



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

Communicated on 23 February 2017

THIRD SECTION

Application no. 8650/12
Y.P.
against Russia
lodged on 18 January 2012

STATEMENT OF FACTS

1. The applicant is a Russian national who was born in 1974 and lives in Nizhniy Tagil, Sverdlovsk Region. The President decided that the applicant's identity should not to be disclosed to the public (Rule 47 § 4). He is represented before the Court by Mr D. Bartenev, a lawyer practising in St Petersburg.

2. The applicant is a post-operative transgender man (female-to-male transgender person). At birth he was genetically female and his gender was registered as "female". However, he identifies himself as male.

3. The facts of the case, as submitted by the applicant, may be summarised as follows.

4. In 1994, prior to undergoing gender transition, the applicant, who was biologically and legally a woman at that time, married Mr G. In 1997 their son E. was born.

5. In 2006 the applicant divorced Mr G. On 18 April 2006 Mr G. was deprived of his parental rights in respect of E. by a judicial decision, because he had neglected his parental obligations.

6. Between 2008 and 2010 the applicant went through medical and legal gender transition. In October 2010 he was issued a birth certificate and a passport with his new (male) name and his gender recorded as "male".

7. In December 2010 the applicant married Ms M. His son resides with him and his spouse.

8. The applicant's passport indicates that he has a son, E. However, E.'s birth certificate still shows the applicant's pre-transition female name and lists him as the mother. Mr G., deprived of parental rights, is listed as the father.

9. On 20 April 2011 the applicant lodged a civil action requesting the court to recognise him as E.'s father and correct the relevant records and E.'s birth certificate.

10. Mr G. participated in the proceedings as a third party and opposed the action, claiming that he intended to restore his parental rights and requesting that his name remain on his son's birth certificate.

11. E., who was fourteen years old at that time, was examined by the court. He supported the action and consented to the applicant's paternity.

12. On 2 June 2011 the Dzerzhinskiy District Court of Nizhniy Tagil (*Дзержинский районный суд г. Нижний Тагил*) dismissed the applicant's claim on the grounds that a paternity action may not be granted if the biological paternity of another person is established and not disputed. The court considered that the fact that Mr G. had been deprived of his parental rights was not a reason for removing his name from his son's birth records. The District Court further held that the unwillingness of the applicant to disclose his gender transition in cases requiring the establishment of parental relations with E. was not a ground for granting his action. Lastly, the court highlighted that although Mr G. had been deprived of his parental rights, he still maintained his parental duties and thus it was in E.'s best interests as a child to have the records maintained in their original form.

13. An appeal lodged by the applicant was dismissed by the Sverdlovsk Regional Court (*Свердловский областной суд*) on 19 July 2011.

COMPLAINT

14. The applicant complains under Article 8 of the Convention that the State failed to discharge its positive obligation to recognise not only his gender transition, but also his civil status and parental ties without being required continuously to disclose that he had undergone transition.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private and/or family life, within the meaning of Article 8 § 1 of the Convention?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

2. Did the State fail to discharge its positive obligation by recognising the applicant's civil status and parental ties without requiring him to continuously disclose the fact that he had undergone gender transition?