X. v Poland

Case Law, Legal Protection, Children, European Court of Human Rights, Family, Poland, Sexual Orientation

Custody rights

(Application no. 20741/10), 19 July 2019

Find here the communicated case.

Find Court's judgement here.

X v Poland Download

- Following a divorce, a mother was denied custody of her three children on **grounds of her sexual orientation**.
- ILGA-Europe together with FIDH, ICJ, KPH and NELFA submitted the following:
    - The ECtHR expressly stated that the concept of one's sexual orientation is a prohibited ground of discrimination under **Article 14 ECHR** and discrimination on this ground is considered 'suspect' and subject to 'particularly severe scrutiny'. The Court has confirmed that parent-child ties and custody cases fall under **Article 8**, and applies to LGBTI parents'. In *Salgueiro da Silva Mouta v. Portugal*, the ECtHR considered that the refusal to grand custody over the child based on the applicant's sexual orientation constituted a violation of Article 8 in conjunction with Article 14. The IACtHR reached the same conclusion in *Atala Riffo y Ninas v Chile*, where custody rights were denied to the mother due to her sexual orientation. A number of national courts in Europe and internationally have considered the **custodial rights of gay and lesbian parents**, affirming their right to **equal access** to children without discrimination based on sexual orientation.
    - This case provides the Court with the opportunity to reaffirm its findings made in *Salgueiro da Silva Mouta v. Portugal* and confirm **rights of parents irrespective of their sexual orientation** or gender identity and expression to **equal access to custody of their children**.