



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

FIRST SECTION

Application no. 39438/13
Anatoliy Sergeyevich NAZARENKO against Russia
lodged on 15 May 2013

STATEMENT OF FACTS

The applicant, Mr Anatoliy Sergeyevich Nazarenko, is a Russian national, who was born in 1965 and lives in Ulan-Ude.

A. The circumstances of the case

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

In 2007 the applicant's wife N. gave birth to a daughter A.

In 2010 the applicant and N. got divorced.

1. Residence and paternity proceedings

On 18 January 2011 the Oktyabrskiy District childcare and guardianship authority fixed A.'s residence as follows: on even weeks with the applicant and on odd weeks with N.

On 22 March 2011, suspecting that A. had been beaten and sexually abused, the applicant refused to return A. to her mother N. During the following year A. lived with the applicant and her paternal grandmother. On several occasions the applicant allowed N. to visit A. in his presence.

On 25 March 2011 the applicant applied to the Oktyabrskiy District Court of Ulan-Ude for an order fixing A.'s residence with him. N. counterclaimed, asking that A.'s residence be fixed with her.

On 19 May 2011 the Oktyabrskiy District Court fixed A.'s residence with her mother N. On 16 June 2011 the Supreme Court of the Buryatiya Republic upheld the judgment on appeal.

As the applicant continued refusing to return A. to N., N. applied to the Oktyabrskiy District Court for an injunction to the applicant to return A. to her. On 29 November 2011 the Oktyabrskiy District Court allowed N.'s claims and ordered that the applicant should return A. to N. On an unspecified date that judgment was upheld on appeal by the Supreme Court of the Buryatiya Republic.

On an unspecified date the applicant for a second time applied to the Oktyabrskiy District Court for an order restricting N.'s parental rights over A. and fixing A.'s residence with him.

On 23 January 2012 the Oktyabrskiy District Court rejected the applicant's claims and confirmed A.'s residence with N. On 2 April 2012 the Supreme Court of the Buryatiya Republic upheld that judgment on appeal.

On 13 March 2012 N. kidnapped A. from the applicant. She has since prevented the applicant from visiting his daughter.

The applicant for a third time applied to the Oktyabrskiy District Court, asking that N. be deprived of parental rights over A. and that A.'s residence be fixed with him.

While the above proceedings were pending, N. also applied to the Oktyabrskiy District Court, disputing the applicant's paternity of A. and asking that his name be deleted from A.'s birth certificate and that A.'s family name and patronymic be changed.

On 23 July 2012 a DNA paternity test established that the applicant was not A.'s biological father.

On 18 September 2012 the Oktyabrskiy District Court allowed N.'s claims. It found that the applicant was not A.'s biological father and ordered that his name be deleted from A.'s birth certificate and that A.'s family name and patronymic be changed to a family name and a patronymic not connected with the applicant. On 19 November 2012 the Supreme Court of the Buryatiya Republic upheld the judgment on appeal.

On 16 January 2013 the Oktyabrskiy District Court discontinued the proceedings on the applicant's claim that N. be deprived of parental rights over A. and that A.'s residence be fixed with him. The court found that the applicant was not A.'s biological father and that he therefore had no standing under domestic law to lodge a civil action related to parental rights over A. or to A.'s residence.

On 27 February 2013 the Supreme Court of the Buryatiya Republic upheld the decision on appeal. According to the applicant, he was not apprised of the date of the hearing. He was not informed about the appeal decision until 12 March 2013.

2. Criminal investigation into the allegations of child abuse

On 21 March 2011 the applicant saw bruises on A. When asked about the bruises, A. said that her mother's new partner V. had pinched her.

On 22 March 2011 A. was examined by a doctor who noted several bruises on her pubis and thighs. On the same day she was diagnosed with an ureaplasma infection (an urogenital infection caused by a bacterium).

On 25 March and 6 April 2011 the applicant complained to the police and to the Oktyabrskiy District Investigations Committee that his daughter A. had been abused by V. He alleged, in particular, that V. had beaten and sexually abused A. and had contaminated her with a sexually transmittable disease.

On an unspecified date the Investigations Committee opened an inquiry.

On 25 April and 27 June 2011 A. was interviewed by the investigator. A psychologist was present during the interview. A. stated that she wanted to live with the applicant because he was nice, while N. and her new partner V. had treated her badly.

On 16 June 2011 A. was examined by medical experts who found that her hymen was intact and that there were no visible injuries in the genital area.

On 30 June 2011 the Oktyabrskiy District Investigations Committee opened criminal proceedings into the alleged ill-treatment and sexual abuse of A.

On 15 July 2011 A. was granted the procedural status of victim and the applicant was granted the status of her legal representative.

On 3 August 2011 A. was again interviewed in the presence of a psychologist and confirmed her previous submissions.

The investigator also questioned several witnesses:

– The applicant and his mother reiterated to the investigator their allegations of child abuse against V.

– V. denied ill-treating or sexually abusing A. He stated that he had treated A. as his own daughter and had only once slightly spanked her because she had been jumping on him and had ignored his rebukes. As regards the bruises recorded on 22 March 2011, several days before that A. had fallen while playing in the nursery school.

– N. refuted all allegations of child abuse against her partner V. She stated that V. and A. were on very good terms, that V. had taken care of A., had played with her and had taught her. After some time A. had started to call him “daddy”. She thought that the applicant’s accusations against V. were motivated by jealousy.

– The teachers of A.’s nursery school stated that A. was a cheerful and sociable girl. She was always cleanly dressed and taken good care of. The teachers had never seen any injuries on her. A. loved her mother and always spoke well of her. She had never complained of any ill-treatment at home. A.’s grandmother had once voiced her suspicions that A. had been beaten by her mother and V. The teachers had immediately questioned A. who had said that her mother and V. had always treated her well and had never beaten her. Several times A. had been taken from school by V. A. had been glad to see him and the teachers had the impression that V. and A. had been on good terms. One of the teachers however stated that she had the impression that A. did not like V. and was unwilling to leave school with him. The teachers confirmed that A. had once fallen and received bruises while playing in the nursery school.

On 16 February 2012 a panel of experts examined N.’s and A.’s medical records and found that N. had suffered from an ureaplasma infection during her pregnancy and that that infection could have been transmitted to A. during the birth.

On 20 March 2012 A. was again interviewed by the investigator. A psychologist was present. A. said that she liked living with her mother and that her mother was treating her well.

On 23 April 2012 A. was examined by a panel of psychologists. They found that A. did not suffer from any mental disorder. However, due to her age, level of development and her susceptibility to external influence, she was unable to give reliable testimony about her relationships with her mother, her father and her mother’s new partner.

On 30 April 2013 the Oktyabrskiy District Investigations Committee discontinued the criminal proceedings, finding that there was no evidence of child abuse. As established by experts, the ureaplasma infection could have

been transmitted to A. by her mother during the birth. The bruises could have been caused by a fall. According to expert psychologists, A.'s testimony about V.'s treating her badly was unreliable. The witnesses had been unable to provide any information confirming the applicant's allegations of abuse.

On 17 May 2012 the acting Oktyabrskiy District prosecutor annulled the decision of 30 April 2013 and ordered additional investigation.

On 22 June 2012 the Oktyabrskiy District Investigations Committee discontinued the criminal proceedings for the same reasons as before.

On 3 September 2012 the acting Oktyabrskiy District prosecutor annulled the decision of 22 June 2012 and ordered additional investigation.

On 22 October 2012 the acting Buryatia Republic prosecutor annulled the decision of 2 September 2012, finding that the investigation had been thorough and complete and that there was no need for a further investigation. The applicant was informed of that decision by letter dated 23 November 2012.

B. Relevant domestic law

The Family Code provides that a child is entitled to maintain contact with his parents, grandparents, brothers, sisters and other relatives. The parents' divorce, separation or the annulment of their marriage have no bearing on the child's rights. In particular, in the case of the parents' separate residence, the child is entitled to maintain contact with both of them (Article 55 § 1).

Grandparents, brothers, sisters and other relatives are entitled to maintain contact with the child. If the parents, or one of them, prevent close relatives from contacting the child, the childcare and guardianship authority may order that the parents ensure that the contact is maintained. If the parents do not comply with the childcare and guardianship authority's order, the relative concerned or the childcare and guardianship authority may apply to a court for an injunction to the parents to ensure that the contact is maintained. The court must take a decision in the child's interests and must take the child's opinion into account. If the parents do not comply with the court's injunction, they may be held liable in accordance with law (Article 67).

COMPLAINTS

The applicant complains under Articles 6, 8 and 13 of the Convention that the investigation into the allegations of child abuse was ineffective. He further complains that after the annulment of his paternity the civil proceedings he had initiated to protect A.'s interests were discontinued. As a consequence, he was deprived of any opportunity to see his daughter or to defend her rights. He also complains about various procedural defects in the criminal and civil proceedings, in particular about admission of evidence that has been obtained unlawfully and the failure to inform him about the appeal hearing of 27 February 2013.

QUESTIONS TO THE PARTIES

1. Was there an interference with the right to respect for the applicant's family life? If yes, was the interference lawful and "necessary in a democratic society"? In particular, do the Russian law provides for visiting or contact rights for the applicant after it has been established that he was not A.'s biological father? Given that for five years the applicant raised A. as his own daughter and actively participated in her upbringing, education and maintenance, may the denial of visiting and contact rights to the applicant be considered as serving A.'s best interests? Were A.'s best interests taken into account in the decision of 16 January 2013 by the Oktyabrskiy District Court of Ulan-Ude, as upheld on appeal on 27 February 2013, by which the proceedings on the applicant's claim related to parental rights over A. and to A.'s place of residence were discontinued for the lack of standing?

2. Did the applicant have at his disposal an effective domestic remedy, as required by Article 13 of the Convention, for his complaint under Article 8 that he no longer have any visiting or access rights after it has been established that he was not A.'s biological father?

3. Given that the domestic courts discontinued the proceedings on the applicant's claim related to parental rights over A. and to A.'s place of residence for the lack of standing (see the decision of 16 January 2013 by the Oktyabrskiy District Court of Ulan-Ude, as upheld on appeal on 27 February 2013), has the applicant's "right of access to a court" guaranteed by Article 6 § 1 been respected?

4. Was the applicant apprised of the appeal hearing of 27 February 2013 before the Supreme Court of the Buryatiya Republic in such a way so as to have an opportunity to attend? If not, was it compatible with the applicant's right to a fair trial, enshrined in Article 6 § 1 of the Convention (see *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, § 20 et seq., 5 October 2006; and *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008)?

5. The parties are requested to submit the following documents:

- the decision of 18 January 2011 by the childcare and guardianship authority of the Oktyabrskiy District of Ulan-Ude fixing A.'s residence;
- the judgment of 19 May 2011 by the Oktyabrskiy District Court of Ulan-Ude and the appeal judgment of 16 June 2011 by the Supreme Court of the Buryatiya Republic;
- the judgment of 29 November 2011 by the Oktyabrskiy District Court of Ulan-Ude and the relevant appeal judgment by the Supreme Court of the Buryatiya Republic;
- the judgment of 23 January 2012 by the Oktyabrskiy District Court of Ulan-Ude and the appeal judgment of 2 April 2012 by the Supreme Court of the Buryatiya Republic.