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Access to court file: highly personal right or right that can be exercised by proxy?

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- › Facts
- › Decision
- › Comment

The Supreme Court recently upheld the appeal of a petitioner and declared that the right to inspect files in adult protection proceedings can also be exercised by a representative.⁽¹⁾

Facts

The petitioner was the caregiver and proxy of an elderly man. She had been granted a general and unlimited power of attorney, including representation in court. In court proceedings concerning an adult protection matter, the complainant requested access to the file on behalf of the represented person.

The two lower courts rejected the request. Both argued that, according to the limited right of access to the file in adult protection proceedings, only the person concerned and their legal representative can be granted a file inspection right regarding sensitive information. As a contractual authorised representative, a proxy counts as a third party and accordingly has no right to do so. Otherwise, the protection granted by the provision would be circumvented.

Decision

The Supreme Court allowed the complainant's appeal and reversed the decision of the appellate court.

The main purpose of the limited right of access to files in adult protection matters is the protection of private and family life pursuant to article 8 of the European Convention on Human Rights and the fundamental right to data protection pursuant to section 1 of the Data Protection Act. In this context, the person concerned was entitled to non-disclosure of his sensitive personal data to third parties, even if a legitimate interest was claimed.

Referring to its former rulings on guardianships, the Court upheld the objection of the petitioner – namely, that the limited right to inspect files can also be exercised by a proxy acting on behalf of the represented person. When requesting access to a file, a proxy cannot be considered a third party, because the proxy does not act in their own name, but in the name of the represented person themselves. The ruling clarified that, just like the general file inspection right, the limited right of access to a file can be transferred by a power of attorney as well. Accordingly, it cannot be qualified as a highly personal right.

The Court further held that if the proxy does not exercise the power of attorney in the interest of the person represented, the file access request must be rejected. It thereby referred to the general principles of representation. Generally, to protect a third party from having to investigate the motives of a representative, the representative's abuse does not affect the validity of a transaction. The validity, however, is affected if the third party (in this case the Court) has knowledge of the misuse. According to the Court, when abuse is at issue, a representative must not be able to act under the power of attorney.

Comment

While the underlying idea seems reasonable, it should be considered that according to case law, even the "mere recognisability" of an abuse leads to the invalidity of a power of attorney. In connection with procedural acts, such as file inspection, which are to be carried out quickly, an obligation of the Court to follow up on each and every indication towards improperly applied proxies could easily lead to excessive delays.

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Endnotes

(1) OGH 17 December 2020, 6 Ob 243/20h.



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