

CASE OF KONSTANTIN MARKIN v. RUSSIA

Епифанова Ольга,
группа 401 аб

The plot of the Case

- On 30 September 2005 the applicant's wife, Ms Z., gave birth to their third child. On the same day a court granted her petition for divorce.
- On 6 October 2005 the applicant and Ms Z. entered into an agreement under which their three children would live with the applicant and Ms Z. would pay maintenance for them. The agreement was certified by a notary.
- According to the applicant, several days later Ms Z. left for St Petersburg.
- On 11 October 2005 the applicant asked the head of his military unit for three years' parental leave. On 12 October 2005 the head of the military unit rejected his request because three years' parental leave could be granted only to female military personnel.

- On 14 March 2006 the Military Court of the Pushkin Garrison dismissed the applicant's claim for three years' parental leave as having no basis in domestic law.
- The court held that only female military personnel were entitled to three years' parental leave, while male military personnel had no such entitlement even in those cases where their children were left without maternal care. In such cases a serviceman was entitled either to an early termination of his service for family reasons, or to three months' leave. The applicant had made use of the second opportunity.

- The applicant appealed, alleging that the refusal to grant him three years' parental leave had violated the principle of equality between men and women guaranteed by the Constitution. He further submitted that the factual findings made by the first-instance court were irreconcilable with the evidence examined at the hearing.

- On 11 August 2008 the applicant applied to the Constitutional Court, claiming that the provisions of the Military Service Act concerning the three-year parental leave were incompatible with the equality clause in the Constitution.
- The Constitutional Court concluded that the provisions challenged by the applicant were compatible with the Constitution.

- Later the applicant apply to the European Court of Human Rights
- The applicant complained that the refusal to grant him parental leave amounted to discrimination on grounds of sex. He relied on Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

Article 8

states:

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

states:

- “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The verdict

THE COURT

1. *Dismisses*, by sixteen votes to one, the Government's preliminary objections;
2. *Holds*, by sixteen votes to one, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention;
3. *Holds*, by fourteen votes to three, that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;
4. *Holds*, by fourteen votes to three,
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,150 (three thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

- Thus the Court considers that the applicant had been subjected to the discrimination on grounds of sex and his rights stipulated in the Article 14 and the Article 8 had been violated

THANK YOU!