

## **BGE 20240924\_55603\_18 vom 24. September 2024**

Bundesgericht (BGE), 2024-09-24, FR

Quelle: [https://mcp.opencaselaw.ch/entscheid/bge\\_20240924\\_55603\\_18](https://mcp.opencaselaw.ch/entscheid/bge_20240924_55603_18)

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### **Regeste**

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Lien d'amitié sur le réseau social Facebook entre le président de l'autorité en matière de protection de l'enfant et de l'adulte (APEA) et le père d'un enfant, dans le cadre d'une procédure relative à l'autorité parentale. La requérante, mère de l'enfant, se plaint d'une violation de son droit d'être entendue par un tribunal impartial en raison du lien entre le président de l'APEA et le père de l'enfant. Selon la jurisprudence de la CourEDH, même lorsqu'un organe juridictionnel chargé d'examiner des contestations portant sur des droits et obligations de caractère civil ne remplit pas toutes les exigences de l'art. 6 par. 1 CEDH, il ne saurait y avoir violation de la Convention si la procédure devant cet organe a fait l'objet d'un contrôle ultérieur par un organe judiciaire de pleine juridiction présentant, lui, les garanties de cet article. En l'espèce, la décision de l'APEA ayant fait l'objet d'un réexamen ultérieur par des tribunaux remplissant les garanties de l'art. 6 par. 1 CEDH, le grief de la requérante tiré du manque d'impartialité du président de cette autorité doit être rejeté comme manifestement mal fondé (ch. 11-16). Conclusion: requête déclarée irrecevable. Inhaltsangabe des BJ (4. Quartalsbericht 2024) Recht auf ein unparteiisches Gericht (Art. 6 Abs. 1 EMRK); vermutete Beziehung auf einem sozialen Netzwerk zwischen dem Vorsitzenden der Behörde, die über die elterlichen Rechte des Kindes der Beschwerdeführerin entschieden hat, und dem Vater des Kindes. Die Beschwerde betrifft die Rüge einer Verletzung des Rechts auf ein unparteiisches Gericht (Art. 6 Abs. 1 EMRK) aufgrund einer vermuteten Beziehung auf einem sozialen Netzwerk zwischen dem Vorsitzenden der Behörde, die über die elterlichen Rechte des Kindes der Beschwerdeführerin entschieden hat, und dem Vater des Kindes. Der Gerichtshof stellte fest, dass die Entscheidung über die elterlichen Rechte des Kindes auf Antrag der Klägerin Gegenstand einer weiteren gerichtlichen Überprüfung im Einklang mit den Garantien des Artikels 6 Absatz 1 EMRK war. Daher stellte er fest, dass die Rüge der mangelnden Unparteilichkeit des Vorsitzenden dieser Behörde als offensichtlich unbegründet zurückzuweisen war. Unzulässig (einstimmig).

Regeste DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Lien d'amitié sur le réseau social Facebook entre le président de l'autorité en matière de protection de l'enfant et de l'adulte (APEA) et le père d'un enfant, dans le cadre d'une procédure relative à l'autorité parentale. La requérante, mère de l'enfant, se plaint d'une violation de son droit d'être entendue par un tribunal impartial en raison du lien entre le président de l'APEA et le père de l'enfant. Selon la jurisprudence de la CourEDH, même lorsqu'un organe juridictionnel chargé d'examiner des contestations portant sur des droits et obligations de caractère civil ne remplit pas toutes les exigences de l'art. 6 par. 1 CEDH, il ne saurait y avoir violation de la Convention si la procédure devant cet organe a fait l'objet d'un contrôle ultérieur par un organe judiciaire de pleine juridiction présentant, lui, les garanties de cet article. En l'espèce, la décision de l'APEA ayant fait l'objet d'un réexamen

ultérieur par des tribunaux remplissant les garanties de l'art. 6 par. 1 CEDH, le grief de la requérante tiré du manque d'impartialité du président de cette autorité doit être rejeté comme manifestement mal fondé (ch. 11-16). Conclusion: requête déclarée irrecevable. Synthèse de l'OFJ (4ème rapport trimestriel 2024) Droit à un tribunal impartial (art. 6 § 1 CEDH) ; relation alléguée sur un réseau social entre le président de l'autorité qui a statué sur les droits parentaux de l'enfant de la requérante et le père de l'enfant. La requête concerne le grief d'une violation du droit à un tribunal impartial garanti par l'article 6 § 1 CEDH en raison d'une relation alléguée sur un réseau social entre le président de l'autorité qui a statué sur les droits parentaux de l'enfant de la requérante et le père de l'enfant. La Cour a constaté que, sur recours de la requérante, la décision de l'autorité qui a statué sur les droits parentaux de l'enfant a fait l'objet d'un contrôle ultérieur par des tribunaux répondant aux garanties de l'article 6 § 1 CEDH. Dès lors, elle a constaté que le grief tiré du manque d'impartialité du président de cette autorité devait être rejeté comme étant manifestement mal fondé. Irrecevable (unanimité).

Regesto Questo riassunto esiste solo in francese. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Lien d'amitié sur le réseau social Facebook entre le président de l'autorité en matière de protection de l'enfant et de l'adulte (APEA) et le père d'un enfant, dans le cadre d'une procédure relative à l'autorité parentale. La requérante, mère de l'enfant, se plaint d'une violation de son droit d'être entendue par un tribunal impartial en raison du lien entre le président de l'APEA et le père de l'enfant. Selon la jurisprudence de la CourEDH, même lorsqu'un organe juridictionnel chargé d'examiner des contestations portant sur des droits et obligations de caractère civil ne remplit pas toutes les exigences de l'art. 6 par. 1 CEDH, il ne saurait y avoir violation de la Convention si la procédure devant cet organe a fait l'objet d'un contrôle ultérieur par un organe judiciaire de pleine juridiction présentant, lui, les garanties de cet article. En l'espèce, la décision de l'APEA ayant fait l'objet d'un réexamen ultérieur par des tribunaux remplissant les garanties de l'art. 6 par. 1 CEDH, le grief de la requérante tiré du manque d'impartialité du président de cette autorité doit être rejeté comme manifestement mal fondé (ch. 11-16). Conclusion: requête déclarée irrecevable. Sintesi dell'UFG (4° rapporto trimestriale 2024) Diritto a un giudice imparziale (art. 6 § 1 CEDU); relazione asserita su un social media tra il presidente dell'autorità chiamata a decidere in merito ai diritti parentali del figlio della ricorrente e il padre di quest'ultimo. Il ricorso riguarda la censura di violazione del diritto a un giudice imparziale garantito dall'articolo 6 paragrafo 1 CEDU causata da una relazione asserita su un social media tra il presidente dell'autorità che ha deciso in merito ai diritti parentali del figlio della ricorrente e il padre di quest'ultimo. La Corte ha constatato che, in seguito al reclamo della ricorrente, la decisione dell'autorità pronunciata sui diritti parentali del figlio è stata oggetto di un ulteriore controllo delle autorità giudiziarie conformemente alle garanzie dell'articolo 6 paragrafo 1 CEDU. Ha quindi deciso che la censura concernente la mancanza di imparzialità del presidente di tale autorità deve essere respinta in quanto manifestamente infondata. Irricevibile (unanimità).

## **Erwägungen**

### **E. 1**

The application concerns alleged breach of the right under Article 6 § 1 of the Convention to a hearing by an impartial tribunal due to alleged relationship on social network between the presiding member of the authority which determined the parental rights in respect of the

applicant's child and the child's father.

## **E. 2**

By a decision of 1 April 2009, amended in 2011, the Child Protection Authority (C hambre pupillaire ) in Monthey, at the request of both parents, decided that the applicant had full parental rights in respect of the child to whom she had given birth in 2008. On 28 November 2014 the father claimed joint parental authority in respect of the child.

## **E. 3**

Several decisions concerning the protection of the rights of the child and the parents ensued. In particular, on 22 April 2015 the Authority for Protection of Child and Adult of Monthey municipality (APEA) ordered parental mediation, decided to maintain the authority of the Office for Protection of Child to supervise the relations between the child and the parents and appointed a guardian to protect the child's interests in the proceedings. In its decision of 18 December 2015 APEA ruled that the father was entitled, in accordance with the parties' agreement, to spend the period from 18 to 27 December 2015 with the child, subject to the latter's acceptance to go to his father's place. It further indicated that forced execution of that ruling was excluded.

## **E. 4**

On 18 May 2016 APEA decided that both parents were to jointly enjoy parental authority while the applicant retained the right to determine where the child would live. An expert opinion was ordered with a view to assessing the parental competences of both parents. APEA further maintained its earlier decisions concerning the appointment of a guardian and supervision of the relations of the parents and the child by an authority. Finally, it determined the visiting rights of the father subjecting their contact to the child's acceptance and excluding the possibility of enforcement.

## **E. 5**

On 20 June 2016 the applicant challenged that decision as regards determination of parental authority and ordering of an expert opinion. On 16 January 2017 she further objected that, in July 2016, the presiding member of APEA had accepted a "friendship" invitation on the social platform Facebook by the child's father. She argued that that authority could not be considered impartial and claimed that all APEA's previous decisions taken in the case with the participation of that presiding member should be annulled.

## **E. 6**

In a letter of 16 January 2017 to the Canton of Valais Tribunal the applicant referred to APEA's president's and the child father's relationship on Facebook of which she had been informed. She claimed that all decisions taken by APEA's president within the proceedings should be quashed. On 17 January 2017 she asked APEA to review its above decisions of 22 April and 18 December 2015 because of its president's and the child father's relationship on Facebook.

## **E. 7**

On 25 January 2017 the newly appointed President of APEA informed the Canton of Valais Tribunal, at the latter's request, that his predecessor formally denied knowing or having any contacts with the child's father outside the procedure concerned. The former APEA president further indicated to have accepted the invitation on Facebook by mistake as he

had considered it to be by one of his former employees with the same name as the child's father. The acceptance of the contact had taken place five months after the last hearing and two months after notification of APEA's decision of 18 May 2016. The nature of the decisions taken on 22 April and 18 December 2015 proved as such the absence of any bias on the part of APEA's then President. In the absence of any valid reasons APEA did not intend to decide on the applicant's request for review of its above two decisions of 2015.

#### **E. 8**

On 14 July 2017 the Canton of Valais Tribunal dismissed the applicant's appeal. As regards the alleged bias of APEA's president, the tribunal noted his explanation that he entertained no relationship with the child's father and that he had probably accepted the invitation on the social network by error as he had considered that it was one of former employees with the same name. Similarly, in a submission the child's father had denied being the acquaintance of APEA president or having made a request to that effect. He had deleted APEA's former president from the list of his friends in December 2016 after having discovered that fact. The tribunal found nothing to put those affirmations in doubt and further noted that the contested social network contact was posterior to APEA's decision in issue. The tribunal examined in detail the facts of the case and the parties' submissions. In its reasoned judgment it upheld APEA's decision of 18 May 2016. It further dismissed the applicant's request of 16 January 2016 for quashing APEA's earlier decisions taken in the proceedings.

#### **E. 9**

On 14 September 2017 the applicant challenged the Canton of Valais Tribunal's judgment before the Federal Tribunal. She claimed that she should be granted full parental rights in respect of her child. The applicant further claimed that APEA's decision of 18 May 2016 and the judgment of the Canton of Valais Tribunal of 14 July 2017 be annulled on account of the bias of the former's president.

#### **E. 10**

On 14 May 2018 the Federal Tribunal dismissed the applicant's complaint. As regards the alleged bias of APEA's president, the Federal Tribunal considered that, in the absence of any other objectively established facts, the "relationship" between the father and APEA's president on social network in circumstances which could not be clearly established and where both persons concerned denied having known each other did not suffice to conclude that APEA's president had lacked impartiality. The Federal Tribunal further addressed in detail and dismissed the applicant's complaint related to the decision on joint parental authority. The judgment was served on 28 May 2018. THE COURT'S ASSESSMENT

#### **E. 11**

The applicant complained that her right under Article 6 § 1 of the Convention to a hearing by an impartial tribunal had been breached as APEA's President had been biased on account of his contacts with the child's father. She contested the conclusion that mere existence of social network relationship did not suffice to establish lack of impartiality even in circumstances where the details of creation of such relationship could not be clearly determined and the two persons concerned gave different accounts.

#### **E. 12**

The Government argued, with reference to the facts of the case and domestic courts' judgments, that in the absence of any genuine contacts or relationship between the two persons concerned the applicant's right to a hearing by an impartial tribunal had not been breached. In any event, the alleged shortcoming in that respect in the proceedings before APEA had been remedied in that the case was subsequently examined by the cantonal tribunal which secured the guarantees of a fair hearing before an impartial tribunal.

#### **E. 13**

According to the Court's case-law, even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1" (see *Denisov v. Ukraine* [GC], no. 76639/11 , § 65, 25 September 2018, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 132, 6 November 2018; both with further references).

#### **E. 14**

In the present case the applicant's civil rights were determined in proceedings leading to APEA's decision of 18 May 2016. The applicant sought a judicial review of that decision inasmuch as it concerned determination of parental authority and ordering of an expert opinion (see paragraph 5 above). The Canton of Valais Tribunal, a court with full jurisdiction, addressed her arguments and gave ample reasons for its decision. Her complaint concerning allegedly erroneous legal assessment of the issue of parental authority by that tribunal was subsequently examined and dismissed by the Federal Tribunal. The applicant does not allege that those tribunals lacked impartiality contrary to Article 6 § 1 of the Convention.

#### **E. 15**

The Court notes that in the proceedings before it the applicant does not complain about the outcome of the proceedings concerning the parental authority which, in any event, is a matter primarily for the domestic courts (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09 , § 197, ECHR 2012) or that the proceedings were otherwise unfair.

#### **E. 16**

In these circumstances, given that on the basis of the applicant's appeal APEA's decision of 18 May 2016 was subject to subsequent review by tribunals meeting the guarantees of Article 6 § 1 of the Convention, the applicant's complaint about lack of impartiality of that authority's president must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention. Entscheid For these reasons, the Court, unanimously, Declares the application inadmissible. Done in English and notified in writing on 17 October 2024. Olga Chernishova Darian Deputy Registrar Pavli President