



Eriksson v. Sweden

App. No. 11373/85, 12 Eur. H.R. Rep. 183 (1990).

Country: Sweden

Region: Europe

Year: 1989

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

Health Topics: Child and adolescent health, Health care and health services, Health systems and financing, Mental health

Human Rights: Right to due process/fair trial, Right to family life, Right to privacy

Facts

Applicant and her daughter Lisa are Swedish nationals. Lisa was taken into public care shortly after her birth on the ground that the conditions in their home were unsatisfactory. Later on an appeal the court terminated the public care, but prohibited for an indefinite period the removal of Lisa from the foster home pursuant to section 28 of the Social Services Act and further regulated applicants' access to her. The prohibition on removal was based on, five medical certificates from the Psychiatric Clinic which stated that Lisa was deeply rooted in the foster home and her transfer to her natural parents' home would jeopardize her mental health and development. Applicant unsuccessfully brought a series of proceedings over a period of six years challenging the prohibition on removal. Applicants alleged violations of Articles 6 para. 1 (effective remedy), Article 8 (respect for family) of the Convention.

Decision and Reasoning

The court found a violation of Article 8 (art. 8) of the Convention. It reasoned that the imposition of restrictions on access while a prohibition on removal is in force lacked all legal effect as there are no legal provisions on which any such restrictions could be based under Swedish law. The interference in question with Mrs. Eriksson's right to respect for family life did not have the requisite basis in domestic law and was therefore not "in accordance with the law" for the purposes of Article 8 (art. 8). The severe and lasting restrictions on access combined with the long duration of the prohibition on removal are not proportionate to the legitimate aims pursued. There has been a violation of Articles 6 para. 1. Since no administrative appeal lay against a decision by the Social Council to restrict access, applicant did not have any remedy before a court with regard to the restrictions imposed on her access to her daughter Lisa.

Decision Excerpts

67. Section 28 is clearly designed to protect the legitimate interests of children when a care order is lifted. The Court has also found (see paragraph 62 above) that there is nothing to suggest that the prohibition on removal was not imposed in accordance with this section. It accordingly concludes that that measure did have the aims invoked by the Government. Although the Court has found that the restrictions on access had no basis in domestic law (see paragraph 65 above), it does not doubt that they were imposed with the legitimate aims of protecting Lisa's health and rights.