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

Communicated on 13 February 2014

FIRST SECTION

Application no. 26668/09
Gennadiy Anatolyevich NOSOV
against Russia
lodged on 16 March 2009

STATEMENT OF FACTS

1. The applicant, Mr Gennadiy Anatolyevich Nosov, is a Russian national, who was born in 1976 and lives in Belgorod. He is represented before the Court by Mr K.A. Markin, a lawyer practising in Velikiy Novgorod.

A. The circumstances of the case

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

3. On 12 September 1992 the applicant married Mrs N. and on 23 July 1993 their daughter Mrs NE. was born.

4. After unspecified period of time the applicant's marriage became dysfunctional and he started a relationship with another woman, who had later conceived his child. The applicant consistently provided financial and parental support to his daughter born out of his marriage.

5. In 2008 the applicant decided to divorce his wife and to register his relationship with his new partner. He filed a civil action seeking divorce.

6. After the lapse of the reconciliation period ordered by the court under section 2, Article 22 of the Family Code, the applicant's civil action was dismissed by the Justice of the Peace for the 8th Circuit of Zapadniy District of Belgorod on 5 December 2008. The relevant parts of the judgment read as follows:

> "The plaintiff [the applicant] submits in his action that martial relations of the parties are factually terminated and that they do not have a common household anymore. The plaintiff considers further preservation of the family impossible and requests dissolution of marriage.

> At the same time the defendant [Mrs N., the applicant's wife] stated that she, the plaintiff, and their child have a possibility to reside together in a service apartment provided for the whole family ...
>
> An underage witness Mrs NE. stated during the hearing that she as an underage daughter of the parties wants to live in a full family with both parents, who she loves a lot, and that she sees no weighty reasons for divorce.
>
> The court had established that in case of dissolution of marriage the defendant [Mrs N.], who has disability of the second degree, loses the status of a military serviceman's family member along with all related rights and social security guarantees... In the opinion of the court such development would negatively influence financial security, living arrangements and psychological state of an underage child; considering among other factors the defendant's state of health she would not be in a position to independently provide for the child and to ensure proper upbringing.
>
> According to Article 22 of the Family Code a marriage is dissolved by a court if it establishes that subsequent common life of the spouses and preservation of the family are not possible.
>
> The court established that the parties still maintain a possibility to live in the same household, [and to] commonly and jointly bring up their underage child, [that] the defendant [Mrs N.] did not categorically dismiss in court a possibility to maintain family relations, [that] the interests of an underage child require living in a family with both parents, and that the plaintiff did not advance in court any convincing reasons for dissolution of marriage (i.e. founding a new family, unlawful actions of the defendant ... medical certificates confirming battery ...).
>
> Under these circumstances, having regard to all aspects of the parties' lives, and protection of the interests of an underage child the court considers that the marriage may be preserved and the action for dissolution of marriage must be dismissed."

7. The applicant appealed alleging that the trial court's arguments concerning possible negative influence of a divorce on financial security, living arrangements and psychological state of an underage child were purely speculative. Further he stated that in any event under section 2, Article 22 of the Family Code a court may not refuse dissolution of a marriage if reconciliation measures were fruitless and one of the spouses insists on it. Finally the statement of appeal highlighted that an express wish to terminate marital relationship is in itself a sufficient reason for dissolution of marriage.

8. On 19 February 2009 the Oktyabrskiy District Court of Belgorod dismissed the applicant's appeal. The relevant parts of the judgment read as follows:

> "According to Article 56 of the Civil Procedure Code each party to civil proceedings has to prove existence of circumstances serving as grounds for claims and objections.
>
> Both the Justice of the Peace and the appeal court clarified to the applicant his obligation to prove impossibility of preservation of family and maintaining a common household [to which he refers] ...
>
> No convincing reasons were advanced by [the applicant] in order to prove that further common life and preservation of the family are impossible... [T]he court considers all arguments for dissolution of marriage as unwillingness of the plaintiff to live with his family without any reasons for non-preservation of the family.
>
> Mr Ch. a witness examined during the hearing stated that Mr Nosov [the applicant] is in contact with another woman and does not wish to live with his family.
>
> [This statement] does not allow the court to conclude that the applicant has factually established new family relations.

> The period of time during which the plaintiff is living separately from his family in not lengthy, while for a long time [between 1992 and 2008] the plaintiff and the defendant lived as one family. The fact that they do not reside as one family since September 2008 may not justify the conclusion that further common life of the spouses and preservation of the family are impossible.
>
> These circumstances established by the court permit to concluded that the dissolution of marriage is sought by Mr Nosov without an intention to establish a new family.
>
> In the opinion of the court dissolution of marriage may violate Mrs NE's right to live in a full family.
>
> The court considers that dissolution of the [the applicant's and Mrs N's] marriage would be contrary to the interests of their common daughter, since a child has the right to be raised in a full family and the right to full attention of both parents.
>
> Preservation of the family does not breach anyone's rights, since there is no evidence to the contrary."

9. The applicant attempted to register his marriage with his new partner. But on 24 March 2009 his application for marriage was dismissed by the Civil Status Registration Authority of Belgorod due to failure to prove dissolution of the previous marriage.

10. He lodged another civil action for dissolution of marriage. However it was dismissed on 25 August 2009 by the Justice of the Peace for the 9th Circuit of Zapadniy District of Belgorod. The relevant parts of the judgment read as follows:

> "The plaintiff did not appear for the hearing, requested consideration of the case in his absence with participation of his representative Mr NZ.
>
> The defendant Mrs N. stated that she is against dissolution of marriage, considers misunderstandings with her husband to be temporary, marital relations with the plaintiff had not been terminated, her husband maintains relations with her and occasionally visits her. In her opinion a divorce may have significant psychological effect on her underage daughter and may lead to termination of their housing rights in the service apartment provided to her husband.
>
> The court finds unconvincing the plaintiff's arguments concerning impossibility to preserve marriage and [possibility of other arrangements for taking care of the common child] ...
>
> Considering objections of the spouse to [dissolution of marriage] and the decision of the plaintiff not to appear for hearings the court finds that the claim for [divorce] is premature ..."

11. The applicant's appeal against the judgment was dismissed on 24 November 2009 by the Oktyabrskiy District Court of Belgorod. The relevant parts of the appeal judgment read as follows:

> "There is no convincing evidence that further common life and preservation of the family are impossible... the court considers all arguments for dissolution of marriage as unwillingness of the plaintiff to live with his family without any reasons for non-preservation of the family.
>
> The plaintiff's reference to the fact that he established a new family and that the woman with whom he lives conceived his child is not convincing and unsubstantiated ...
>
> The testimony of Mrs NA. [the applicant's mother] that her son established a new family could not be accepted, since she has hostile relations with her [current daughter-in-law] and thus the testimony is biased ...

The testimony of Mrs V. also does not prove existence of a new family, since the plaintiff's new partner is registered and lives in [another city]... and the fact of visits cannot establish existence of common life and household ...

[Mr P. testified] that during visits he had seen the plaintiff's new partner only from time to time; accordingly, in the opinion of the court, there was no permanent common life [of the applicant and his partner] or a new family ...

The rental agreements ... also do not prove termination of marital relations with the defendant.

The plaintiff's claim that he terminated his relationship with his wife in summer of 2008 is not convincing.

The evidence in the case demonstrates that in July 2008 the plaintiff and the defendant bought together electrical appliances: vacuum cleaner and washing machine.

The period of time during which the plaintiff is living separately from his family in not lengthy, while for a long time [between 1992 and 2008] the plaintiff and the defendant lived as one family. The fact that they do not reside as one family since September 2008 may not justify the conclusion that further common life of the spouses and preservation of the family are impossible.

Mr Nosov [the applicant] and Mrs N. are married spouses... neither of them found a new family, they communicate with each other ... Mrs N. does not consent to dissolution of marriage, considers preservation of the family possible if there would be no interferences by the others.

The circumstances established by the court permit to conclude that dissolution of marriage does not pursue a goal of establishing a new family ...

The defendant states that preservation of family is possible and necessary for the sake of underage child, who needs daily care and communication with her mother and father...

Accordingly the appeal court considers it necessary to secure the interests of an underage child to live in a full family with two parents ...”

B. Relevant domestic law and practice

1. The Family Code of the Russian Federation

12. The legal framework for conclusion and dissolution of marriages is defined by the Family Code of the Russian Federation adopted on 29 December 1995.

13. While the Code does not expressly define a marriage, it lists in Article 12 two conditions for conclusion of marriage, namely, mutual and voluntary consent of future spouses and attainment of the age of marital capacity.

14. Article 14 of the Code contains an exhaustive list of reasons precluding conclusion of marriage, namely being 1) already married, 2) close relatives, 3) adoptive parents and children, and 4) legally incapacitated due to a mental disorder.

15. Articles 21 and 22 of the Code prescribe the court procedure for all non-consensual dissolutions of marriages. In the relevant parts they provide as follows:

Article 21. Dissolution of marriage by a court

“1. A marriage shall be dissolved by a court if the spouses have common underage children... or if a spouse does not consent to dissolution of marriage...”

Article 22. Dissolution of marriage by a court in absence of a spouse's consent to dissolution of marriage

"1. A marriage is dissolved by a court if it establishes that subsequent common life of the spouses and preservation of the family are not possible.

2. A court considering an application for dissolution of marriage in absence of a spouse's consent may take measures aimed at reconciliation of the spouses and may adjourn hearings for a period of up to three months affording the spouses a reconciliation period.

3. A marriage is dissolved if reconciliation measures were fruitless and the spouses (one of them) insist on dissolution of marriage."

2. The Supreme Court of the Russian Federation

16. The Plenum of the Supreme Court of the Russian Federation in its Decree No. 15 of 5 November 1998 (as amended by the Decree No. 6 of 6 February 2007) provided the Russian courts with guidelines on cases concerning dissolution of marriage.

17. Section 7 of the Decree states that the civil action for dissolution of marriage shall necessarily contain among other information the reasons for dissolution of marriage if there is no agreement to divorce between the spouses.

18. Section 10 highlights that if no reconciliation had been reached by the spouses after the expiry of the court-ordered period and if at least one of the spouses insists on divorce the court shall dissolve the marriage.

19. Section 20 of the Decree lists the requirements for a judicial decision on dissolution of marriage including among others clear identification of the reasons for spousal discord and indication of proof that the family may not be preserved.

COMPLAINTS

20. The applicant complains under Articles 8 and 12 of the Convention that he was unable to obtain dissolution of marriage with his wife and thus forced to legally maintain his marital relations despite desire to register his relationship with his partner.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private and/or family life, within the meaning of Article 8 § 1 of the Convention?

If so, was that interference in accordance with the law in terms of Article 8 § 2? In particular on which grounds in the Russian law or legal practice did the domestic courts rely in refusing to dissolve the applicant's marriage?

Considering the domestic courts' systemic reliance on the applicant's alleged failure to prove impossibility to preserve a family and lack of convincing reasons for dissolution of marriage, what is the standard of proof established by the Russian legislation and/or legal practice regarding the two issues mentioned above? In particular, do the domestic courts consider express wish of one of the spouses to divorce to be a sufficiently convincing reason for dissolution of a marriage after a court-ordered reconciliation period expires?

Was the interference with the applicant's rights under Article 8 necessary in a democratic society? What were the legitimate aims pursued by domestic courts in their refusal of dissolution of marriage? Was the interference proportionate to the legitimate aims pursued by the national authorities?

2. Has there been a violation of the applicant's rights under Article 12 of the Convention?

In particular, considering the Court's judgment in the case *Johnston and others v. Ireland* (no. 9697/82, §§ 51-54, 18 December 1986) and in the light of the present day conditions, did guarantees of Article 12 of the Convention apply in the circumstances of the present case?

Did the domestic courts' refusal to dissolve the applicant's marriage restrict his right to marry his new partner and to found a family with her as guaranteed under Article 12 of the Convention? If so, was such restriction in accordance with the national laws governing the exercise of this right?

3. The parties are invited to provide detailed answers to each of the questions above.