



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 29 November 2019

THIRD SECTION

Application no. 47220/19
A.M. and Others
against Russia
lodged on 4 September 2019

STATEMENT OF FACTS

1. The facts of the case, as submitted by the applicants, may be summarised as follows.

2. The applicants are Russian nationals residing in Moscow. The President of the Section has decided, under Rule 47 § 4, not to disclose the applicants' identity to the public and, under Rule 33 § 1, to treat the case-file as confidential.

3. The first applicant, Ms A.M., was born in 1972. She is a post-operative transgender woman (male-to-female transgender person). She was born genetically and phenotypically male and her gender was registered as "male" in her birth records. She identifies herself as female.

4. The second and the third applicants are biological children of the first applicant. Mr M.M., her son, was born in 2009 and Ms K.M., her daughter, was born in 2012.

A. Events preceding the restriction of the first applicant's parental rights

5. On 18 July 2008, the first applicant, whose gender at that time had been officially recorded as "male", married Ms N. In 2009 and 2012 the second and the third applicants were born in that marriage.

6. In February 2015 the first applicant formally donated an apartment, where the family resided at the time, to Ms N.

7. In June 2015 the marriage between the applicant and Ms N. was dissolved. Under the agreement of the former spouses the second and the third applicants stayed with Ms N. and the first applicant agreed to pay monthly allowances to the children.

8. On 31 July 2015 the Lyublinskiy District Court of Moscow legally recognised the first applicant's transition from male to female gender. On the basis of that judgment the first applicant's civil status records were altered and she was issued new identification documents.

9. Until December 2016 the first applicant had regularly visited the second and the third applicant and spent time with them. During the visits she presented herself and dressed as a man, since otherwise Ms N. would have objected to the visits.

10. Since December 2016 Ms N. started refusing visits to the first applicant. In January 2017, following the first applicant's complaint, Ms N. was interviewed by social services. The letter notifying the applicant of that interview stated in particular the following:

“... During the interview [with Ms N.] it was established that she categorically objects to your contacts with underage children, since in her opinion it causes them psychological harm. She was advised [on applicable legal provisions] which prescribe that parents have equal rights and bear equal duties in respect of underage children (parental rights); a separately residing parent has a right to visit them, take part in their upbringing and make [educational choices]. [Ms N. was informed of the available mediation procedures]...”

B. Restriction of the first applicant's parental rights

11. On 9 January 2017 Ms N. initiated judicial proceedings aimed at restricting the first applicant's parental rights. She stated in her submissions that the first applicant had been diagnosed with ‘transsexualism’, a mental health disorder, and transitioned from male to female gender and that contacts with the children after the transition were rare. In Ms N.'s opinion these developments 1) caused irreparable harm to mental health and morals of the children, 2) could distort their perception of family, 3) could lead to inferiority complex and bullying at school, 4) could expose them to information on “non-traditional sexual relations”, while that information was prohibited from distribution to minors.

12. In her submissions in reply the first applicant argued that she never refrained from exercising her parental obligations, that she paid allowances to the children and maintained close contact with them until Ms N. started obstructing it. She further maintained that under the domestic law a parent may be restricted in parental rights only if that parent resides together with a child and puts that child in danger. In the first applicant's opinion none of these conditions were satisfied in her case. She further lodged a counter-claim asking the courts to set rules on visits of children and communication between parents.

13. On 14 June 2017 the Lyublinskiy District Court of Moscow ordered forensic psychiatric, sexological and psychological assessment of the first, second and third applicants. The District Court considered appropriate for the assessments to be carried out by experts of Serbskiy Institute, a leading psychiatric research and care facility in Russia, and compiled a list of detailed questions.

14. The experts of Serbskiy Institute examined in detail the applicants' medical and family histories, sociological profiles and conducted relevant tests and interviews.

15. In their report dated 24 October 2017 the experts stated in respect of the second and the third applicants that the information about gender transition of the first applicant would have a negative impact on them. The experts referred to the following relevant factors: the age of the children, the significance of gender identification and the role of parents in the development of that identification, societal pressure and the complexity of the family situation. They further noted that 1) currently there is a lack of research on upbringing of children in families where one of the parents underwent gender transition, 2) the available studies concluding that no negative impact exists are methodologically inadequate and 3) presently there are no reliable psychotherapeutic strategies for managing the impact of a parent's gender transition on children. The experts concluded that disclosure of the information on gender transition of the father would induce pronounced long-term traumatic impact on the children's mental health.

16. In their report dated 18, 20 December 2017 the experts confirmed the first applicant's diagnosis and stated the following:

“... Given the degree of manifestation of feminine characteristics of [the first applicant] and a principled inability to preserve male appearance; insufficient consideration by her of age-related specificities of children's development; expressed intention to communicate with children as a “transgender woman” and a “parent” coupled with providing them with information on [the gender transition]; low degree of critical assessment of the effects of [the transition] on the children's mental health; developmental and individual characteristics of [her son] and developmental characteristics of [her daughter]; social and psychological factors linked to gender transition... at the present moment contacts of [the first applicant] with [her children] and the information on the gender transition would have a negative impact on their mental health and development. ... [T]he negative impact will be produced not by the individual and psychological profile of [the first applicant] or her parenting style, but by the anticipated reaction of the children to their father's gender transition (given the available research data on age-related aspects of gender identity development in children and the findings of the present assessment) ...”

17. On 16 and 19 March 2018 the municipal social services issued formal opinions on the matter and concluded that the restriction of the first applicant's parental rights was reasonable given the social and individual circumstances of gender transition and the findings of the experts.

18. The first applicant submitted as evidence an alternative expert report from a private psychiatric service, which concluded that transsexualism

presented no danger to the children and could not be an obstacle to upbringing of the children. The report stated that 1) the first applicant did not suffer from any mental disorder, 2) typically transsexuals did not exhibit offensive behaviour, 3) the first applicant demonstrated requisite caution and a constructive approach in contacts with the children.

19. On 19 March 2018 the Lyublinskiy District Court of Moscow held a hearing, examined the above expert findings and social services' opinions, heard the parties and character witnesses.

20. On the same day the District Court adopted the judgment restricting the first applicant in her parental rights and dismissing her counter-claim. In the relevant part the text of the judgment read as follows:

“...

The court in taking the decision to restrict Ms A.M.'s parental rights... is guided solely by the interests of children, their psychological and mental health and does not question the feelings of the loving parent Ms A.M. [The court] considers that by itself [Ms A.M.'s] disorder – transsexualism – is not a ground for restricting her parental rights, but the resulting changes to Ms A.M.'s personality and the disclosure of information on [the father's gender transition] will create long-term psycho-traumatic circumstances for the children and induce negative effects on their mental health and psychologic development. [This position is confirmed by the expert findings].

...

The court in taking the decision to restrict Ms A.M.'s parental rights and dismiss her counter-claim... is guided by the established facts demonstrating that communication of Ms A.M. and her children is impossible at the present moment. At the same time, the court notes the continuous nature of family relations. As the children grow older and the level of their mental development changes the issue of contact between [Ms A.M.] and the children should be re-examined and visitation rights reconsidered in the manner affording gradual adjustment of the children to the gender transition of the father, while preserving their psychological and mental balance. At the present moment, given age-related characteristics of the children, establishing such contacts is unreasonable, since it would have a negative impact on the mental health and psychological development ...”

21. The first applicant appealed, but her appeal was dismissed by the Moscow City Court on 16 June 2018. Her subsequent cassation appeals were dismissed on 1 February 2019 by the Moscow City Court and on 4 March 2019 by the Supreme Court of the Russian Federation.

COMPLAINTS

22. The applicants complain under Article 8 of the Convention that the restriction of the first applicant's parental rights in respect of the second and the third applicants has not been necessary in a democratic society and, therefore, violated their right to respect of family life.

23. The first applicant further complains under Article 14 in conjunction with Article 8 of the Convention that the restriction of her parental rights

has been discriminatory, since her gender identity served as a sole ground for that restriction.

QUESTIONS TO THE PARTIES

1.a. Has there been a violation of the applicants' rights to respect for their family life, contrary to Article 8 of the Convention? Specifically, was the restriction of the first applicant's parental rights necessary in a democratic society and proportionate to the aim pursued?

1.b. Did the domestic courts in taking the decision to restrict the first applicant's parental rights strike a proper balance between the legitimate aim pursued and the interests of all the applicants? Were the judicial decisions based on reliable and sufficient evidence?

2.a. Has the first applicant suffered discrimination on the ground of her gender identity and transition, contrary to Article 14 in conjunction with Article 8 of the Convention?

2.b. In particular, has the first applicant been subjected to a difference in treatment in connection with her gender identity and transition?

2.c. If so, did that difference in treatment pursue a legitimate aim; and did it have a reasonable justification?

2.d. Does the first applicant belong to a particularly vulnerable group in society, whose members have suffered considerable discrimination in the past? If so, what were the "very weighty reasons" for the difference in treatment (see, *mutatis mutandis*, *Horváth and Kiss v. Hungary*, no. 11146/11, § 128, 29 January 2013)?

APPENDIX (anonymity has been granted)

No.	Applicant's initials	Gender	Birth year	Nationality	Place of residence
1	A.M.	F	1972	Russian	Moscow
2	M.M.	M	2009	Russian	Moscow
3	K.M.	F	2012	Russian	Moscow