



## Restriction of contact arrangements between a transsexual and her six-year-old son was in the child's best interests

In today's Chamber judgment in the case of [P.V. v. Spain](#) (application no. 35159/09), which is not final,<sup>1</sup> the European Court of Human Rights held, unanimously, that there had been:

**No violation of Article 8 (right to respect for private and family life) taken in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.**

### Principal facts

The applicant, P.V., is a Spanish national who was born in 1976 and lives in Lugo (Spain). She is a male-to-female transsexual who, prior to her gender reassignment, had a son with P.Q.F. in 1998. When they separated in 2002 the judge approved the amicable agreement they had concluded, by which custody of the child was awarded to the mother and parental responsibility to both parents jointly. The agreement also laid down contact arrangements for the applicant, who was to spend every other weekend and half of the school holidays with the child.

In May 2004 P.Q.F. applied to have P.V. deprived of parental responsibility and to have the contact arrangements and any communication between the father and the child suspended, arguing that the father had shown a lack of interest in the child and adding that P.V. was undergoing hormone treatment with a view to gender reassignment and usually wore make-up and dressed like a woman. P.Q.F.'s application was dismissed in respect of the first point.

As regards the contact arrangements, the judge decided to restrict them rather than suspend them entirely. Since ordinary contact arrangements could not be made on account of P.V.'s lack of emotional stability, a gradual arrangement was put in place, initially involving a three-hour meeting every other Saturday "until [P.V.] undergoes surgery and fully recovers her physical and psychological capacities". The judge pointed out that P.V. had begun the gender-reassignment process only a few months earlier and that it entailed far-reaching changes to all aspects of her life and her personality and hence emotional instability, a characteristic noted by the psychologist in her report.

That decision was upheld by the *Audiencia Provincial*, which reiterated that ordinary contact arrangements could undermine the child's emotional stability. The child would have to come to terms gradually with his father's decision, which he was in the process of doing since they enjoyed a good emotional relationship. As regards the applicant's

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

objection to the psychologist who had drawn up the report, the *Audiencia Provincial* held that it had not been raised in time.

The contact arrangements were extended in February 2006 to five hours every other Sunday and subsequently, in November 2006, to every other Saturday and every other Sunday, for approximately eight hours each time.

In December 2008 an *amparo* appeal by the applicant was dismissed. The Constitutional Court held that the ground for restricting the contact arrangements had not been P.V.'s transsexualism but her lack of emotional stability, which had entailed a real and significant risk of disturbing her son's emotional well-being and the development of his personality, in view of his age – he had been six years old at the time of the expert report – and the stage of his development at that time. The court held that in reaching that decision, the judicial authorities had taken into account the child's best interests, weighed against those of the parents, and not P.V.'s status as a transsexual.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) taken in conjunction with Article 14 (prohibition of discrimination), the applicant complained about the restrictions ordered by a judge on the arrangements for contact with her son, on the ground that her lack of emotional stability following her gender reassignment was liable to upset the child, who had been six years old at the time.

The application was lodged with the European Court of Human Rights on 18 June 2009.

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

Josep **Casadevall** (Andorra), *President*,  
Elisabet **Fura** (Sweden),  
Corneliu **Bîrsan** (Romania),  
Boštjan M. **Zupančič** (Slovenia),  
Alvina **Gyulumyan** (Armenia),  
Egbert **Myjer** (the Netherlands),  
Luis **López Guerra** (Spain), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

## Decision of the Court

The Court agreed that once they had learned of P.V.'s gender emotional instability, the Spanish courts had adopted contact arrangements that were less favourable to her than those laid down in the separation agreement.

The Court emphasised that, although no issue of sexual orientation arose in the applicant's case, transsexualism was a notion covered by Article 14, which contained a non-exhaustive list of prohibited grounds for discrimination.

While emotional disturbance had not been considered a sufficient reason for restricting contact, the decisive ground for the restriction had been the risk of jeopardising the child's psychological well-being and the development of his personality. In addition, P.V.'s lack of emotional stability had been noted in a psychological expert report which she had had the opportunity to challenge.

Rather than suspending contact entirely, the judge had made a gradual arrangement, whereby he would review the situation on the basis of a report submitted every two

months. From a three-hour meeting every two weeks under professional supervision, the contact arrangements were eventually extended to eight hours every other Saturday and every other Sunday. The overriding factor in that decision had been the child's best interests and not the applicant's transsexualism, the aim being that the child would gradually become accustomed to his father's gender reassignment. The Court further noted that the contact arrangements had been extended although there had been no change in the applicant's gender status during that period.

The Court therefore considered that the restriction of the contact arrangements had not resulted from discrimination on the ground of the applicant's transsexualism and concluded that there had been no violation of Article 8 taken in conjunction with Article 14.

*The judgment is available only in French.*

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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.