



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

THIRD SECTION

CASE OF BLYUDIK v. RUSSIA

(Application no. 46401/08)

JUDGMENT

STRASBOURG

25 June 2019

FINAL

25/09/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Blyudik v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 5 June 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 46401/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Konstantinovich Blyudik (“the applicant”), on 26 June 2008.

2. The applicant was represented by Mr R. Kadiyev, a lawyer practising in Makhachkala. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant complained of the unlawful placement of his daughter in a closed educational facility for minors and a violation of his and his daughter’s right to respect for their family life and correspondence resulting from that placement.

4. On 26 September 2013 the application was communicated to the Government under Article 5 §§ 1 and 5 and Article 8 of the Convention.

5. On 7 March 2018 the applicant’s daughter, who had reached the age of majority on 13 July 2010, confirmed her interest in the application and issued a power of attorney to Mr R. Kadiyev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Makhachkala, Republic of Dagestan.

7. In 1990 the applicant started living with Ms T.K.

8. In 1991 and 1992 they had two daughters, Kr. (born on 1 July 1991) and K. (born on 13 July 1992). The applicant did not register his paternity.

9. In 2002 the applicant and T.K. separated. Both girls continued living with the applicant.

10. In 2004 T.K. married Yu.K.

11. In May 2004 Yu.K. registered his paternity in respect of Kr. and K. However, the girls still remained living with the applicant.

12. In July 2007 K. stopped attending school, frequently ran away from home and exhibited delinquent behaviour. She allegedly stole her mother's jewellery.

13. In December 2007, following an application by T.K., K. was placed in a temporary detention centre for juvenile offenders.

14. On 18 February 2008 the Kirovskiy District Court of Makhachkala ("the District Court"), sitting in a single-judge formation composed of Judge I., granted an application lodged by the administration of the Kirovskiy District of Makhachkala to place K. in a closed educational institution for minors for two years and five months. In taking this decision the District Court relied on the following circumstances: K.'s not attending school, running away from home, vagabonding and leading an anti-social and immoral lifestyle, as well as unsuccessful attempts to discipline K. and her being detained in the temporary detention centre for juvenile offenders.

15. On an unspecified date shortly afterwards K. was placed in a closed educational institution for minors in the town of Pokrov, Vladimir Region, some 2,500 km from her home town of Makhachkala. According to the applicant, his daughter's correspondence with him was subjected to censorship by the facility's administration.

16. In the meantime, the applicant brought proceedings seeking the establishment of his paternity *vis-à-vis* Kr. and K.

17. On 9 April 2008 the District Court established the applicant's paternity in respect of Kr. and K. and annulled the registration of Yu.K. as the girls' father.

18. At the applicant's request, the Prosecutor of the Republic of Dagestan applied to the Presidium of the Supreme Court of the Republic of Dagestan for a supervisory review of the decision of 18 February 2008.

19. The present application was already pending before the European Court of Human Rights when, on 7 August 2008, the Presidium of the Supreme Court of the Republic of Dagestan, by way of a supervisory

review, quashed the decision of 18 February 2008 as unlawful and unjustified, and discontinued the proceedings. The court held, in particular, that in violation of the procedure established by the Federal Law on Basic Measures for Preventing Child Neglect and Delinquency of Minors, no. 120-FZ of 24 June 1999 (“the Minors Act”), the District Court had decided to place K. in a closed educational institution for minors in the absence of a decision refusing to institute criminal proceedings or a decision to discontinue the criminal proceedings against the latter, and without her having undergone a prior medical examination.

20. On 30 September 2008 K. was released from the closed educational institution for minors and returned home.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

21. Article 46 of the Constitution provides, among other things, that everyone should be guaranteed judicial protection of his or her rights and freedoms and that decisions, actions or inaction of State bodies, local authorities, public associations and officials may be challenged before a court.

B. Civil Code of the Russian Federation

22. Civil rights may be protected in many ways, in particular, by awards of compensation for non-pecuniary damage (Article 12).

23. A court may hold the tortfeasor liable for non-pecuniary damage incurred by an individual through actions impairing his or her personal non-property rights, such as the right to personal integrity and the right to liberty of movement. The amount of compensation is determined by reference to the gravity of the tortfeasor’s fault and other significant circumstances. The court also takes into account the extent of physical or mental suffering in relation to the victim’s individual characteristics (Articles 150 and 151 of the Civil Code).

24. Damage inflicted on the person or on the property of an individual must be compensated in full by the tortfeasor. The tortfeasor is not liable for damage if he proves that the damage has been caused through no fault of his own (Article 1064 §§ 1 and 2).

25. State and municipal bodies and officials are liable for damage caused to an individual by their unlawful actions or omissions (Article 1069).

26. Irrespective of any fault on the part of State officials, the State or regional treasury are liable for damage sustained by an individual on account of (i) an unlawful criminal conviction or prosecution; (ii) the

unlawful application of a preventive measure; and (iii) an unlawful administrative penalty (Article 1070 § 1).

27. Damage sustained by an individual in the framework of the administration of justice shall be compensated for provided that the judge's guilt has been established in a final criminal conviction (Article 1070 § 2).

28. Non-pecuniary damage must be compensated for irrespective of the tortfeasor's fault in the event of an unlawful conviction or prosecution, or the unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave one's place of residence, or an unlawful administrative penalty in the form of administrative arrest or community work (Article 1100 § 2).

C. Code of Civil Procedure of the Russian Federation

29. Individuals who have reached the age of eighteen years have the full capacity to exercise their procedural rights through their own actions, comply with procedural obligations and assign a representative to argue their case before a court (Article 37 § 1).

30. The rights and interests of minors aged fourteen to eighteen years must be defended by their legal representatives. The court has, however, an obligation to invite such minors to participate in the proceedings. In certain cases provided for by federal law, minors aged fourteen to eighteen years are entitled themselves to defend their rights and interests stemming from civil, family, labour and other relations. In such cases the court is, however, entitled to involve the minor's legal representatives in the proceedings (Article 37 §§ 3 and 4).

31. The rights and interests of minors under the age of fourteen years must be defended by their legal representatives – parents, adoptive parents, guardians and other persons who have been granted such a right under federal law (Article 37 § 5).

D. Family Code of the Russian Federation

32. The Code defines a child as a person under the age of eighteen years (age of majority) (Article 54 § 1).

33. Parents act on behalf of their child and defend the child's rights and interests in any relations with other persons or legal entities. They act *ex officio* as the child's legal representative in court proceedings (Article 64 § 1).

E. Minors Act

34. The Federal Law on Basic Measures for Preventing Child Neglect and Delinquency of Minors, no. 120-FZ of 24 June 1999 (“the Minors Act”) defines a minor as a person under the age of eighteen years (section 1).

35. A minor over the age of eleven with special educational needs may be placed in a “closed educational institution” until he or she reaches the age of eighteen, but for no longer than three years, if he or she (i) has committed a delinquent act before reaching the statutory age of criminal responsibility; (ii) has reached the statutory age of criminal responsibility but is exempted from criminal liability due to delays in mental development not connected to mental illness, which have prevented him or her from fully understanding the factual nature and social dangerousness of his or her actions (or failure to act) or to control them; or (iii) has been convicted for having committed a crime of medium or high gravity and is exempted from punishment (section 15(4)).

36. Closed educational institutions must put in place special conditions for the holding of minors. These include protection of the grounds of the institution in question, ensuring the personal safety of minors and shielding them from negative influences; restriction of free access to the grounds of the institution by third persons; isolation of minors, ensuring that they are unable to leave the grounds of the institution at their own free will; round-the-clock monitoring of and control over minors, including at nighttime; personal inspection of minors, inspection of their belongings and of incoming and outgoing correspondence; and restriction of the use of mobile communication, including access to the Internet, without however leading to restriction or deprivation of minors’ contact with their parents or other legal representatives (section 15(9)(1)).

37. For examination of the issue whether to place a minor in a closed educational institution, an official from the department of the interior or a prosecutor must submit to the court at the place of the minor’s residence the file pertaining to a terminated criminal case against him or her, or the relevant documentation on the refusal to institute criminal proceedings against him or her (section 27(1)(1)).

38. Bodies and institutions operating in the field of prevention of child neglect and delinquency of minors, as well as minors, their parents or other legal representatives, are entitled to bring court proceedings seeking compensation for pecuniary damage caused to the minor’s health, his or her property and/or for non-pecuniary damage, in accordance with the procedure provided for by federal law (section 9(1)).

F. Children's Rights Act

39. The Federal Law on the Basic Guarantees of the Rights of the Child in the Russian Federation, no. 124-FZ of 24 July 1998 ("the Children's Rights Act"), provides that parents (or persons replacing them), as well as pedagogical and medical staff, social workers, psychologists and other specialists engaged in the upbringing, education, healthcare, social protection, care, adaptation and rehabilitation of children are entitled to bring court proceedings for compensation in respect of pecuniary damage caused to a child's health and property, as well as non-pecuniary damage, in accordance with the procedure provided for by federal law (section 23(1)).

G. Practice of the Supreme Court of the Russian Federation

40. Section 1 of the Plenary Supreme Court's Practice Direction no. 10 of 20 December 1994 deals with "certain issues arising out of the application of provisions on compensation for non-pecuniary damage". It provides that, given that the issues relating to compensation for non-pecuniary damage are governed by a number of legislative instruments which entered into force at different times, in order to ensure that disputes are resolved in a proper and timely manner, the courts should ascertain in each case the nature of the legal relationship between the parties and the legal provisions regulating them. They should also ascertain whether the law provides for the possibility of awarding compensation for non-pecuniary damage in cases with such a legal relationship. Where such responsibility is established, they should determine when the legislation providing for the conditions and procedure for compensation in such cases entered into force, as well as when the acts resulting in the non-pecuniary damage had been committed.

THE LAW

I. THE APPLICANT'S STANDING TO RAISE COMPLAINTS ON BEHALF OF HIS DAUGHTER K.

41. The Court observes that the application was brought by the applicant in his own name and raised complaints alleging violations of his own rights, as well as the rights of his daughter, K. The first issue to be determined is whether the applicant was entitled to bring an application in his own name and raise therein complaints on behalf of K.

42. The Court observes that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its

provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective. In this context, the position of children under Article 34 deserves careful consideration, as they must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense. A restrictive or technical approach in this area is therefore to be avoided and the key consideration in such cases is that any serious issues concerning respect for a child's rights should be examined (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 118, 11 December 2014, with further references).

43. Having regard to the above principles, the Court observes that in the instant case, at the time of the events in issue, as well as at the time when the application was lodged, K. was still a minor (see paragraphs 1 and 14 above). The applicant was entitled to act on her behalf and defend her interests by virtue of Article 64 of the Family Code (see paragraph 33 above). In particular, it was at the request of the applicant that the prosecutor initiated a supervisory review of the decision to order K.'s placement in a closed educational institution for minors (see paragraph 18 above). It can therefore be concluded that the applicant was entitled, likewise, to apply to the Court to protect K.'s interests (see *Tonchev v. Bulgaria*, no. 18527/02, §§ 30-33, 19 November 2009).

44. The Court also notes that after the applicant's daughter reached the age of majority, she confirmed her interest in the application and issued a power of attorney to the lawyer representing the applicant in the case (see paragraph 5).

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

45. The applicant challenged the lawfulness of his daughter's placement in a closed educational institution for minors. The complaint falls to be examined under Article 5 § 1 (d) of the Convention, which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority."

46. The Court considers that the applicant's complaint about his daughter's placement in the closed educational institution for minors also raises an issue under Article 5 § 5 of the Convention, which reads as follows:

“5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. The parties’ submissions

47. The Government conceded that there had been no grounds under domestic law for the placement of K. in the closed educational institution, which had amounted to a violation of Article 5 § 1 (d) of the Convention. The unlawfulness of K.’s confinement in the institution had been acknowledged by the decision of the Presidium of the Supreme Court of the Republic of Dagestan of 7 August 2008 quashing the placement decision of 18 February 2008 by way of a supervisory review. K. had then been released and returned home. Accordingly, the domestic authorities had admitted the existence of the violation and eliminated its consequences. Referring to the provisions of domestic law and domestic practice (see paragraphs 22-32 and 38-40 above), the Government also submitted that it had been open to the applicant, acting in the interests of K., and as of her coming of age to K. herself, to sue the State for damages resulting from their unlawful decision to place her in the closed educational institution. However, neither of them had used that legal avenue, and thus had not afforded the domestic authorities an opportunity to eliminate the damage caused to K. by way of an award of compensation for non-pecuniary damage. In such circumstances, the Government concluded that the applicant’s complaint alleging a violation of K.’s rights under Article 5 §§ 1 (d) and 5 of the Convention was inadmissible due to her loss of victim status.

48. The applicant disagreed with the Government’s argument that K. had lost her victim status. He argued that neither he nor K., as of her coming of age, could have claimed compensation for the latter’s unlawful placement in a closed educational institution in the absence of clear provisions to that effect in the domestic law. He referred, in particular, to the absence of either a criminal or an administrative case in respect of K., the lack of clarity as to the procedure followed by the District Court when taking the decision of 18 February 2008 on K.’s placement, and the uncertainty of K.’s procedural status. Article 1070 § 1 of the Civil Code provided for compensation for unlawful criminal conviction or prosecution, the unlawful application of a preventive measure and an unlawful administrative penalty, whereas K. had been neither the accused in any criminal proceedings, nor a party to any administrative proceedings. The Minors Act did not contain any provisions on compensation for damage caused by illegal placement of minors in closed educational institutions, either. Nor did the decision of the Presidium of the Supreme Court of the Republic of Dagestan of 7 August 2008 contain any mention of K.’s right to compensation. Lastly, the applicant noted the absence of any established domestic practice as regards compensation for

damage caused to a minor as a result of his or her unlawful placement in a closed educational institution.

B. The Court's assessment

1. Admissibility

49. The Government argued that the applicant's daughter had lost her victim status in respect of the complaints under Article 5 §§ 1 (d) and 5 of the Convention, raised on her behalf by the applicant, in view of the failure to pursue civil proceedings for compensation in respect of damage caused by her unlawful placement in the closed educational facility for minors.

50. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 115, ECHR 2014 (extracts)). In the present case, however, although the Supreme Court of the Republic of Dagestan acknowledged the unlawfulness of the order to place the applicant's daughter in a closed educational institution by quashing the relevant decision of the Kirovskiy District Court of Makhachkala of 18 February 2008, by the time the quashing took place, on 7 August 2008, the applicant's daughter had already spent almost six months in the institution and was not released until 30 September 2008. Moreover, no redress was provided by the authorities in this respect. The Court therefore concludes that the applicant's daughter can still claim to be a "victim" within the meaning of Article 34 of the Convention.

51. Insofar as the Government's argument may be interpreted as a plea of non-exhaustion, the Court notes that the applicant challenged the lawfulness of his daughter's placement in the closed educational institution for minors by requesting the Prosecutor of the Republic of Dagestan to apply to the Presidium of the Supreme Court of the Republic of Dagestan for a supervisory review of the placement order of 18 February 2008. The substance of the issue was therefore brought before the domestic authorities, and they addressed it accordingly by finding the disputed measure unlawful (see paragraph 18 above). The Court further notes that where lawfulness of detention is concerned, an action for damages against the State is not a remedy to exhaust in Russia because the right to have the lawfulness of detention examined by a court is separate from the right to obtain compensation for any deprivation of liberty incompatible with Article 5 of the Convention (see *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, § 66, 26 June 2018; *Ivan Kuzmin v. Russia*, no. 30271/03, § 79, 25 November 2010; and *Moskovets v. Russia*, no. 14370/03, § 51, 23 April

2009). The Government's objection must therefore be dismissed in so far as it concerns the complaint under Article 5 § 1 of the Convention.

52. In so far as the non-exhaustion grounds raised by the Government concern the complaint under Article 5 § 5 of the Convention, the Court considers that they are closely related to the substance of the above complaint and should therefore be joined to the merits of the complaint under Article 5 § 5 of the Convention.

53. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 5 § 1 (d) of the Convention

54. The Government acknowledged that there had been a violation of Article 5 § 1 (d) of the Convention on account of K.'s placement in the closed educational institution for minors (see paragraph 47 above).

55. The Court takes note of the admission made by the Government and finds no reason to hold otherwise. It therefore concludes that there has been a violation of Article 5 § 1 (d) of the Convention on account of the placement of the applicant's daughter in the closed educational institution for minors.

(b) Article 5 § 5 of the Convention

(i) General principles

56. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of that Article. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Korshunov v. Russia*, no. 38971/06, § 59, 25 October 2007, with further references).

57. The Court also reiterates that the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty. This requirement goes hand in hand with the principle that the Convention must guarantee not rights that are theoretical or illusory but rights that are practical and effective. It follows that compensation for detention imposed in breach of the provisions of Article 5 must be not only theoretically available but also accessible in practice to the individual concerned (see *Abashev v. Russia*, no. 9096/09, § 39, 27 June 2013, with further references).

(ii) Application of those principles in the present case

58. In the present case the Court has found a violation of Article 5 § 1 (d) of the Convention on account of the placement of the applicant's daughter in the closed educational institution for minors. It must therefore establish whether or not the applicant, acting in the interests of his daughter, or the applicant's daughter herself as of her coming of age, had an enforceable right to compensation for the breach of Article 5 § 1 (d).

59. The Government claimed that the applicant had a right to compensation under a number of provisions of domestic law, namely the Minors Act, the Children's Rights Act and the Civil Code of the Russian Federation.

60. The Court notes, first of all, that the Minors Act and the Children's Rights Act referred to by the Government enable a minor's legal representatives to claim compensation for pecuniary and/or non-pecuniary damage caused to the minor in accordance with the procedure provided for by federal law (see paragraphs 38-39 above). The Court observes, however, that in the absence of any special procedure provided for by federal law as regards State liability for the unlawful placement of minors in closed educational institutions, the general rules of the Civil Code should apply.

61. The Court further notes that, pursuant to the relevant provisions of the Russian Civil Code (see paragraphs 25-26 and 28 above), an award in respect of pecuniary and/or non-pecuniary damage may be made against the State, irrespective of any fault on the part of State officials, in the specific exhaustively listed cases of (i) an unlawful criminal conviction or prosecution; (ii) the unlawful application of a preventive measure, and (iii) an unlawful administrative penalty. However, neither of the above-mentioned cases leading to the strict liability of the State covers the unlawful placement of a minor in a closed educational institution. It appears, therefore, that in the event of the unlawful placement of a minor in a closed educational institution, compensation may be claimed only if the plaintiff can prove the authorities' "fault".

62. The Court notes in this connection that the decision of 18 February 2008 ordering the placement of the applicant's daughter in the closed educational institution was issued by the Kirovskiy District Court of Makhachkala in the framework of the administration of justice. It follows, therefore, that in order to claim compensation the applicant would have been required to produce a final criminal conviction of the judge who had issued the contested decision (see paragraph 27 above), which he would have been unable to do. It is apparent that, by issuing the decision in question Judge I. erred in the assessment of relevant facts but did not thereby commit any criminally reprehensible act which the applicant could have proven to the required standard of proof.

63. It follows that the manner in which the domestic law is formulated precluded the applicant from obtaining compensation – whether before or

after the findings of the European Court in the present judgment – for his daughter’s unlawful placement in the closed educational institution for minors (compare to *Abashev*, cited above, § 41, and *Shcherbina v. Russia*, no. 41970/11, §§ 54-55, 26 June 2014).

64. In the light of the foregoing, the Court concludes that the applicant, acting in the interests of his daughter, did not have an “enforceable right to compensation” under Article 5 § 5 of the Convention for his daughter’s placement in the closed educational institution for minors, which has been found to be in violation of Article 5 § 1 (d) of the Convention.

65. Accordingly, the Court dismisses the Government’s objection and finds that there has been a violation of Article 5 § 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant complained that the placement of his daughter K. in a closed educational institution for minors had amounted to an interference with his and his daughter’s right to respect for their family life and correspondence, in breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his ... family life ... 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.”

A. The parties’ submissions

67. In their initial observations of 24 January 2014 the Government argued that there had been no proof that K.’s correspondence had been subjected to censorship by the administration of the closed educational institution. They relied on K.’s personal file from the closed educational institution and submitted copies of her letters to her mother, T.K. They submitted that the applicant’s complaints should therefore be dismissed as being manifestly ill-founded. In their additional observations of 23 May 2014, the Government further argued that the applicant had failed to exhaust domestic remedies in respect of his complaints under Article 8 of the Convention by failing to pursue proceedings for compensation in respect of damage caused by the alleged violations.

68. The applicant maintained his complaints. He emphasised the considerable distance (2,500 km) between the closed educational institution where K. had been placed and her home city, which had prevented him and

his daughter from seeing each other and maintaining contact free from outside control.

B. The Court's assessment

1. Admissibility

69. In so far as the Government's plea of non-exhaustion is concerned, the Court reiterates that, pursuant to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 64, 5 July 2016). It notes that the Government did not raise this objection in their initial observations of 24 January 2014 on the admissibility and merits of the application; nor did they provide any explanation for that delay, or refer to any exceptional circumstance capable of exempting them from their obligation to raise an objection to admissibility in a timely manner.

70. The Government are therefore unable to rely on a failure to exhaust domestic remedies at this stage of the proceedings (see *Topal v. Republic of Moldova*, no. 12257/06, § 27, 3 July 2018, with further references).

71. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

72. The Court notes that the applicant's complaint under Article 8 is twofold. First, the applicant complained that the placement of his daughter K. in a closed educational institution for minors had amounted to an interference with their right to respect for their family life. And secondly, he complained that such placement had amounted to an interference with their right to respect for their correspondence.

73. Regarding the first part of the applicant's complaint, the Court reiterates that mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII). It follows that the placement of the applicant's daughter K. in a closed educational institution for minors had amounted to an interference with their right to respect for their family life under Article 8 of the Convention.

74. According to the Court's case-law, such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an

aim or aims that are legitimate under paragraph 2 and can be regarded as “necessary in a democratic society” (ibid.).

75. The Court notes its previous finding under Article 5 § 1 (d) of the Convention as regards the unlawfulness of the placement of the applicant’s daughter K. in a closed educational institution for minors in the absence of any grounds under domestic law for such placement (see paragraphs 54-55 above). The interference with the applicant’s and his daughter’s right to respect for their family life was, therefore, not “in accordance with the law”, as required by Article 8 § 2 of the Convention. In view of this conclusion, the Court is not required to determine whether this interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued. The Court is, however, struck by the considerable distance between the closed educational institution where the applicant’s daughter was placed and her home city.

76. There has accordingly been a violation of the applicant’s and his daughter’s right to respect for their family life under Article 8 of the Convention.

77. In such circumstances, the Court considers that it has examined the main legal question raised under Article 8 of the Convention and that there is no need to pursue the examination of the second part of the applicant’s complaint under Article 8 of the Convention based on the same facts (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

79. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government’s objection of non-exhaustion in respect of the complaint under Article 5 § 5 of the Convention and *declares*, the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 (d) of the Convention;
3. *Dismisses* the Government's objection of non-exhaustion and *holds* that there has been a violation of Article 5 § 5 of the Convention;
4. *Holds* that there has been a violation of the applicant's and his daughter's right to respect for their family life under Article 8 of the Convention;
5. *Holds* that there is no need to examine the other complaint under Article 8 of the Convention lodged by the applicant based on the same facts.

Done in English, and notified in writing on 25 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

V.D.G.
J.S.P.

CONCURRING OPINION OF JUDGE DEDOV

Due to my previous experience concerning an issue of State responsibility under domestic law, I have a different view on the approach to be taken in paragraphs 61-63 of the judgment in finding a violation of Article 5 § 5 of the Convention. I would not go so far as to say that domestic law precluded the applicant from obtaining compensation. I believe that it is not for the Court to interpret the domestic law (namely Articles 1070 and 1100 of the Russian Civil Code) and to say that, under Article 1100, an award in respect of non-pecuniary damage may be made against the State, irrespective of any fault on the part of State officials, only in the specific exhaustively listed cases.

The Russian Constitutional Court had occasion to interpret the above provisions of national law (judgment no. 9-II of 16 June 2009) in connection with apprehension and administrative arrest. It expanded the scope of Article 1100 in accordance with Article 5 of the Convention, finding it to be applicable to other situations involving deprivation of liberty, including administrative offences. The Court may conclude that the placement of the child in a closed educational institution is not directly regulated by Article 1100 but not excluded from the scope thereof, and that the provision therefore requires further interpretation.

Hence, it is premature to say that in the event of the unlawful placement of a minor in a closed educational institution, compensation may be claimed only if the plaintiff can prove the authorities' "fault". I would instead favour the formula set out in § 55 of the *Shcherbina* judgment (*Shcherbina v. Russia*, no. 41970/11, 26 June 2014), which reads as follows:

"55. It's not the Court's role to give a definitive interpretation of the relevant provisions of Russian law on the liability of the State for unlawful detention within extradition proceedings. However, the law referred to by the Government as such is not sufficiently clear and left room for interpretation. The Government did not refer to other sources of law which would help in interpreting the legislative provisions at issue. Therefore, the Court is not persuaded that the applicant's claim for damages had prospects of success. Due to that uncertainty, the Court is prepared to conclude that a claim for compensation was not an 'effective remedy' within the meaning of Article 35 of the Convention, and that the applicant cannot be blamed for not having used that legal avenue. ..."