



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

Communicated on 19 December 2013

FIRST SECTION

Application no. 16899/13  
Vitaliy Mikhaylovich KOCHEROV and Anna Vitalyevna SERGEYEVA  
against Russia  
lodged on 17 January 2013

**STATEMENT OF FACTS**

The applicants, Mr Vitaliy Mikhaylovich Kocherov (“the first applicant”) and Ms Anna Vitalyevna Sergeyeva (the first applicant’s daughter, “the second applicant”), are Russian nationals, who were born in 1966 and 2007 respectively and live in St Petersburg. They are represented before the Court by Mr D.G. Bartenev, a lawyer practising in St Petersburg.

**A. The circumstances of the case**

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

*1. The birth of the second applicant and her placement in public care*

The first applicant has a mild intellectual disability. Between 1983 and January 2012 he has lived in St Petersburg Psycho-Neurological Social Care Home no. 1 (“Social Care Home”).

In 2007 the first applicant married N.S., a resident of the same social care home, who had been deprived of her legal capacity due her mental disability.

On 30 May 2007 N.S. gave birth to the second applicant. At that moment the first applicant was not recognised as the father of the second applicant due her mother’s legal incapacity. One week later N.S. was placed in a hospital because of an infection from the delivery.

On 12 July 2007 the second applicant was placed to St Petersburg Specialized Children’s Home no. 3 (“Children’s Home”) as a child lacking parental care.

On 7 August 2007 the first applicant obtained a new birth certificate for the second applicant and was registered as her father. Subsequently he

agreed to her stay in Children’s Home until it would be possible for him to take care of her. Throughout the second applicant’s stay in Children’s Home the first applicant has maintained regular contact with her: he would visit her regularly, spend time with her, take her for walks and buy books, toys and clothes for her.

In December 2007 the Social Care Home, on the applicant’s request, applied to the St Petersburg City Administration with a request to provide the first applicant with social housing with the view of his discharge from the Social Care Home. Between 2008 and 2011 the first applicant reiterated his requests, but to no avail.

On 24 September 2008 the marriage between the first applicant and N.S. was declared void at the request of the public prosecutor because of the legal incapacity of N.S.

Following a claim of the first applicant acting on his own and on behalf of the second applicant, on 6 June 2011 Smolninskiy District Court, St Petersburg, ordered the City Administration to provide the applicants with an apartment under a social tenancy agreement. Accordingly, in November 2011 the applicants were provided with an apartment in St Petersburg.

## *2. Proceedings for restriction of the first applicant’s parental rights*

In November 2011 the first applicant informed the Children’s Home of his intention to take the second applicant into his care once he moved to his apartment.

Following this information the Children’s Home filed a claim with Frunzenskiy District Court, St Petersburg (“the District Court”), with a view to restricting the first applicant’s parental rights. The Children’s Home indicated that “the first applicant has not yet taken the girl from the Children’s Home to raise her in his family but he was planning to raise the girl by himself”. In the view of the Children’s Home it was not advisable to give the girl to her parents’ care as her mother had been deprived of her legal capacity and posed a danger to the girl’s life and health whereas her father (“the first applicant”) could not fully exercise his parental responsibilities due to his mental disability. In addition, the Children’s Home submitted, referring to the information provided by its staff, that the girl had refused to communicate with her parents, had felt fear and emotional tension when communicating with them.

In February 2012, on the basis of the medical assessment, the first applicant was discharged from the Social Care Home and moved to his apartment. Since that date he has been living there together with N.S.

On 8 February 2012 the custody and guardianship authority examined living conditions in the first applicant’s flat and concluded that they had been appropriate for his daughter’s living there. In particular, the report stated that the apartment had been renovated, had been clean and light, all necessary furniture and home appliances had been present, as well as a sleeping place for a child with clean bed linen. There were also toys and books matching her age and season clothes. A separate desk was equipped for the child.

On 20 March 2012 the District Court granted the Children’s Home claim and restricted the first applicant’s parental rights with regard to the second

applicant. In particular, the District Court considered that if the Children Home's request for limitation of the first applicant's parental right was dismissed, the first applicant would be entitled to take his daughter into his care. The District Court considered that it would not correspond to the child's interests for the following reasons:

- it would be stressful for the girl to be placed into the family of her parents in which she had never lived and had had no chance to get used to. This conclusion was based on reports by staff of the Children's Home and statements by the girl's treating doctor A., according to which she felt anxious in the presence of her parents and had difficulties in communicating with them;

- in the circumstances, the first applicant's intention to raise his daughter by himself was premature. In particular, since his childhood and until February 2012 the first applicant had been living in specialised state institutions for people with mental disabilities and had no skills and experience in bringing up children and taking care of them;

- there was no sufficient and reliable evidence to believe that the girl's living with her parents was not dangerous for her. In particular, the girl's biological mother, had been visiting the first applicant's flat freely. Her presence in the apartment might be dangerous for the girl since she had been deprived of her legal capacity;

- there was no reliable evidence that it would be safe for the girl to live with the first applicant. In particular, according to the opinion by the representative of the Social Care Home, in view of his mental disability the first applicant could not be regarded as a person having no contraindications for being adoptive parent;

- the first applicant's income was insufficient for securing appropriate material conditions for his daughter.

The first applicant appealed against the judgment of 20 March 2012 to the St Petersburg City Court ("the City Court").

With regard to the first argument of the District Court the applicant submitted that it would be in any case stressful for the child, who had spent four years in the Children's Home, to start living in another place, even with an adoptive family. As for the Children's Home reference to the anxiety of the child in the presence of her parents, the applicant pointed out that at the hearing before the District Court the Children's Home confirmed that the child had no longer been afraid of her parents and of being given to the first applicant's care.

The applicant further submitted that the second argument of the District Court had no basis in domestic law since the Family Code had not allowed restricting parental rights on the basis of a parent's former or present residence in a social care home. Moreover, the law had not required biological parents to prove their ability to raise children or their housekeeping skills as a prerequisite for exercising their parental rights.

With regard to the third argument of the District Court the applicant submitted that it had been of no relevance to his case that the girl's mother had been legally incapable. Legal incapacity was a formal status and did not mean that the person was dangerous to others. In any case, the mental health of the child's mother could not serve as the basis for restricting his parental

rights. The applicant also claimed that during his daughter's stay at the Children's Home, her mother had been allowed to visit her.

As to the fourth argument of the District Court, the applicant submitted that there had been no evidence at the District Court's disposal of the applicant being dangerous to his daughter. On the contrary, in accordance with the medical report of the Social Care Home, which had observed the applicant for many years, his mental condition had not impaired his ability to fulfil his parental responsibilities.

Finally, regarding the fifth argument, the applicant claimed that the District Court had erred in establishing his income, which, in fact, exceeded the living wage in St Petersburg. Referring to the Court's judgment in the case of *Saviny v. Ukraine* (no. 39948/06, 18 December 2008) and the relevant provisions of the United Nations Convention on the Rights of Persons with Disabilities, the applicant submitted that his income could not be a decisive element in taking the decision to restrict his parental rights.

On 17 July 2012 the City Court upheld the judgment of 20 March 2012.

## **B. Relevant domestic law**

The relevant part of the Russian Family Code of 1995 provides as follows:

### **Article 73: Restriction of Parental Rights**

“1. A court may, taking into account the interests of the child, decide to remove a child from his parents (one of the parents) without stripping them of their parental rights (restricting their parental rights).

2. Restriction of parental rights is allowed when leaving the child with his parents (one of the parents) is dangerous for the child due to circumstances which do not depend on the parents (one of the parents) such as mental illness or other chronic disease, a combination of difficult circumstances, and others.

Restriction of parental rights is also possible in cases where leaving the child with the parents (one of the parents) is dangerous for the child on account of their conduct, but sufficient grounds for stripping the parents (one of the parents) of their parental rights have not been established. If the parents (one of the parents) do not change their conduct, the custody and guardianship authority is under an obligation to submit a claim for the parents to be stripped of their parental rights six months after the court decision restricting the parental rights. Acting in the interests of the child, the authority may lodge such a claim before the expiry of the above-mentioned term ...”

### **Article 74: Consequences of Restriction of Parental Rights**

“1. Parents whose parental rights are restricted by a court shall lose the right to bring the child up in person, and also the right to the privileges and State allowances granted to citizens with children.

2. Restriction of parental rights shall not relieve parents of the duty to upkeep the child.

3. A child whose parents' parental rights (or those of one of them) are restricted shall retain the right of ownership of any living accommodation or the right to use that accommodation, and shall also retain property rights based on his kinship with his parents and with his other relatives, including the right to receive an inheritance.

4. If the parental rights of both parents have been restricted, the child shall be placed in the care of the custody and guardianship authority.”

**Article 75: The Child’s Contact with Parents whose Parental Rights Have Been Restricted by a Court**

“Parents whose parental rights have been restricted by a court may be allowed to maintain contact with the child, unless this has a negative impact on the latter. The parents’ contact shall be permitted with the consent of the custody and guardianship authority, or with the consent of the child’s guardian (trustee), his foster parents or the authorities of the institution in whose care the child is placed.”

**Article 76: Lifting a Restriction of Parental Rights**

“1. If the grounds on which one or both parents’ parental rights have been restricted cease to exist, the court may, on the application by the parents (or one of them) make a decision to return the child to one or both parents and to lift the restrictions stipulated in Article 74 of the present Code.

2. The court shall have the right, taking into account the child’s opinion on the matter, to refuse granting the application if the child’s return to one or both parents is contrary to his [her] interests ...”

## COMPLAINTS

The first applicant complains under Article 8 of the Convention on his own behalf and on behalf of his daughter (“the second applicant”) that their right to respect for their family life was violated by the decisions of domestic courts to restrict the first applicant’s parental rights in relation to his daughter (“the second applicant”) which made it impossible for the applicants to live together at home as a family.

The first applicant also complains under Article 14 of the Convention in conjunction with Article 8 that the restriction of his parental rights was discriminatory on the grounds of his mental disability.

## QUESTIONS TO THE PARTIES

1. Have there been any changes in the applicants’ situation after July 2012?
2. Has there been an interference with the applicants’ right to respect for their family life, within the meaning of Article 8 § 1 of the Convention as a result of the restriction of the first applicant’s parental rights in respect of his daughter (“the second applicant”)? If so, was that interference in accordance with the law, did it pursue a legitimate aim and was it necessary in terms of Article 8 § 2?
3. Has the first applicant suffered discrimination in the enjoyment of his right to respect for his family life on the grounds of his mental disability, contrary to Article 14 of the Convention, read in conjunction with Article 8 of the Convention?

The Government are requested to provide the Court with a full copy of the record of the court hearings before the Frunzenskiy District Court of St Petersburg and St Petersburg City Court.