



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

Communicated on 3 July 2014

FIRST SECTION

Application no. 78754/13
Pavel Grigoryevich SHISHKOV
against Russia
lodged on 28 November 2013

STATEMENT OF FACTS

The applicant, Mr Pavel Grigoryevich Shishkov, is a Russian national, who was born in 1989 and lives in Moscow.

A. The circumstances of the case

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

1. Events in 2005 - 2009

In 2005 the applicant started a relationship with Ms Ye. who lived in Orel. They did not get married, and the applicant continued to spend most of the time in Moscow where he worked and where his parents live.

On 20 July 2007 Ms Ye. gave birth to a son, K.Ye., and on 31 July 2008 she gave birth to a daughter, V.Ye. The birth certificates indicated only the father's first name as "Pavel" through children's patronymics; the fields concerning the identity of the father were left blank. As the applicant submitted later to the national authorities, Ms Ye. wanted to be recorded as single mother for the social benefits purposes.

According to the applicant, he continued to visit Ms Ye. in Orel regularly and took part in the children's upbringing. Sometime in 2009 he and Ms Ye. decided to end their relationship. It appears that after that the applicant had not maintained any regular contact with Ms Ye. and learned of the subsequent events in the end of 2011.

2. The children's placement into care

As it appears from the subsequent documents, on 19 February 2010 the local police in Orel learnt that the two kids were neglected by their mother,

Ms Ye. On 22 February 2010 the police took K.Ye. and V.Ye. from their mother's flat and placed them into the Orel Paediatric infections hospital. On the same day the child care authority has been informed of this.

On 12 March 2010 the hospital informed the child care authority that no one had picked the children from there.

On 29 March 2010 the child care authority examined Ms Ye.'s flat and recommended that the children be taken into state care.

On 5 April 2010 the Mayor of Orel issued an order declaring K.Ye. and V.Ye. in need of state care due to neglect by their single mother and a threat to their life and health. The Mayor ruled on placing the children to the municipal child-caring facility Orel Specialised children's house.

As it appears, no legal action aimed at limiting or withdrawing Ms Ye.'s parental rights has been taken at that time. On 1 June 2010 Ms Ye. requested the Orel Specialised children's house to keep her son K.Ye. for six months; on 24 December 2010 she made a similar request asking to keep her daughter V.Ye. for three months.

On 29 July 2010 K.Ye. who reached the age of three, was transferred to another municipal facility, Mtsenskiy Children's house. His younger sister V.Ye. remained at the Orel Specialised children's house.

On 17 December 2010 the Orel Town child care department informed Mtsenskiy Children's house that they have worked with Ms Ye. As a result, the mother had renovated her flat, was aware of the need to take care of her kids and regularly visited her daughter, V.Ye., at the Orel Specialised children's house. In such circumstances, it appeared premature to seek withdrawal of parental rights in respect of K.Ye.

On 25 May 2011 the Orel Specialised children's house drew up an act confirming that V.Ye.'s mother had failed to participate in the child's upbringing. The act noted that the mother had not paid any visits to V.Ye. in the past five months, had not inquired about her health and wellbeing, had not contributed to her daughter's upbringing in any way. In such circumstances, and taking into account that the girl had lived separately from her mother for over six months, there was no need to seek her consent for the child's adoption.

On 19 July 2011 the Sovetskiy District Court of Orel ("the District Court") granted the request of the Mtsenskiy Children's house, supported by the Orel child care authority, to withdraw Ms Ye.'s parental rights in respect of K.Ye. The Children's house showed that since the child had been admitted there in July 2010, Ms Ye. had not paid a single visit to him, had not send anything, called or otherwise shown any interest in his wellbeing. Ms Ye. admitted her failure to take any steps in respect of her son for over one year and agreed with the claim. The District Court concluded that it was in the child's best interest to withdraw Ms Ye.'s parental rights in respect of her son and to seek alimony from her to cover her child's upbringing. The decision was not appealed and entered into force on 30 July 2011.

On 15 November 2011 the District Court granted the request of the Orel Specialised children's house, supported by the Orel child care authority, to withdraw Ms Ye.'s parental rights in respect of V.Ye. The Children's house submitted that since the child had been admitted there in April 2010, Ms Ye. had paid four visits to her daughter. Ms Ye. disagreed with the claim and argued that she had paid visits to her daughter as often as she could, and that

at other times when she wanted to visit the Children's house did not admit visitors. She argued that she was working, had little time to spend with the child, but that she intended to take her daughter to Moscow where V.Ye.'s father and his mother lived. She did not name the father and the court does not seem to have followed on this information. The court called three additional witnesses: Ms Yu., V.Ye.'s educator from the Children's house; Ms Z., police officer responsible for juvenile issues who had taken the kids from the flat in February 2010; and Mr P., the secretary of the Sovetskiy district commission on juvenile issues. Ms Yu. testified that she had seen Ms Ye. twice during the child's stay at the institution, that the girl had little memories about her mother, did not ask for her and did not recall her name. Ms Z. and Mr P. testified that while the kids lived with her, Ms Ye. had neglected them, the flat was rundown, the kids were dirty. Ms Ye. had a drinking problem, during the meetings she smelled with alcohol and had never contacted the commission or the municipal care authority on her own initiative, seeking to return the kids home. The District Court's decision was not appealed and entered into force on 29 November 2011.

In the meantime, the Orel Specialised children's house proceeded with seeking adoptive parents for V.Ye. On 25 November 2011 it gave its consent to the child's transfer for upbringing to the adoptive family of L.P and Yu.P. The document noted that the adoptive family had established good emotional and psychological contact with the child, who was in need of attention and support from caring adults. Since the child's adoption to the institution, her mother had not paid visits and had not taken any attempts to re-establish contact with the child. V.Ye.'s transfer to the adoptive family would be entirely in her best interests.

On 30 December 2011 the Mayor of Orel ruled to transfer V.Ye. for foster care to the adoptive family of L.P and Yu.P. On 11 January 2012 L.P and Yu.P. concluded an agreement with the Orel Town Administration to act as foster parents in respect of V.Ye.

3. Procedures initiated by the applicant to obtain care of the children

The applicant submits that he had learnt of these events in October 2011. In his letter to the Orel Town Administration of 5 April 2012 the applicant explained that Ms Ye. had not told him or his mother, with whom she had maintained phone contact, that she had lost parental rights over the children. He intended to obtain custody of his children and for this reason sought to obtain changes to their birth certificates. He stressed that the children were separated in July 2010, which must have caused them further emotional distress.

On 15 May 2011 the applicant applied to the District Court. He sought to establish the fact of his paternity of K.Ye. and V.Ye. and asked to call a number of witnesses; he also sought to award him the children's custody. The applicant indicated that he had last seen the kids in 2009. In 2010 he had learnt that the children had been placed to the Orel Specialised children's house, but in April 2010 Ms Ye.'s aunt informed his mother that the kids have returned home and stayed with their mother. Ms Ye. avoided any contact with him and did not tell him that the children remained in state care. He had learnt of the decisions to withdraw Ms Ye.'s parental rights

only in October 2011, when he came to her house in Orel, following which she again disappeared.

On 18 June 2012 the District Court ordered a DNA test of paternity in respect of V.Ye., to which her foster family, L.P and Yu.P., objected.

Following the results of the DNA test, and having heard Ms Ye. and several other witnesses, on 23 August 2012 the District Court found the applicant's paternity established both in respect of K.Ye. and V.Ye.

Following that, L.P and Yu.P. initiated court proceedings to withdraw the applicant's parental rights over V.Ye.

On 24 September 2012 the District Court disjoined the applicant's requests to award him custody of K.Ye. and V.Ye. The court noted that the award of custody over V.Ye. was linked to the pending question of withdrawal of parental rights and adjourned the question of custody in respect of the girl.

On 27 September 2012 the District Court awarded custody over K.Ye. to the applicant. The court noted that the applicant and his mother had paid regular visits to the boy in the Children's house, brought him presents and clothes. The child waited for their visits, was happy to see them and had a good contact with both his father and grandmother. The court was satisfied with the applicant's living conditions, financial and personal references. It noted that, as a parent, the applicant had preferential right to take care of his child and that it would be in K.Ye.'s best interest to live with his father.

In October 2012 the Orel Town civil registration office issued new birth certificates for K.Ye. and V.Ye., indicating the applicant as the father.

On 2 November 2012 the Orel Region Prosecutor's Office wrote to the applicant's mother that, in reply to her letter, they had carried out an inquiry into the applicant's children's situation. The prosecutor's office found that the local police had breached the relevant domestic regulations on 22 February 2010 when they had taken the two children from their mother's flat and took them to the Paediatric infections hospital, without involving the local child care authorities. The child care authorities then failed to examine the children's family home within three days, having visited Ms Ye. only on 29 March 2010. Following the Mayor's order of 4 April 2010 to take children into state care, the local prosecutor's office had not been informed timely, and no steps to limit Ms Ye.'s parental rights or to otherwise clarify the children's legal status had been taken at that time. The letter further explained that as the boy had been found to be suffering from a mental disorder, the foster family would not accept two children. Thus, on 16 November 2011 the regional child care authority had authorised taking of just the girl into foster care. The prosecutor's letter ended by referring to the pending administrative demarches taken in respect of the officials who had been found guilty of these breaches.

On 21 February 2013 the District Court refused to award custody over V.Ye. to the applicant. The court noted that the only reason why the parents could be refused in their right to take care of their children were the child's own interests. The court recalled that even though the applicant had first learnt about the children's placement to the Children's house in March 2010, he had failed to apply to the authorities before April 2012. Such attitude demonstrated, in the court's view, lack of interest towards the children, V.Ye. in particular. The court critically assessed the applicant's

version that the children's absence could be kept secret from him for such a long time, if, as he claimed, he was genuinely interested in their wellbeing. Referring to the Orel Town Administration's assessment, the court noted that V.Ye.s' further taking from foster family would create a serious stress for her. She had not seen her father and did not remember him, was attached to her foster parents and called them "father" and "mother", attended kindergarten and an arts studio, had appropriate living space, toys and books. The court referred to the psychological examination of 3 December 2012, which found that V.Ye. had considered herself, L.P and Yu.P. to be a family, that she called them mother and father and did not name any other important adults in her life. The psychologist who had carried out the examination was called to the court to testify and argued that the stress of being removed, once again, from the environment which she considered her home, could have long-lasting consequences, such as loss of trust in adults. The court then examined the submissions made by the headmistress of the kindergarten and the director of the art studio which V.Ye. attended. Both indicated that V.Ye. had been anxious and scared at the beginning, refused to let go her foster mother and had fears that she could be left at the kindergarten or picked up by strangers. The child became more relaxed and confident with time, but was visibly attached to her foster family.

The court further referred to the results of the Moscow municipal child care authority visit to the applicant's flat, carried out on its request in December 2012. The applicant failed to appear for the agreed time of the visit and had failed to follow the recommendations previously given to him by the child care authorities in terms of improvements at his flat. While there was sleeping place for K.Ye., there was no such place for the second child. At the time of the visit, K.Ye. residence at the flat had not been regularised, as a result of which he had not been assigned to the local paediatric care and had not attended kindergarten. On 13 December 2012 the head of municipal authority "Yuzhnoportovoye" in Moscow, taking into account the results of the visit and discussion, concluded that the applicant was not ready to take custody of V.Ye. As recorded, the applicant could not recall when he had last seen his daughter and refused to discuss any plans in case she moved to Moscow. In December 2012 the applicant underwent a psychological testing at the Moscow municipal Centre of assistance to families and children, which concluded that he demonstrated signs of infantile behaviour, was not sure of himself and had weak emotional attachments to others. Similarly, the Moscow 14-th psychiatric hospital examined the applicant and concluded that he had failed to take full cognisance of the psychological consequences of his daughter's move to Moscow and the need to live with her biological father, whom she had not seen for four years, and brother, whom she had not seen for two years. The court concluded that the child care authorities in both Orel and Moscow did not recommend V.Ye.'s transfer to her father as not being in the child's best interests.

Having summarised the above, the court concluded that transfer of care over V.Ye. to the applicant had not been in the child's best interest.

The applicant appealed. On 28 May 2013 the Orel Regional Court confirmed the decision of 21 February 2013. The applicant in his appeal pointed out, among other things, that the district court's evaluation of the

circumstances ignored his rights as biological father; that it also failed to take into account that as a result of this arrangement the girl had lost contact with her grandparents (his parents) and brother. The applicant questioned the lawfulness of the procedure by which V.Ye. had been transferred to foster care. The Regional Court fully endorsed the findings of the District Court and stated that the applicant could still seek to fulfil his parental rights, as well as maintain contact with the girl's other relatives, if the circumstances as established by the District Court would change.

The applicant appealed the decision of 28 May 2013 in cassation. He stressed, once again, that the decision of the courts had breached the right of V.Ye., in so far as it had separated siblings, and that at the time when V.Ye. had been transferred to foster care the situation of her brother had not been taken into account, in breach of the relevant domestic provisions. The applicant also stressed that the court proceedings in his case have been unreasonably long, and that the time was of particular matter in the child care cases.

On 8 November 2013 a judge of the Orel Regional Court refused to submit the case for cassation review to the Presidium of the Regional Court. He found that the applicant's arguments have been fully evaluated by the two previous tribunals which had based their decisions on the child's best interests. The judge repeated that the applicant could still maintain relationship with his daughter, and that the legal nexus between the child and parent didn't cease with the transfer of the latter into foster care.

On 22 July 2013 the applicant was informed by the Orel child care authority that L.P and Yu.P. had been invited to the administration in order to discuss the possibility of contacts between V.Ye. and him, as well as her grandparents. The foster family refused to arrange such meetings, arguing that the girl had not known other relatives except for them. The applicant was invited to apply to a court in order to settle the situation.

B. Relevant domestic law and practice

According to Article 124(2) of the Family Code, adoption is allowed in respect of minors and only if it is in the best interest of the child, taking account of the possibilities to secure the child's full physical, mental, spiritual and moral development.

Article 130 of the Family Code provides that parental consent for adoption is not necessary if, for reasons deemed inadequate by the court, the parents have not been living together with the child for more than six months and have failed to take care of and support him or her.

COMPLAINTS

1. The applicant complains under Articles 6 and 13 of the Convention that the court proceedings were not fair and that there was a breach of the reasonable time guarantee; the unfairness of the proceedings had resulted in breach of the right to effective remedies under Article 13.

2. The applicant considers that his right to respect of family life under Article 8 of the Convention had been violated, since his daughter V.Ye. had been transferred into foster care without his consent or involvement, and also in breach of the relevant domestic rules which establish that siblings should be kept together, unless this becomes impossible.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust the available domestic remedies in respect of his complaints under Article 8 of the Convention?

2. Has there been a violation of the applicant's right to respect for his family life, contrary to Article 8 of the Convention?