MALTA

QORTI CIVILI
(SEZZJONI TAL-FAMILJA)

ONOR. IMHALLEF
ABIGAIL LOFARO

Seduta tal-25 ta' April, 2012

Mandat Numru. 81/2012/1

A B
Vs
C D u E F G

Il-Qorti:

Rat ir-rikors tar-rikrorenti tad-19 ta’ April 2012 li permezz tieghu talbet il-hrug ta’ Mandat ta’ Inibizzjoni kontra l-intimati biex jigu inibiti milli johogu lill-minuri H C barra minn Malta.

Rat id-digriet taghha tad-19 ta’ April 2012, li permezz tieghu, ‘inter alia’ laqghet it-talba provvizorjament u appuntat ir-rikors ghas-smigh ghat-18 ta’ Mejju 2012.

Rat ir-rikors b’urgenza tal-intimati tal-20 ta’ April 2012 li permezz tieghu talbu lill-Qorti sabiex tisma l-mandat b’urgenza, qabel il-25 ta’ April, 2012 peress illi l-esponenti u uliedom ser jigu rilokati fl-Isvizzera fil-25 ta’ April 2012, u

ghalhekk il-Qorti intalbet tirrikjama s-smigh u t-trattazzjoni tal-mandat f'jum qabel il-25 ta' April 2012.

Rat id-digriet taghha tal-20 ta' April 2012 li permezz tieghu "inter alia" laqghet it-talba ghas-smigh u trattazzjoni tal-mandat bl-urgenza u irrikjamat il-mandat ghas-smigh ghat-23 ta' April 2012.

Rat ir-risposta tal-intimati ghar-rikors li sar ghall-hrug ta' mandat ta' inibizzjoni.

Semghet lix-xhieda illi gew prodotti.

Rat l-affidavits bix-xihda tar-rikorrenti, tal-familjari u ta' habiba tar-rikorrenti.

Rat id-dokumenti illi gew esebiti, il-provi u l-atti ta' dan il-procediment.

Rat ir-rapport preliminari ta' David Grillo, minnu mahluf fit-23 ta' April, 2012.

Rat id-digriet taghha tat-23 ta' April 2012 li permezz tieghu estendiet l-inkarigu ta' David Grillo espert psikoterapista, ghall-finijiet u effetti kollha tal-Mandat ta' Inibizzjoni, b'dan illi kellu jkellem lill-minuri H, u jirrapporta lura lill-Qorti fis-seduta tallum;

Rat ir-rapport ta' David Grillo, mahluf minnu waqt is-seduta tallum.

Semghet lill-avukati difensuri tal-partijiet jaghmlu domandi in eskussjoni lill-espert psikoterapista, semghet it-twegibiet tieghu u semghet it-trattazzjoni tal-avukati difensuri tal-partijiet;

Rat illi irrizulta mir-rapport preliminari tas-Sur Grillo illi minkejja illi kien ikkuntattja lil omm il-minuri u ghamel appuntament maghha biex ikellem lill-minuri fil-21 ta' April 2012, dawn baqghu ma tfaccawx u illi Dr Lara Dimitrijevic , l-avukat tal-intimati, infurmatu li l-klijenta taghha ma marritx tkellmu fuq il-parir taghha.

Ikkunsidrat :

Illi irrizulta mill-assjem tal-provi prodotti illi r-rikorrenti kienet marret tghin, fl-Open Center ta' Hal Far u hemm hekk kienet rat ringiela tfal fil-buggies. Kienet kellmet lill-intimata li kienet qaltilha illi bintha kellha erba' xhur, u li kellha bzonn lil xi hadd biex jiehu hsiebha sabiex hi tohrog tahdem. L-intimata kienet qaltilha ukoll li kellha lil binha l-Creche. Ir-rikorrenti bdiet tiehu lill-minuri ghandha fil-weekends u meta tkun bil-leave izda meta l-intimata hadet lill-minuri l-Creche, ir-rikorrenti innotat illi l-minuri kienet imdejqa u ghalhekk informat lill-intimata li kienet ser tiehu lill-minuri maghha u ghamlet hekk bil-kunsens tal-intimati u ilha trabbiha ghal dawn l-ahhar hames snin.

Illi mhux ikkontestat illi r-rikorrenti habbet u rabbiet lill-minuri H daqslikieku kienet bintha, edukataha fi skola privata, hallsitilha ghal 'extra curricular activities', spejjez ta' safar u kull ma jkun hemm bzonn. Sahansitra sifritha maghha u hallset lil ommha sabiex tehodha btala l-Isvizzera biex jaraw lil qrabathom hemmhekk.

Il-minuri iffurmat rabtiet familjari sodi ferm mal-familja tar-rikorrenti illi kollha iqisuha bhala wahda tal-familja. Ir-rikorrenti thallas ukoll l-ispejjez ta' skola privata u trasport lil hu l-minuri, Abdul u ghenet lill-intimati finanzjarjament kull meta kellhom bzonn.

Illi ir-rikorrenti saret taf illi l-intimati kienu ser jigu 'relocated' l-Isvizzera flimkien mal-minuri H madwar gimghtejn qabel ma pprezentat ir-rikors, madanakollu ipprezentat ir-rikors taghha il-Hamis 19 ta' April 2012, sitt ijiem biss qabel il-gurnata illi fiha ghandhom isiefru l-intimati, u b'hekk il-Qorti giet rinfaccata b'sitwazzjoni fejn id-decizjoni ghandha bil-fors tittiehed fi zmien qasir ferm.

Ikkunsidrat :

Illi l-intimati, flimkien mal-erba' ulied taghhom, gew maghzula sabiex jibdew hajja gdida fl-Isvizzera, pajjiz ghani li joffrilhom opportunitajiet kbar. Illi irrizulta, kemm

mix-xiehda ta' Jon Hoisaeter, ufficjal tal-UNHCR, kif ukoll minn dokument mahrug mill-International Organisation for Migration ipprezentati mill-intimati, illi jekk l-intimati ma jsifrux lejn l-Isvizzera illum, qatt ma jerga jkollhom l-opportunita' illi jigu rekolati fl-Isvizzera.

Illi gie ippruvat, minn dokument B esebit mar-risposta tal-intimati, illi l-UNHCR ghamlet diversi laqghat mal-intimati u t-tfal taghhom u illi l-minuri H kienet dejjem prezenti ghal dawn il-laqghat u dejjem ikkomportat ruhha b'mod normali. Irrizulta mill-istess dokumenti illi l-intimati infurmaw lill-UNHCR dwar il-fatt illi r-rikorrenti kienet tiehu hsieb H, b'dana pero' illi huma dejjem baqghu f'kuntatt ma H u ma riedux jabdikaw mir-responsabbiltajiet taghhom lejha. Illi l-UNHCR tqis illi l-ghaqda fil-familja hija fl-ahjar interess tal-minuri dejjem sakemm ma jirrizultax illi l-minuri tkun giet traskurata jew abbuzata, u dan ma irrizultalhomx fil-kaz odjern. Ghalhekk huma irrakomandaw illi l-intimati jintbaghtu l-Isvizzera, izda d-decizjoni finali ittiehdet mill-awtoritajiet Svizzeri u l-awtoritajiet Maltin, flimkien mal-intimati.

Illi, kif diga' intqal, ir-rikorrenti kienet hallset lill-intimata sabiex tiehu lil H l-Isvizzera ghal gimgha, peress illi l-intimati ghandhom qraba taghhom jghixu hemmhekk.

Illi irrizulta ukoll illi l-intimati kienu jaraw lil H, anke jekk mhux spiss hafna. H ghandha relazzjoni tajba mal-familja naturali taghha inkluz mat-tlett hutha.

Illi ir-rikorrenti allegat illi l-intimat gieli sawwat lil martu u illi l-intimata gieli sakkret lit-tfal f'kamra u halliethom wahedhom sakemm harget jew marret tahdem.

Illi l-intimati cahdu kategorikament dawn l-allegazzjonijiet u irrizulta illi r-rikorrenti qatt ma ghamlet xi rapport lill-pulizija f'dan is-sens. Ir-rikorrenti dejjem hadet lil H ghand l-intimati u gieli hallietha ftit maghhom u addirittura kienet kuntenta thalli lil H issiefer ma ommha ghal gimgha u dan ukoll jindika illi ma kien hemm l-ebda abbuz jew vjolenza fuq H meta kienet tkun mal-familjari taghha.

Illi ukoll giet esebita l-kondotta tal-intimat, illi hija netta u fic-cirkostanzi il-Qorti rat illi l-allegazzjonijiet tar-rikorrenti ma gewx ippruvati.

Illi il-psikoterapista ra lill-intimata u lill-minuri H ukif ukoll lir-rikorrenti fl-24 ta' April 2012 u irraporta lura lill-Qorti fis-seduta ta' llum.

Illi David Grillo irrapporta illi l-minuri hija kunfidenti, socjevoli u intelligenti u illi thobb lill-intimata. Hija tghid illi ghandha "two mummies" u illi l-genituri taghha wegheduha illi jgibuha Malta fil-vaganzi sabiex tkun tista tara lir-rikorrenti. Il-minuri stqarret li kienet ser thoss in-nuqqas tar-rikorrenti u tal-hbieb taghha, kienet konfuza izda ma kenitx trawmatizzata.

Illi l-Qorti thoss illi l-Awtoritajiet f'Malta, l-International Organisation for Migration, l-Awtoritajiet Svizzeri u l-UNHCR ma hadux hsieb jezaminaw fir-reqqa is-sitwazzjoni tal-minuri H u ma sarux l-arrangamenti idoneji sabiex il-minuri tigi ippreparata sew ghal din it-tranzizzjoni.

Illi l-qorti tirrakkomanda bil-qawwa kollha illi f'kaz ta' sitwazzjoni simili, fil-futur, l-Awtoritajiet kompetenti :

1) jassenjaw 'child psychologist' u 'social worker' sabiex jghinu lill-partijiet kollha u spjecjalment lill-minuri, fit-tranzizzjoni illi trid issehh minn mal-familja tal-'carers' ghall-familja naturali tal-minuri,
2) jiehdu hsieb illi l-minuri ikollha l-opportunita' ittemm is-sena akkademika fl-iskola u ikollha zmien bizzejjed sabiex tispjega illi ser tigi relokata lill-hbieb taghha kolllha u titkellem dwar is-sitwazzjoni mal-hbieb taghha u b'hekk jkollha 'closure' maghhom.
3) Jinhatru 'social workers' tal-Agenzija Appogg sabiex jahdmu maz-zewg familji bil-ghan illi jintlahaq ftehim bejn il-familja tal-carers u il-familja naturali dwar l-access mill-carers ghall-minuri wara li tkun saret ir-relokazzjoni, fl-istess suprem tal-minuri.
4) Jigi appuntat 'social worker' li jkun hadem fil-qasam ta' l-imigrazzjoni sabiex jghin lill-minuri fil-perijodu ta' tranzizzjoni.

5) Jinhatar ‘child psychologist’ bil-ghan illi jispjega din it-tranzizzjoni lill-minuri.

Il-Qorti tittama illi dawn ir-rakkomandazzjonjiet jigu implimentati sabiex b’hekk jigu minimizzati l-wegghat u is-sofferenzi kbar illi jridu jbaghtu minnhom il-persuni involuti f’dawn id-drammi umani.

Ikkunsidrat :

Illi kien ikun ferm aktar desiderabbli li kieku l-Qorti ngabet a konjizzjoni ta’ din is-sitwazzjoni ferm qabel sabiex b’hekk kienet tigi appuntata ‘social worker’ li, flimkien mal-psikoterapista David Grillo, kienu jkunu f’posizzjoni illi jghinu lill-minuri taghmel it-tranzizzjoni minn ghand ir-rikorrenti ghal ghand il-genituri naturali.

Illi matul dan il-process, kemm ir-rikorrenti kif ukoll l-intimati kienu jinghataw l-ghajnuna mehtiega u t-tranzizzjoni kienet issehh bl-aktar mod seren u minghajr skossi.

Illi minflok sar hekk, sfortunatament ir-rikorrenti kellha tiehu lill-minuri l-Ghassa tal-Pulizija fejn kien hemm l-intimata u l-avukati tal-partijiet u l-minuri giet mitluba taghzel ma’ min riedet tmur, u ghazlet lill-intimata, izda b’mod ferm trawmatiku ghall-minuri. Il-minuri ttiehdet mal-intimata dakinhar stess, cioe` fid-19 ta’ April 2012.

Ikkunsidrat:

Illi m’huwiex kontestat illi r-rikorrenti m’ghandhiex dritt izzomm lill-minuri fil-kustodja taghha, peress illi qatt ma sar xi ftehim jew inbdew xi proceduri ghal adozzjoni jew fostering tal-minuri.

Illi d-decizjoni trid tittiehed mill-Qorti fl-interess suprem tal-minuri.

Illi l-Qorti rat ir-rapport tal-psikoterapista David Grillo pprezentat u mahluf fl-udjenza tal-lum.

Illi l-Qorti rat illi s-sur Grillo wasal ghas-segwenti konkluzjonijiet u rakkomandazzjonijiet:

“Conclusions and Recommendations

According to the UNHCR representatives in Malta, postponing of relocation is not possible and therefore a period where H can be supported, in Malta, to make a healthy transition from A’s family to her biological parents cannot be considered. Having said this, given that the relationship between A and the biological parents is severed due to court litigation and lack of trust from both sides, this transition would have been more difficult and would have needed monitoring. While it would have been ideal for H to have a smooth transition period and to clarify confusion, making the family lose the opportunity for relocation may also have negative consequences on H since she will always carry the burden for the family. Both uprooting without preparation, and missing on relocation might be damaging for the child. The best interest of H, these circumstances still need to be considered and therefore the following is being recommended as soon as the family relocates in Switzerland:

1. The Swiss Foundation of the International Social Service, an organisation which works with children across borders, needs to be informed immediately about the case, so that the best available support can be given to the child. ISS Switzerland in liaison with UNHCR needs to support the family to support H.
2. It is important that a Social Worker and/or a psychologist will explain to H what relocation means to her and her family. Information needs to be age appropriate and need to focus on reducing confusion and anxiety. Work should also focus on building a stronger relationship with the siblings.
3. A child psychologist and a social worker are to be assigned to H to help her adapt to the biological family and to deal with the abrupt changes that she will go through. Sessions need to address the relationship with A and what she means to H.

4. E and C need to understand that H will need a period of adjustment. Any unfavourable comments regarding A will be damaging. H needs to know that it is acceptable for the parents that she expresses that she misses Malta and that A is important in her life. A needs to be acknowledged for the solid basis that she offered H.
5. Ideally, the biological parents will reach an agreement with A, so that in the best interests of the child, some continuity is provided by means of phone calls and visits. These need to be structured, scheduled and agreed upon and signed.
6. H needs to be supported by means of normalcy and routine and as much as possible, continue to take regular part in activities that she had started in Malta like ballet, dancing, gymnastics and dancing. She also needs to be supported to form new friendships.
7. After a cooling period of a month from departure, agreement may be reach with Ms A B to, if she and the biological parents wish, keep supporting her in her education and development while she is relocated in Switzerland. This will give the child the opportunity to keep contact with her current primary care giver and to keep the same standards of Education being offered now.
8. The Swiss authorities, through their Social Services and in liaison with UNHCR, need to monitor the adjustment of H and to keep offering the necessary psychological and social services to the family."

Illi, peress illi l-Qorti taqbel ma dawn il-konkluzjonijiet u rakkomandazzjonijiet qeghda taddotta fl-intier ir-rapport tal-espert psikoterapista u taghmlu bhala taghha.

Illi irrizulta, anke kif spjegat fir-rapport ta' David Grillo, illi ikun fl-interess suprem tal-minuri illi l-minuri tghix mal-familja naturali taghha u ghalhekk illi issegwihom u tibda hajja gdida maghhom fl-Izvizzera.

Izda, peress illi ma sarx il-process kif imsemmi aktar ‘il fuq f’dan id-digriet, il-Qorti tirrakkomanda bil-qawwa kollha illi l-Awtoritajiet f’Malta jaghmlu kuntatt mal-UNHCR, mal-International Organisation for Migration u mas-Swiss Foundation of the International Social Service sabiex tinghata l-assistenza kollha mehtiega lill-intimati u lill-minuri H, inkluz l-assistenza ta’ ‘social worker’ u ta’ espert psikologu jew psikoterapista, bil-ghan illi l-minuri tkompli l-edukazzjoni taghha fl-Isvizzera, tintegra ruhha aktar mal-familja naturali taghha u taddatta ghall-hajja gdida taghha fl-Isvizzera u ghalhekk il-Qorti tordna n-notifika ta’ dan id-digriet u tal-verbal ta’ llum lill-Ufficju tal-Kummissarju ghat-Tfal, lill-Agenzija Appogg u lill-Ministru ghall-Gustizzja, Djalogu u l-Familja ghall-azzjoni mehtiega.

Illi jkun ferm opportun illi r-rikorrenti tithalla izzur lill-minuri u lill-intimati, u dan fl-interess tal-minuri, u il-Qorti semghet lill-avukati difensuri tal-intimati jiddikjaraw fl-udjenza tat-23 ta April 2012, kif spjegat b’mod aktar dettaljat fid-dikjarazzjoni illi ghamlu fis-seduta ta’ llum, illi l-intimati m’ghandhomx oggezzjoni f’dan ir-rigward.

Ghaldaqstant, il-Qorti taqta u tiddeciedi billi, filwaqt illi tirrevoka ‘contrario imperio’ id-digriet taghha tad-19 ta’ April 2012, tichad it-talba ghall-hrug ta’ Mandat ta’ Inibizzjoni.

Il-Qorti tordna illi fic-cirkostanzi, kull parti ghandha thallas l-ispejjez taghha.

Il-Qorti tordna n-notifika immedjata ta’ dan id-digriet lill-Kummisarju tal-Pulizija, lill-Ufficjal inkarigat mill-hrug tal-Passaporti, lill-Kontrollur tad-Dwana, lill-Malta International Airport, lill-Virtu Ferries Ltd, lill-UNHCR u lill-IOM.

Finalment il-Qorti tordna d-divjett tal-pubblikazzjoni ta’ l-ismijiet tal-partijiet u ta’ l-isem tal-minuri.

< Sentenza Finali >

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