



Clear violations in stripping of contact rights from parent undergoing gender reassignment

In today's **Chamber** judgment¹ in the case of [A.M. and Others v. Russia](#) (application no. 47220/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

a violation of Article 14 (prohibition of discrimination) taken in conjunction Article 8.

The case concerned a court decision to end A.M.'s contact rights with her children because she had been undergoing gender transition at that time.

The Court found in particular that there had been no evidence of any potential damage to the children from the transition, and that the domestic courts had not examined the particular circumstances of the family. Furthermore, it found that the decision had been clearly based on the applicant's gender identity and had thus been biased.

Principal facts

The applicant, A.M., is a Russian national who was born in 1972. She lives in Moscow. She is the mother of M.M. and K.M., who were born in 2009 and 2012 respectively. She is a post-operative transgender woman.

In 2008 A.M., who was registered as "male" at that time, married a Ms N. In 2015 she gave the apartment where they resided to N. They divorced, with the applicant agreeing to pay maintenance.

Later in 2015 the applicant was legally recognised as female.

From December 2016 onwards N. began objecting to the applicant's visiting their children, claiming that the visits caused them psychological harm. On 9 January 2017 N. initiated proceedings to restrict the applicant's access to the children. In particular, she argued that A.M.'s gender status had caused irreparable harm to the mental health and morals of the children; could distort their perception of family; could lead to an inferiority complex and bullying at school; and could expose them to information on "non-traditional sexual relations", such information being prohibited from distribution to minors. A.M. lodged a counterclaim, seeking contact rights.

In 2017 an expert report confirmed the applicant's diagnosis of "transsexualism". It stated that a "negative impact [would] be produced not by the individual and psychological profile of [A.M.] or her parenting style, but by the anticipated reaction of the children to their father's gender transition", but noted a lack of research in the area.

On 19 March 2018 the Lyublinskiy District Court of Moscow ordered the restriction of A.M.'s parental rights and dismissed her counterclaim. The court stated, also noting the expert findings, that A.M.'s gender transition would "create long-term psycho-traumatic circumstances for the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

children and produce negative effects on their mental health and psychological development”. The court did order that the issue should be re-examined when the children were older, without providing a specific time frame.

A later alternative expert report commissioned by A.M. was very critical of the reasoning behind the judgment, stating that the earlier expert report had been “unscientific in nature”.

Subsequent appeals and cassation appeals by the applicant were dismissed by the domestic courts.

According to the applicant, on an unspecified date Ms N. changed her place of residence with the children and A.M. has no information about where the children now reside. At present, she is deprived of any opportunity to receive information about their lives and health.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicant complained that the restriction of her parental rights had not been necessary in a democratic society and had been discriminatory.

The application was lodged with the European Court of Human Rights on 4 September 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul Lemmens (Belgium), *President*,
Dmitry Dedov (Russia),
Georges Ravarani (Luxembourg),
María Elósegui (Spain),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Admissibility

The application had been lodged by A.M. on her children’s behalf. The Court held that she did not have standing to do so. It declared the application as it pertained to her only admissible.

Article 8

The Court found that the Russian courts’ decisions had interfered with A.M.’s right to respect for family life. The decisions had been taken in accordance with domestic law and pursued legitimate aims (“protection of health or morals” and “protection of the rights and freedoms” of the children). The Court had to determine whether the decisions had been “necessary in a democratic society”.

The parties had not disputed that the restrictions had been a result of A.M.’s gender transitioning and the alleged negative effects of that process on the children. The Court had to assess whether that decision had been reasonable and balanced. It noted that the domestic courts had based their decision heavily on the expert report, but that that report had not set out how exactly A.M.’s gender transition had represented a risk to her children. This was particularly concerning given that the experts had acknowledged the lack of reliable scientific evidence on the issue, and cited only one, widely criticised paper.

The Court adjudged that the domestic courts had failed to consider the specific family situation of the applicant in the reasoning. Furthermore, a decision to entirely deprive a parent of contact should

only be taken in the most extreme situations, which had not been so given the lack of demonstrable harm to the children in this case. The domestic courts had failed to make a balanced and reasonable assessment of the case. The Court thus concluded that the restriction of A.M.'s parental rights and of her contact with her children had not been "necessary in a democratic society", leading to a violation of the Convention in respect of A.M.

Article 14

The Court reiterated that gender identity was covered by the prohibition of discrimination set out in Article 14.

It considered that A.M.'s gender identity had played a significant part – indeed it had been the decisive factor – in the domestic court decisions. The applicant had been treated differently to other parents in the matter of contact rights. The Court found that this treatment on the basis of gender identity had not been proportionate, had been biased and had been counter to the Convention.

There had been a violation of A.M.'s rights.

Just satisfaction (Article 41)

The Court held that Russia was to pay A.M. 9,800 euros (EUR) in respect of non-pecuniary damage and EUR 1,070 in respect of costs and expenses.

Separate opinions

Judges Ravarani and Elósegui expressed a joint concurring opinion. Judge Elósegui expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Neil Connolly (tel: + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Jane Swift (tel: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.