



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

FIRST SECTION

Application no. 20481/11
Larisa Vladimirovna AGEYEVA
against Russia
lodged on 25 March 2011

STATEMENT OF FACTS

The applicant, Ms Larisa Vladimirovna Ageyeva, is a Russian national, who was born in 1963 and lives in the village of Korobovo, the Leninskiy District of the Moscow Region.

She is represented before the Court by Ms Nadezhda Deyeva, Ms Tatiana Chernikova, Ms Nadezhda Yermolayeva and Mr Furkat Tishayev, lawyers of the Memorial Human Rights Centre practising in Moscow, and Ms Joanna Evans, Mr Philip Leach and Mr Bill Bowring, lawyers of the European Human Rights Advocacy Centre based in London.

A. The circumstances of the case

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

1. The adoption proceedings

The applicant has been married to A.A. since 1990.

In 2000 the couple's seventeen-year-old son R., suffering from widespread vasculitis, died. Some time later they decided to adopt two children.

On 19 March 2008 the Nagatinskiy District Court of the city of Moscow approved the adoption by the applicant and her husband A.A. of two unrelated children, a boy A. (first name), born on 7 April 2005, and a girl D. (first name), born on 11 June 2006.

Following the adoption, the children became brother and sister with their first names being changed from A. to G. and from D. to P. respectively.

Their surnames and patronymic names were changed as well to reflect the surname and first names of their adoptive parents.

2. The children's medical condition at the time of the adoption

Both children had been removed from their respective birth parents' care in their infancy. The boy was aged one year and six months at the time of the removal, whilst the girl was aged seven months. Prior to the adoption, both children lived in various foster homes and displayed slight development delays. G. was stated to be developmentally delayed in speech and motor skills and to have been neglected. It appears that G. had problems walking and often fell flat on his face. As a result he had three front teeth missing. At the time of her removal, P. was stated to have minor heart anomalies and delays in her mental and verbal skills.

3. General information concerning the family life with G. and P. prior to the incident of 20 March 2009

After the adoption the family lived with G. and P. in a detached two-storey house in the village of Korobovo in the Leninskiy District of the Moscow Region.

The children's placement was evaluated prior to the adoption and the Leninskiy District Custody and Guardianship Agency ("the Leninskiy District Agency") made two post-adoption visits to their home in May and September 2008. On both occasions the living conditions and the family atmosphere were assessed as being in compliance with the relevant requirements and as "normal" without mentioning any problems.

4. Incident of 20 March 2009

In the evening of 20 March 2009 at around 7.30 p.m. all the family was at home and the children were playing in the house.

The applicant saw G. lying near the stairs. G. was bleeding and had burns on his face. She called her husband and they immediately tried to give G. first aid, having treated the wounds with hydrogen dioxide and applied plasters on the wounds. G. was put to bed.

The applicant and her husband submitted that they had not seen how the incident had occurred, but they suspected that due to their momentary lack of supervision G. might have burnt himself with hot water from an electric kettle on the second floor and had then run downstairs, falling down the steps.

At around 9 p.m. the applicant and her husband examined G. and saw that the left side of their son's face was red, the plasters had come unstuck and the wounds on the chin and eyebrow had started bleeding again. They decided that it was necessary to have him checked by a doctor.

At 9.50 p.m. the applicant's husband took G. to the Emergency Unit of Children's Hospital No. 145 of Moscow. Since the Unit was not open, A.A. took the boy to the Burn Care Centre of Children's Hospital No. 9 named after G. N. Spiranskiy of the Department of Healthcare of the city of Moscow ("the Burn Care Hospital").

From that date until 27 March 2009 G. remained in this hospital for treatment.

An admission entry of 20 March 2009 in G.'s medical file no. 2264 from the Burn Care Hospital described the boy's condition as "serious". He was diagnosed by a surgeon on duty as having the following injuries:

"... a closed crano-cerebral trauma, a brain concussion? a burn with hot liquid I-II-III degree of the face on S=8% of the body surface. Bruises of the head. Multiple scratches, bruises, haematomas of the body, limbs and sexual organs of various degrees of maturity. A syndrome of a beaten child?"

A combined report of the surgeon in charge as well as resuscitation specialist made later on that date confirmed the above conclusions, having reduced the estimate of the surface of the burn to 4%.

5. Subsequent events

As result of the removal and revocation of adoption proceedings which were brought by the authorities after these events both G. and P. were physically removed from their parents and their adoption by the applicant and her husband was cancelled. The children were removed from their parents on 29 March 2009. The final decision in the removal proceedings was taken by the Moscow Regional Court on 21 July 2009. The final decision in the revocation of adoption proceedings was taken by the Moscow Regional Court on 13 August 2009.

6. Criminal proceedings against the applicant and her husband

(a) Criminal investigation

On 26 March 2009 criminal proceedings were brought by the investigatory department of the Main Directorate of Investigations of the Moscow Regional Department of the Interior ("the investigation authority") against the applicant and her husband on account of the incident of 20 March 2009.

On 28 March 2009 G. was examined in the State institution of forensic examinations in the town of Vidnoye of the Moscow Region.

On 21 April 2009 the investigation authority questioned both G. and P. (then aged 4 years and 2 years and 10 months respectively), in the presence of a pedagogue and a legal representative. The applicant and her husband were not present or represented at it and there were also unaware of this interview. G. gave the following statements:

"... Question (Q): Want to go home?

Answer (A): No

Q: Where do the injuries come from?

A: Fell of the stairs

Q: How did you fall? Did you slip?

A: Yes, and then Mummy pushed me

Q: And how did she push you?

A: With a hand. Mummy scolded me because I had not put my toys in order

...

Q: And do you want to go home?

A: No

Q: Do you feel bad at home?

A: Yes

Q: Mummy wants to see you, can we let her in?

A: No

Q: Does she hurt you?

A: Yes

Q: How is it, does she hit you with a belt?

A: Yes

Q: Why does she do it?

A: Because I stand on the rug

Q: Can we let your father in?

A: No

Q: Does he punish you as well?

A: Yes

Q: Why does he do it? May be because you don't obey him?

A: Yes

Q: Does Mummy hit you?

A: Yes

Q: Does it happen often?

A: Yes

Q: Do you cry?

A: Yes

Q: Do she console you afterwards?

A: Yes

..."

1. On the same day P. gave the following evidence:

"Q: Does Mummy scold you?

A: No

Q: Whom does she scold?

A: [She scolds] G.

Q: And why?

A: She hit him for the stairway

Q: And how did she hit him?

A: With a belt

Q: Did she push him off the stairs?

A: Yes

Q: How did she do it?

A: Like that (showing with a hand how she did it) ...”

Between 13 May and 8 July 2009 G. was also examined in the Bureau of Forensic Examinations of the State Department of Health of the Moscow Region. The commission consisted of eight doctors of various specialisations, including paediatricians. The report mentioned the following injuries:

“a) bruises on the skin of eyes and the bridge of the nose, a bruise in the area of the left cheek and also on the chin, fractures of the nose bones, traumatic extraction of three frontal teeth on the lower jaw, brain contusion – inflicted repeatedly (no less than four times) with blunt and hard objects with limited surface of impact directed from front to back and from down to up – which ... possibly occurred on 20 March 2009;

b) haematoma of violet colour on the skin of penis and scrotum on the right inflicted with blunt and hard objects with limited surface of impact no less than twice in the direction from front to back which ... possibly occurred on 20 March 2009;

c) thermal burn of the second degree of the left half of the face and of the left ear, measured at 4 to 5 percent of the overall body surface, resulting from the impact of high temperature and could result from the impact of hot liquid, which ... possibly occurred on 20 March 2009;

d) multiple haematomas, scratches and abrasions on the skin of hair parts of the head, face, body and limbs were all received prior to 20 March 2009 ...”

The report also stated that “the character, focal concentration, insignificance, differing and opposite location of injuries of G., the lack of injuries typical for an impact of a body on blunt and hard objects, the lack of serious ... injuries of the bones of the skeleton, brain and internal bodies, the structural features of the stairway exclude the possibility that the injuries in question had been obtained as a result of a fall on it or a fall from it ...” and that “the location of the burn ..., the lack of burns on a hairy part of the head, on the frontal surface of the body, on limbs, the lack of burns having a vertical direction from up to down (stain like), do not correspond to [the parents’] description of the circumstances ... as a result of spill-over of the kettle”. The report continued: “... given the presence of multiple injuries on

the body having different remoteness... on 20 March 2009 as well as earlier ... the commission is of the view that G. had received bodily injuries repeatedly”. Overall, the report concluded that G’s injuries constituted light harm to his health.

On 23 November 2009 the investigation authority brought criminal charges against the applicant in connection with the (a) alleged ill-treatment resulting from impacts of hard and blunt object, (b) injuries resulting burns and (c) alleged ill-treatment on multiple occasions prior to 20 March 2009. She was charged under Article 156 (non-fulfilment of duties relating to upbringing of minors), part 2 of subpart “d” of Article 117 (infliction of physical sufferings through regular beatings in respect of a minor), part 2 of subpart “c” of Article 112 (intentional infliction of medium harm to health in respect of a person in a helpless situation) and Article 125 (knowing leaving of person in a dangerous situation incapable of taking measures to save himself due to young age) of the Criminal Code of Russia. Her husband A.A. was charged on account of the same events under Articles 156 and 125 of the Criminal Code. G. became a victim in the criminal case, his interests having been represented by an official of the Leninskiy District Agency.

(b) Court proceedings

During the hearing of 29 March 2010 the trial court examined witness Dav., a children’s surgeon in the same hospital, who stated that “... during medical examination I [had] asked the father what had happened and where [did] the injuries come from, to which the father ... responded that the boy spilled on himself hot water from a kettle and then fell of the stairs leading from the second to first floor. Thereafter the father went [away] and I asked the child [the same question]. The boy answered that his mother had pushed him and that at that moment the father of the boy came back and, having apparently overheard our conversation, said that the child would ‘come up with a story’ now. Since the child was diagnosed with having injuries of different remoteness in time I made an indication to the medical sister in charge to ... [report the case to the police]...”.

Both G. and P. were questioned in turn in the court on 28 October 2010. Apart from the court, the only people present during each questioning were a pedagogue, the legal representative of the children and the children.

G. stated that he loved and remembered his family, that he had burns because he had reached for a toy under the table and a kettle had fallen on him, that he then had ran on the stairs and fell off. He did not confirm his earlier statements that his mother had beaten him or that she had pushed him off the stairs. Questioned separately, P. essentially confirmed G.’s story.

The children were not allowed to be questioned by the applicant or her husband. The applicant’s lawyers were given an opportunity to put their questions to the children, but had not received any prior warning about this opportunity and hence could not prepare their questions in advance.

On 15 November 2010 the Vidnovskiy District Court of the Moscow Region, having examined the criminal case against the applicant, delivered the following judgment. The applicant’s husband A.A. was fully acquitted in respect of the charges under Article 156 of the Code and the prosecution dropped the charges against him under Article 125 of the Code. The

applicant was found guilty under Articles 156 (non-fulfilment of duties relating to upbringing of minors) and 115 (intentional infliction of a light harm to health) of the Code only in respect of episode (a). She received a cumulative sentence of 1 year and 8 month of correctional works, which meant that during that period she was to pay 15 percent of her salary to the State. As regards the rest of the episodes and other charges, the applicant either was fully acquitted or the charges were dropped.

As regards episode (a), the applicant was found guilty mainly on the basis of incriminating statements given by G. and P. at the pre-trial stage of investigation as well as expert forensic report no. 762/a of 21 and 29 September 2009, which confirmed that G. had not been “very prone” on coming up with fantasies and that he could adequately render what had happened previously. The court did not comment on the statements of G. and P. given before the trial court, in which they had refuted their earlier statements.

Throughout the proceedings the applicant and her husband denied the well-foundedness of the charges against them.

Both the parents and legal representatives of G. appealed against the judgment in part relating to the applicant’s conviction. They all disagreed with the court’s conclusion and argued that the applicant should be fully acquitted. Among other things, the applicant and her husband raised an argument concerning their inability properly to cross-examine the evidence given by the children at the pre-trial stage of investigation.

The prosecution also appealed against the judgment insisting that the applicant and her husband had been guilty and demanding to quash the judgment in part acquitting the parents.

On 17 February 2011 the Moscow Regional Court examined and rejected the appeals of the parties and upheld the judgment of 5 March 2010.

7. The parents’ access to G. and P. after their removal

On 31 March 2009 G. and P. were transferred in custody of the relevant bodies of the city of Moscow and some time later placed into the State educational establishment “Social asylum for kids and adolescents” of the Department of Family and Juvenile Policy of the city of Moscow (“the foster care”). They have remained there to date.

It does not appear that the applicant and her husband had any access to either G. or P. between 31 March 2009 and 3 June 2010. It appears that between 29 April 2009 and 19 May 2010 the parents were allowed to leave food and gifts for the children at the foster care. On 3 June 2010 the foster care issued them with a permission to visit. As of that day the parents have had regular weekly access to both children.

On 22 February 2011 the applicant’s lawyer interviewed Zhm., a teacher from the foster care, who confirmed that the children remembered and never forgot their parents, wanted to return to their family and that it would be better to return the children to their parents.

On the same day director of the foster care Alb. stated that he agreed with the position of Zhm. and was also of the view that the children’s condition has greatly improved and that it would be better for the children to return to their parents.

B. Relevant domestic law

Article 156 of the Criminal Code: Non-fulfilment of obligations concerning the upbringing of a minor

“1. The non-fulfilment or improper fulfilment of duties concerning the upbringing of a minor by a parent or by another person ... if this conduct was accompanied by cruel treatment of the minor ... shall be punishable by a fine ..., or community service, or imprisonment ...”

Article 115: Intentional infliction of light harm to health

“1. The intentional infliction of light harm to health which produced a short-term health disorder or insignificant, but durable loss of general capacity to work ... shall be punishable by a fine ... or compulsory work of up to 480 hours or or correctional works for a term of up to one year ...”

COMPLAINTS

The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings against her had been unfair on account of an allegedly arbitrary assessment of the evidence in the case as well as her inability to challenge the key evidence obtained at the pre-trial stage of the proceedings. She also considered that the appeal court's failure to address her arguments, let alone correct the errors in question, rendered the proceedings even more unfair.

QUESTIONS TO THE PARTIES

1. Did the proceedings against the applicant comply with the requirements of Article 6 §§ 1 and 3 (b) and (d) of the Convention (*A.S. v. Finland*, no. 40156/07, §§ 48-68, 28 September 2010, *A.L. v. Finland*, no. 23220/04, §§ 35-45, 27 January 2009 and, *mutatis mutandis*, *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 147, ECHR 2011)?

2. The respondent Government are invited to comment more specifically on the applicant's allegations that the use of the statements obtained from G. and P. during the interview of 21 April 2009 to convict the applicant was unfair because the investigator's questions during that interview had an accusatory and biased character and the applicant was effectively precluded from challenging this piece of evidence by the subsequent developments at the trial. More specifically, the applicant alleged that her lawyer's ability to prepare questions to both children on 28 October 2010 was undermined because the trial court had given them too short a notice in this respect.

3. Were the domestic authorities under an obligation to secure the interests of the defence at the interview of 21 April 2009 by any means other than the applicant's personal presence? On the facts, can it be said that the authorities have complied with this obligation?