



Terminating foster-care agreement of a guardian who was undergoing a change of gender identity violated the European Convention

In today's **Chamber** judgment¹ in the case of [Savinovskikh and Others v. Russia](#) (application no. 16206/19) 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.

The case concerned the termination of custody and of the foster-care agreement for D.D. and K.K., two children aged four and five, on the ground of their foster parent being transsexual and undergoing a change of gender identity.

The Court observed that the children had serious medical diagnoses, had been abandoned at birth and, prior to their placement in the applicant's family at the ages of one and three years respectively, had been kept in State-run institutions. The decision to take away the applicant's custody of them had not been supported by any individualised expert examination or any scientific study regarding the impact of a change of gender identity on the children's psychological health and development. The reasoning of the domestic courts had relied primarily on the legal impossibility of same-sex couples' being accepted as foster parents. No consideration had been given to the affection that the children might hold for the applicant and the other members of his family.

The Court found that the national authorities had failed to conduct an in-depth examination of the overall family situation and to properly weigh up the respective interests of each person whilst focusing on what would be the best solution for the children.

Principal facts

The applicants, Yulia Savinovskikh, born in 1977, and D.D. and K.K., both born in 2012, are Russian nationals who, at the time of the events, lived in Yekaterinburg (Russia).

Yulia Savinovskikh is a transgender man. He was assigned female at birth and his gender was registered as female. He has three biological children, two born in 2012 and 2013 from his marriage to Mr E.S. and an adult daughter from a previous marriage. In June 2014 and January 2016 respectively, the applicant was given custody of two minors – D.D. and K.K – who had been living in public care facilities since birth, their biological parents having been stripped of parental rights. D.D. had been diagnosed as HIV-positive and suffered from developmental delays and a form of cerebral and muscular dysfunction. K.K. had been born prematurely and had subsequently been diagnosed with cerebral palsy, delayed speech development and intellectual disability.

In July 2017 the applicant was recognised as transsexual and was approved for surgical, cosmetic and hormonal correction of gender from female to male, which he began that same month, undergoing a double mastectomy. When the social services learned of this in late August 2017, they visited his apartment, found that the living conditions were unsatisfactory and asked him to sign a friendly settlement agreement terminating the foster-care agreement. When he refused, they

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.

removed D.D. and K.K from his care and placed them in a care centre for minors. He has not seen them since.

In early September 2017, the social services attempted to institute criminal proceedings against Yulia Savinovskikh, claiming that he had not properly performed his duties as guardian. At the same time, they lodged a complaint with the District Court requesting termination of the foster-care agreement, stating the applicant's transsexualism as the reason. He lodged a counterclaim, explaining that he had been recognised as transsexual but that he still performed the role of a "mother", which was how the children perceived him. He claimed that the double mastectomy he had undergone had not been part of a gender transition but had been performed merely for personal reasons.

The investigating authorities conducted an inquiry and found the living conditions to be satisfactory and that the applicant and his spouse had performed their parental duties in accordance with the law. They therefore did not institute criminal proceedings.

On 5 February 2018, the District Court held a hearing, ordered that the foster-care agreement be terminated, and dismissed the applicant's counterclaim. The court noted the social services' report of unsatisfactory sanitary conditions in the apartment and accused the foster family of not having done enough for the children's intellectual development and of not having informed the social services of "significant circumstances", which "affected the physical, spiritual and moral development of the children".

The applicant lodged an appeal with the Regional Court, adding as evidence a recent expert panel report that concluded that, in view of the applicant's social adaptability, acceptance of a female social role, heterosexual relations, stable partnership, marriage and childbirth, there had been insufficient indicators for him to be diagnosed as transsexual. That appeal was dismissed, as were subsequent cassation appeals.

The applicant subsequently fled to another country together with his husband and their two biological children, where, in October 2018, he lodged an application for refugee status due to his fear of prosecution in Russia and separation from his biological children on account of his gender change. In April 2021 his asylum application was granted.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Yulia Savinovskikh complained that the removal of D.D. and K.K. from his custody had not been necessary in a democratic society and had violated the right to respect for their family life. Relying on Article 14 (prohibition of discrimination) in conjunction with Article 8, he complained that the termination of his guardianship of D.D. and K.K. had been discriminatory, since his change of gender identity had been the main ground for that decision by the national authorities.

The application was lodged with the European Court of Human Rights on 14 March 2019.

The Court's procedure for processing of applications against Russia can be found [here](#).

Third-party interventions were received from Transgender Europe (TGEU) jointly with the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and the Russian Transgender Legal Defense Project (TLDP); the Russian LGBTQ+ non-governmental organisation Coming Out, and a group of global national human rights organisations (from Argentina, Canada, Colombian, Hungary, India, Indonesia, Ireland, Kenya, South Africa and the United States) led by the Irish Council for Civil Liberties.

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

Pere Pastor Vilanova (Andorra), *President*,
Jolien Schukking (the Netherlands),
Georgios A. Serghides (Cyprus),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

The Court decided that it had jurisdiction to deal with the case, as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, the date on which Russia ceased to be a Party to the European Convention.

Article 8

The Court observed that the national authorities had terminated the applicant's custody of his two foster children essentially on account of his transsexuality, his change of gender identity and the resulting disruption of the "traditional family", defined in national law as the union of a man and a woman, allegedly affecting the foster children's physical, spiritual and moral development. It observed that the decision concerned children, aged four and five years at the time, who had serious medical diagnoses, had been abandoned at birth and, prior to their placement in the applicant's family at the ages of one and three years respectively, had stayed in State-run institutions. The decision to remove custody had not been supported by any individualised expert examination of the applicant and the children or by any scientific study regarding the impact of a change of gender identity on the children's psychological health and development. The reasoning of the national courts had relied primarily on the legal impossibility of same-sex couples' being accepted as foster parents.

No consideration had been given to the conclusion of the investigating authorities that their living conditions had been sanitary, that the applicant and his spouse had performed their parental duties in accordance with the law and to the expert report that stated that the applicant "did not have any disorder which could be dangerous for the children's life, health and development". Moreover, no consideration had been given to the affection that the children might hold for him and the other members of his family.

The Court noted with concern that D.D. and K.K. had been taken from their foster family and placed in the Social Rehabilitation Centre for Minors, where they had remained for one year and six months and nearly two years and six months respectively, before their placement in new foster families in March 2019 and February 2020.

The Court found that the national authorities had failed to conduct an in-depth examination of the overall family situation and to properly weigh up the respective interests of each person whilst concentrating on what would be the best solution for the children.

Therefore, the Court concluded that there had been a violation of Article 8 of the Convention.

Other articles

Having regard to its finding of a violation under Article 8 of the Convention, the Court considered, by six votes to one, that it was not necessary to examine separately the merits of the applicant's complaint under Article 14 of the Convention in conjunction with Article 8.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

Separate opinion

Judge G.A. Serghides expressed a partly dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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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.