



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

FIRST SECTION

Application no. 63206/10
Veronika JUSSI OSAWE
against Estonia
lodged on 22 October 2010

STATEMENT OF FACTS

The applicant, Ms Veronika Jüssi Osawe, is an Estonian national, who was born in 1979 and lives in Tallinn. He is represented before the Court by Mr M. Pirn, a lawyer practising in Tallinn.

A. The circumstances of the case

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

On 29 June 2005 the applicant and O., a Nigerian national, married in Copenhagen, Denmark, where they were living at that time.

Since 1 November 2005 they lived apart. In 2006 or 2007 the applicant initiated proceedings for dissolution of the marriage. The Copenhagen City Court attempted to find O. but to no avail. The outcome of these proceedings is not known.

In September 2008 the applicant moved to Estonia. On 4 October 2008 she gave birth to daughter A. When registering the birth, the applicant was told by the officials of the municipality that since she was married, her husband would be entered in the birth register as the child's father. According to the applicant this was done despite her objections.

On 28 September 2009 the applicant lodged a claim with the Harju County Court seeking a declaration that the entry in the birth register concerning her daughter's father was incorrect. She transmitted to the court a notice from the Copenhagen population register about O.'s registered address but added that in fact O. had left this residence and she did not know his actual residence.

By a decision of 15 December 2009 the County Court gave the applicant a thirty-day time-limit for finding out O.'s actual residence. It noted that according to the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*),

in filiation cases, parties had to appear in court in person and they also had to be summoned personally. Accordingly, the court could not proceed with the claim without having information about the defendant's address. The court noted that it was the plaintiff's obligation to find out this information and considered that the applicant's efforts in this respect had not been sufficient.

By a decision of 12 February 2010 the County Court dismissed the applicant's request of declaring the pertinent provisions of the Code of Civil Procedure unconstitutional. At the applicant's request, the court extended the time-limit for finding O.'s address.

On 16 April 2010 the County Court declined to entertain the case since the applicant had failed to provide it with O.'s actual address. The applicant did not appeal.

In the meantime, on 18 March 2010, the applicant lodged a new claim with the Harju County Court seeking the establishment of her daughter's filiation from D., a British national living in the United Kingdom. She asked the court to order that a DNA test be carried out with the assistance of the British authorities. The applicant supplied the court with D.'s and his parents' address.

On 20 April 2010 the County Court refused to examine the claim. Referring to the Supreme Court's case-law (judgment of 12 September 1996, case no. 3-2-3-20-96), the County Court found that it was not legally possible to establish the child's filiation from D. without the entry in the birth register, according to which her father was O., having been declared incorrect beforehand. It was not permissible to examine these claims simultaneously.

On 17 June 2010 the Tallinn Court of Appeal dismissed the applicant's appeal.

On 8 September 2010 the Supreme Court decided not to examine the applicant's appeal.

B. Relevant domestic law and practice

Section 39 of the Family Law Act (*Perekonnaseadus*), as in force at the material time, provided that a child who was born or conceived during the marriage of the parents was to be deemed to be descended from the man who was married to the mother of the child (subsection 1). In the birth register, the person who was married to the mother of the child was entered as the father (subsection 2).

Section 42 (1) of the Family Law Act provided that if the parents of a child were not married to each other and filiation of the child could not be ascertained, the filiation of the child from the father could be established by a court.

Section 44 of the Family Law Act provided that a court could declare an entry concerning a parent in the birth register incorrect if it established that the child did not descend from that parent (subsection 1). The limitation period of a claim to declare an entry incorrect was one year after the date the person became or should have become aware of the incorrectness of the entry (subsection 3).

Article 346 of the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) provides that in marital and filiation matters the parties shall appear personally in court unless they have a good reason not to appear. If a party is unable or cannot be expected to appear in court, he or she may be heard and his or her explanations may be obtained by another court on the basis of a letter of request (§ 2). A party must be personally informed by the summons of his or her obligation to appear in court in person (§ 3).

In a judgment of 12 September 1996 (case no. 3-2-3-20-96) the Civil Chamber of the Supreme Court held that it was not allowed to establish filiation from another man before the existing entry in the birth register had been declared incorrect and annulled. Only after the pertinent judgment had become final, a claim for establishment of filiation from another man could be resolved. Simultaneous examination of claims concerning the entry of the father in the birth register and filiation of the child was not allowed.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the courts declined to entertain her claims and she cannot challenge before courts the entry of the birth register about her child's father because she is unaware of the registered father's actual residence.

She further complains under Article 8 that her child has been put into a situation where a wrong person has been entered in the birth register as her father. Furthermore, since the entry of the birth register cannot be erased, it is not possible to lodge a claim for establishment of the child's filiation from her real father and to seek alimony from him for the child's upbringing.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention civil head applicable to the proceedings in the present case?

2. Did the applicant have an effective access to court in accordance with Article 6 § 1? If not, was the restriction to her access to court proportionate? If yes, did she have a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant's right to respect for her private and 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?