



Berecovã v. Slovakia

Berecovã v. Slov., App. No. 74400/01, Eur. Ct. H.R. 319 (2007).

Country: Slovakia

Region: Europe

Year: 2007

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Child and adolescent health, Health systems and financing, Mental health, Violence

Human Rights: Right to family life, Right to privacy

Facts

Applicant is a Slovakian national who was granted custody of her two children following her divorce from her husband. The children were allegedly ill-treated, beaten and neglected by applicant and had run away from home. They manifested fear of their mother and refused to return home. A psychologist concluded that their fear resulted from punishment inflicted by their mother and from her harmful emotional behavior. Consequently, an injunction based on the Social Assistance Act and the Family Act (the Acts) stated that the applicant had grossly neglected the education of her children, and that there was a suspicion that she had ill-treated them, ordered that they be placed temporarily in the father's custody. Subsequent injunctions ordered that the children be placed in care since the father was unable to take care of them. The Acts did not allow for review, contrary to Article 41(4) of the Constitution, which required a judicial determination before the State could separate an under-age child from his or her parents against the parent's will. The applicant complained that her right to respect for her family life had been violated by the placement of her children in an institution. She relied on Article 8 (respect for private and family life) of the European Convention on Human Rights.

Decision and Reasoning

The Court found a violation of Article 8 (respect for private and family life) of the European Convention on Human Rights. Indeed, the Court found that the interference in the applicant's family life had not been "in accordance with the law" as required by Article 8 paragraph 2 because, at the relevant time, the applicable ordinary laws had been declared inconsistent with the Constitution by the Constitutional Court of Slovakia.

Decision Excerpts

"52. The relevant provisions of the Family Act of 1963 and the Social Assistance Act of 1998 then in force prevented the applicant from having the decisions in issue given by administrative authorities reviewed by a court. This situation was contrary to Article 41(4) of the Constitution which permits the separation of under-age children from their parents against the latter's will only pursuant to a judicial decision. It was incompatible with Article 152(4) of the Constitution under which the interpretation and application of, inter alia, ordinary laws have to be in accordance with the Constitution.

53. The interference in issue was thus contrary to the Constitution which, as the Constitutional Court found, is the fundamental source of law in Slovakia to which the other legal rules have to conform. As a result, that interference was not "in accordance with the law" as required by Article 8 paragraph 2 of the Convention. In these circumstances, there is no need for the Court to determine whether or not the interference was "necessary in a democratic society" within the meaning of that paragraph."