

Curia Rulings: Child Custody Law

Szilvia Czifra, journalist – Good afternoon! You are watching the latest episode of our video series on Curia rulings. Today we'll be discussing a particularly special child custody case considered under family law, which the Curia decided on in 2017. In the following, I will briefly present the story of a 6-year-old child. The child was 6 years old when the parents' partnership ended and the mother left the family, moving out of the house they owned together. The child stayed with the Father, claiming that he did not want to leave his familiar environment. The parents agreed on raising the child together. Unfortunately, however, this process was interrupted when the Father became hospitalized. For this period, the Father left the child in the care of his girlfriend, a decision that was contested by the Mother early on. Both their continued and periodical meetings deteriorated or ended. The situation became so tense that the child, at one point, stopped wanting to see her mother at all, in spite of their earlier good relationship. There were meetings where he would not even get out of the car or roll down the window. Moreover, on one occasion in 2015, the child ran away from the meeting. The police was called in, and they found the child at the grandmother on the Father's side. The Curia repealed the final judgment, which had originally given custody rights to the Father, and upheld the decision of the first instance court to place the child with the Mother. The decision was justified by stating that the deterioration of the parents' relationship must not lead to the child effectively cutting ties with and losing the emotional attachment to the absent parent, in spite of their earlier good relationship. We invited experts Dr. András Kőrös, retired President of the Family Law Council of the Curia, Dr. Rita Németh psychologist and Dr. Zoltán Irring psychologist, Head of the Family Support and Child Welfare Service of Budapest's District XII to discuss the case. My first question goes to judge András Kőrös.

What were the main considerations behind the Curia's decision?

The Curia based its decision on the opinion that parents living separately have a shared responsibility to act in the child's interests. This includes that the custodial parent must ensure the enforcement of custody rights and continued contact between the child and the absent parent, in order to create an environment for the child where no emotional bonds need to be broken. This is why joint physical custody is the preferred choice in the new Civil Code as well if parents separate. If this is not possible, then the Civil Code regards reaching an amiable agreement between the parents as having precedence over the court's decision on giving custody to the parent who is considered to better ensure the physical, mental and moral development of the child. Although the law uses the phrase "give custody", the parent living separately has "the right to share in the decision-making process" in several issues and must be ensured continuous and unbroken contact.

In this particular case, the Curia decided that the Father, who is the custodial parent, seriously violated his obligations in the matter by denying the Mother, in spite of final official and court decisions, the chance to have a continuous relationship with the child. Instead, he did everything in his power to alienate the Mother from the child by exerting undue influence over him. Eventually, things got to a point over the course of 4 years that the Mother could not make contact with the child at all. Her attempts at doing so failed and, in the end, it was the child himself who refused to take part in the meetings. According to the court psychologists assigned to the case, this was clearly the result of the Father's influence. This kind of behaviour cannot be tolerated any longer, said the Curia, and it must be concluded that the parent in question had become less suitable for having custody over the child. Another important question is why the Curia refused to consider the child's preference, noted by both the court and the experts, to stay with his Father, in his familiar environment. Based on expert opinions, the Curia established that the child was in a heavily influenced mental condition.

For the court psychologist, what are the most important messages and crucial issues that need to be addressed?

Such emotional influence exerts tremendous psychological pressure on the child, making him feel uncomfortable. He will identify with one of the parents and reject the other one. Optimally, the child will be emotionally attached to both parents unless he has been seriously traumatized. If this is not the case because he is pressed to abandon his feelings towards one of the parents, the child will be emotionally distraught. On the long run, this is harmful for the child. Not being able to maintain the bonds with one of the parents will derail the development of his personality.

For a healthy personality development, the child needs to have a good relationship with both parents, even if they are separated. The parents have a significant role in ensuring this. They need to take their obligation to cooperate very seriously as their life does not end with the final decision of the court.

The Curia needed several years to conclude the proceedings, which also involved the child protection services, which continuously acted as an intermediary between the parents.

Perhaps we should change the strategy and focus on educating people about how to separate with dignity, ensuring that all parties maintain their inner balance and act in the children's best interest. People are generally rather awkward in such situations. They are left to struggle alone, without a clear path to follow, prey to their temper, their grievances and the ensuing desire for revenge, which often determine the way they will act during the divorce. The Mother takes off, leaving the child in the care of the Father, just like that. A couple of months pass, and she realizes her mistake. What better weapon would the Father need to fight the one who injured him by breaking up than denying access to the child, which will thus become a sensitive issue

in the conflict between the two? Some families are able to recognize and stop this process, while others can not. Society must help families get over this conflict. The Curia's decision aims to ensure that the right of access is ensured for both parents. This decision is very appropriate from the perspective of child protection and the enforcement of the child's rights. However, I do believe that letting the child unwittingly endure his role in the conflict between her parents for four years needs to be reconsidered. This way, establishing a truly healthy emotional bond is not possible with either party. Even though it may seem in our case that the child is attached to his Father, he may have difficulties later on accepting that his Father denied access to his Mother. Such situations prevent the forming of truly positive relationships with either parent, since one of them is off limits and he is probably afraid of the other one.

Is it possible to erase the memory of this situation? How should we proceed?

Optimally, if the parents are capable of reaching an amiable agreement in the end and they accept the decision of the Curia, the situation can be consolidated and these injuries may heal with time. However, the child needs to see that his parents come to terms with each other. If not, he may experience serious deviances later in his adolescence, him being only 9 years old as of now. However, the situation is often not possible to consolidate legally, leading to further litigation. I have had several cases where the same families keep on trying to settle their differences by legal means for 7-8 years. Sometimes several proceedings are started, such as for limiting contact, terminating parental custody or increasing the amount of alimony.

Is it possible for the courts or the Curia to expedite the process in exceptional cases?

Since the court is required to accept all motions to present evidence submitted by the parties, speeding up the process becomes increasingly difficult when the losing party starts filing additional motions, such as requesting the assignment of a different court psychologist or the hearing of additional witnesses. If judges want to reach a well-founded decision, they can hardly ignore any such requests. I hope that the new Code of Civil Procedure will speed up lawsuits in general as it requires that the parties present their position at the initial hearing. They will have to present their case, choose between employing an expert privately or using the expert assigned by the court as well as list all additional evidence or expert opinions issued by teachers or schools they want to use. This way, the court will be able to focus on deciding about the case as it is. No more legal loopholes! Broken relationships are very difficult to mend. Courts have jurisdiction over the legal dispute, but they cannot solve human conflict.

We have already talked about considering the child's wishes and how they relate to his long-term interests. Is it acceptable to allow the child, who may be influenced emotionally, to have a defining role in such decision-making processes?

I think this should be avoided. What is at issue here is the right of parents to the child and not the child's right to the parents. It is not an omission that neither the United Nations Convention on the Rights of the Child nor domestic laws state the age when a child becomes capable of deciding in such matters. In certain issues, a child as young as 10 might be able to come to a reasoned decision. Therefore, insight must be requested from children with considerations paid to their age and development, and they must never be pressed to make a decision because it may lead to serious psychological or mental consequences. The law states that "due consideration must be given" to the opinion of children who are able to make a reasoned decision, making it an integral part of the decision-making process. The court must, of course, examine whether the opinion is given freely and independently. In the case at hand, the child was asked about his opinion and then it was examined whether he came to his conclusions by himself or under external influence. Both expert psychologists as well as the Curia were on the opinion that the child's opinion was not free of influence. Therefore, despite the fact that the child has the right to express his opinion, the court ignored his wish to remain in his Father's custody. All children wish to have a good relationship with both parents.

Psychologists are able to read a child's true intentions beyond his verbal statements. Through drawing tests or play therapy, it can be uncovered in a playful environment whether a child's words truly reflect his intent or not. In many cases, a child will speak out of a need to comply with a parent's expectations. Unfortunately, the things told by the child to the expert are not considered confidential information. In certain cases, this may lead to uncomfortable consequences for both. The child must be reassured that the decision is not his responsibility. This is extremely important because such a decision would impose great burden on the child.

It may be that this boy has good grades and is in a good physical condition; however, psychologists will know that there are other significant issues to consider. These children will often feel strong anxiety, which may manifest itself as the driving force behind their exceptional performance, but will have dire consequences for their future development.

We have touched upon the "art of separation", but what is even more pressing is to find the person with enough authority to instruct the parents in such matters – it may be a teacher or a close friend, but perhaps both of them would be rejected. Unfortunately, there is no institutional background, such as an "office of divorce", to help us get informed about such matters.

What is the message of the decision about the importance of things?

The rights of the child should be handled as priority. It is important to ensure that the child is able to keep in touch with both parents equally, so that neither parent can manipulate the child by denying visitation rights. I hope there will be a time when the courts and the child protection authority will work together. This is what we need for solving difficult situations like this one.

There is this boy who had consistently testified against his Mother, yet the court decided to send him back to her. Will they be able to settle their differences? I believe that the court made the right decision. However, this matter is beyond their authority. This is where child protection authorities could intervene.

As shown in this process, the child's short-term and long-term interests may clash and different acting authorities may have different preferences. The child's emotional resources must be considered as well. Given that he grew distant from one of the parents, having refused to keep in touch, it is reasonable to believe that he may have difficulties rebuilding the connection and maintaining a healthy relationship.

One of the most important messages of the Curia's decision is that considering the child's current preference might not be in his best interest, even though it is certainly conceivable that the child might be disadvantaged and emotionally distraught by having to move from the Father to the Mother. However, the decision will hopefully lead to the improvement of his relations with both parents in the long run. Another message is that the absent parent cannot be excluded from the child's life without consequences. If this is done over a prolonged period of time or in spite of official measures or court orders, custody will be taken from the culpable parent and given to the other one.

Thank you for watching and good bye!