends, due to the terms of the court order which removed him from the family. "[The] children were practically deprived of the opportunity to communicate with their parents," explained Menko, "because it's very expensive and far to travel."

Bringing the case to the European Court of Human Rights

It seemed the only way to obtain justice was to file a complaint with the European Court of Human Rights. Menko already had experience of appealing to the ECHR, and the family quickly agreed to pursue the case further. Menko admitted that there was only a small chance of success: "It was practically obvious that the only way out in the current situation was to put children in a boarding school. On the other hand, after all, they are parents and they are parents with disabilities. And in fact they repeatedly addressed local authorities with requests to provide help!"

The applicants agreed that their living conditions were basic, however, they did not consider the conditions so dangerous that they threatened the life or health of children and made their removal necessary. In particular, there was no evidence that children suffered from any diseases related to malnutrition or unsanitary conditions.

The applicants did not deny that they received some financial support from the State, but insisted that in order to improve their situation such support was extremely inadequate. Moreover, their requests to the authorities to provide gas to their apartment, allowing them to have heating and hot water and, consequently, to create normal sanitary conditions, were denied. The applicants agreed with the decision to place children in boarding schools, but argued that alternative methods could have been used. By placing their children in different institutions, the State made it almost impossible for their parents to communicate with their children. In the applicants' view, if the children were allowed to visit their parents for short periods of time, it would only serve their best interests and would not present any danger.

For their part, the government stressed that the applicants were not deprived of their parental rights. However, they claimed that the parents rarely visited the children after they were placed in institutions and did not do anything to improve their own living conditions, thereby demonstrating that they were not interested in family reunification. The government also stressed that the applicants received government benefits and assistance from the State-supported Ukrainian Society of the Blind, which turned out to be pointless, since the applicants were "immature and irresponsible".

ECHR decision

The ECHR decided to give the case priority status. "Prior to that I had one more case pending before the ECHR, it concerned criminal prosecution and I had asked for priority status. We waited for about three years" noted Menko, "But in the Saviny case, I did not even ask, however, according to the decision of the chamber's chairman, the case was given priority status and on the initiative of the ECHR funds were allocated to pay for my services. And then I realised that this matter is of particular importance in the light of the Convention on the Protection of Human Rights."

In its final decision, the court stressed that maintaining mutual relations between children and parents was a fundamental element of family life. It ruled that although governments have the discretion to decide about the placement of children into State care, the separation of family ties means a child will be separated from their roots - which can only be justified in exceptional circumstances. The court stated that an appropriate decision needed to be supported by sufficiently substantiated and weighty considerations in the interests of the child, with the government taking responsibility for accurately assessing the potential consequences of the proposed measure for the child and their family.

In particular, the court pointed out that when a decision is interpreted as required to protect a child from danger, it is necessary to establish the actual danger. The fact that a child can be placed in a more favourable environment does not justify the decision to remove him or her

from the family. The ruling also noted that a merely financially unstable situation can be solved by less radical measures, such as by providing financial and social support.

The court further argued that in any case the placement of a child into State care should be viewed as a temporary measure, which should be suspended as soon as circumstances permit. Therefore, such a measure can not be justified without first considering possible alternatives and should be perceived in the context of the positive obligation of the State to make every effort to promote the reunification of children with their parents and to maintain regular contact between them, with brothers and sisters residing in the same institution wherever possible.

The court found the reasons for which the children were separated from their parents relevant, but doubted the adequacy of the evidence that the living conditions of children were actually dangerous for their life or health. In particular, it noted that the proceedings which started in January 2004 did not lead to the removal of children until June 23, 2006.

During these two years, no temporary measures have been taken and, in fact, there has been no record of any harm to children during this period. In addition, a number of concrete conclusions, for example, that children were malnourished, dressed improperly and often remained alone, were based solely on the materials of the municipal authorities derived from their occasional inspections of the applicants' home. No other supporting evidence, such as the opinion of the children themselves, their medical records, the views of their pediatricians or neighbours, had been taken into account.

The court concluded that the judicial authorities had failed to conduct a detailed investigation to establish the extent to which the alleged inconsistencies in children's upbringing were related to applicants' blindness, pointing out that this was rather a situation related to their financial difficulties, which could have been eliminated with the support of the State.

Furthermore, an evaluation of the emotional or mental maturity of the parents never took place. There was no analysis of the applicants' attempts to improve their situation. There was no data on the actual volume and sufficiency of social assistance, or on the content of specific recommendations provided or explanations as to why these recommendations failed. Critically, throughout the entire process, at no stage of the trial were the children's own opinions heard.

Thus, the Court ruled that Ukraine violated Article 8 of the European Convention on Human Rights. Although the reasons for the State's decision to withdraw the children from the family were relevant, they were not sufficient to justify such a serious interference with the applicants' family life. Menko commented on the Court's decision: "This was a huge satisfaction for us. It is very important that the ECHR stressed the duty of the State to provide satisfactory living conditions for these children."

Outcome

After the ECHR carried out its decision, the case returned to the Supreme Court of Ukraine, and the original decision of the first instance court to remove children from the family was overturned. After the decision by the ECHR, the family repeatedly appealed to the local authorities with requests for financial support, but they never received a response.

"According to Ukrainian legislation, if a family adopts a child, the State pays them monthly around 4600-4800 hryvnia [160-150 Euros]. This is a decent amount, given that the minimum wage is 3200 hryvnia [108 Euros]. Now, if Saviny received such help, this case would have not even happened," Menko stated.

As a result, despite the fact that the ECHR has indicated that placement of the child under public care should be considered only in exceptional circumstances and as an interim measure, the Savinys' children remained in boarding schools due to lack of proper State support for the family. On top of this, Menko told CRIN that, according to Ukrainian legislation, only orphans and children deprived of parental care are eligible for State funding in care institutions.

Thus, as they had supposedly not been deprived of parental rights, the Savinys should have themselves paid for the accommodation of their children in boarding schools. Thus, when the case was readmitted, the family found themselves in a vicious circle: Ukraine's social services claimed that without a court decision to take away their children, they could not be placed in State institutions, but at the same time the State had also refused to provide financial support to keep them at home.

"How absurd is that? Even worse, a year after the decision of the European Court, the father of the family passed away. It was difficult for the mother to look after children on her own. In the absence of proper support from the authorities for the family, it was logical to put the children in a boarding school, but to give the mother the opportunity to visit them and take them home on weekends," Menko added. In the end, as an exception to the rules, the children were arranged places in boarding homes without a court decision to remove them from their mother.

Impact

Despite the fact that social assistance programs for vulnerable families in Ukraine still provide little support, judicial practice has changed significantly thanks to the Saviny case. According to the data of the Ukraine's Unified State Register of Court Decisions, it has been cited in 939 cases of the courts of first instance, in 78 appeal cases and nine cassation cases.

According to Menko, cases of State interference in family life occur much less frequently now, and only in exceptional cases: "The case greatly changed the attitude of the State to such situations and, accordingly, the attitude of the courts."

Moreover, State is now considering the possibility of full de-institutionalisation of care institutions and boarding homes. Recent studies have shown that huge amounts of budget

allocated for orphanages are not spent on children, but rather on the maintenance of the institutions. Thus, out of 6 billion hryvnia (around 203 million euros), about 84 percent is spent on the maintenance of staff and buildings, and only 16 percent is spent on food, treatment and clothing for the child residents. "If you gave Saviny that kind of money which is being spent on a boarding school maintenance it could be an astronomical sum for them. They could do everything, buy an apartment for their children, provide them with all kinds of opportunities," noted Menko.

The practice of European countries proves that parents with disabilities can cope with the upbringing of their children no worse than others if the State provides them with the necessary support. When CRIN asked attorney Dmytro Menko what advice would he give to other lawyers, he said: "First and foremost, put yourself in the client's shoes. When I took up this case, I thought how would it be if I was in their place. They do not see anything around, well, they are very, very limited in life, God has created them like that. And children are the most precious thing they have."

Further information

- Read CRIN's case summary of Saviny v. Ukraine.
- Find out more about strategic litigation.
- See CRIN's country page on Ukraine.
- Read CRIN's report on access to justice for children in Ukraine.

CRIN's collection of case studies illustrates how strategic litigation works in practice by asking the people involved about their experiences. By sharing these stories we hope to encourage advocates around the world to consider strategic litigation to challenge children's rights violations. For more information, please visit: https://www.crin.org/en/home/law/strategic-litigation/strategic-litigation-case-studies.
