European Court of Human Rights rules against Russia: Trans parent's foster-care termination violates family rights

article, non-discrimination, parenthood

In a judgement published yesterday, the European Court of Human Rights found that Russia violated the right to private and family life of a trans man and his two foster children by terminating the foster care agreement on grounds of the man's transition.

TGEU, ILGA-Europe, and the Irish Council for Civil Liberties, on behalf of ten* fellow members of the International Network of Civil Liberties Organizations (INCLO), express relief over this decision. However, we regret that the Court failed to examine and rule on an apparent discriminatory motive.

The case concerns a Russian transgender man whose two foster children were removed from his home on account of his gender identity and transition.

Violation of the rights to private and family life

The European Court of Human Rights addressed issues under Article 8 regarding family life. The case involved the termination of custody and a foster care agreement of a trans man (and his husband) caring for two children, due to his diagnosis of "transsexualism" and change of gender identity. The Russian authorities primarily based their decision on the fact that under Russian law it is impossible for same-sex couples to be foster parents. Also, they cited societal traditions and mentality for the interference. The European Court however criticised that the overall family situation was not examined in full, nor were the conclusions of investigating authorities considered.

The Court criticised the lack of an individualised expert examination or scientific study on the impact of gender identity changes on children's psychological health and development. Additionally, the assessment was not balanced or reasonable regarding the competing interests involved. The Court also concluded that under Article 34 ECHR, the applicant had standing to represent the children's interests because, at the time the application was filed, social services that were meant to be safeguarding the children's interests were responsible for the wrongful actions in the first place. The Russian government denied this.

A question of discrimination?

The applicant also alleged a violation of his right to non-discrimination, as protected by Article 14 ECHR. Unfortunately, the Court did not consider it necessary to explore this argument and concluded that the finding of a violation of Article 8 ECHR was sufficient. However, Russian authorities terminated the applicant's custody exclusively on account of the gender identity of the trans man and his decision to transition, as chamber member Judge Serghides rightly pointed out in a partly dissenting opinion to the judgement. Therefore, it is incomprehensible why the complaint under Article 14 ECHR (non-discrimination) combined with Article 8 ECHR was not fully investigated. This is a missed opportunity to develop jurisprudence on Article 14.

TGEU, ILGA-Europe, and TLDP as well as the Irish Council for Civil Liberties, on behalf of 10 INCLO members, have respectively submitted comments in the case at the time.

What this means for trans foster parents and their families

Russia left the Council of Europe on 16 September 2022. Therefore, the country is no longer bound by the European Convention on Human Rights. However, cases that were pending at that point are still heard by the European Court of Human Rights.

Technically, Russia is still bound to implement cases that are dated before Russia left the Council of Europe. However, in practice it is highly unlikely that trans people in Russia will benefit from the judgement as Russian authorities tend to ignore judgements from the ECtHR, even more so if they relate to LGBTI people.

However, since the judgement is also relevant for the remaining member states, trans foster parents and their families in 46 States of Europe can refer to this judgement.

*The endorsing INCLO members are: American Civil Liberties Union (ACLU); Canadian Civil Liberties Association (CCLA); Centro de Estudios Legales y Sociales (CELS); Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia); Human Rights Law Network (HRLN); Hungarian Civil Liberties Union (HCLU); Irish Council for Civil Liberties (ICCL); Kenya Human Rights Commission (KHRC); KontraS (Commission for the Disappeared and Victims of Violence); Legal Resources Centre (LRC).

More info

Savinovskikh v Russia judgement from 9 July 2024

TGEU, ILGA-E and TLDP submitted joint comments in the case in 2021

Case description on the ECtHR website

10 INCLO members submitted joint comments