



Court examines two Russian child residence order cases, finds one violation, one non-violation

In **Chamber** judgments¹ delivered today, **Leonov v. Russia** (application no. 77180/11) and **Magomadova v. Russia** (application no. 77546/14), the European Court of Human Rights examined two different sets of proceedings for child residence orders.

In **Leonov v Russia**, it held,

by six votes to one, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights, and, *by six votes to one*, that there had been no violation of **Article 14 (prohibition of discrimination)** in conjunction with **Article 8**. The Court rejected, *by a majority*, a complaint under **Article 5 of Protocol No. 7 to the Convention (equality between spouses)** as manifestly ill-founded.

In **Magomadova v. Russia**, it held, unanimously, that there had been **a violation of Article 8** and rejected a complaint under **Article 13 (right to an effective remedy)**.

The cases concerned the applicants' legal efforts to have their children live with them.

Neither Sergey Leonov, the applicant in the first case, nor Elita Magomadova, the applicant in the second case, won their cases at the domestic level. They both alleged that the domestic courts had violated their rights under the Convention.

The Court found that Mr Leonov had been able to present his case fully to the domestic courts and that the courts' reasons for their decision not to order that his child live with him had been relevant and sufficient. In particular, it was not convinced by Mr Leonov's argument that the judge in his case had believed that small children should always be raised by their mothers. It did not find any violations of his rights under the Convention.

That had not been the case for Ms Magomadova: the courts' examination had not been thorough enough, which had not allowed the best interests of the child to be established. Overall, there had been a violation of her rights under Article 8. She eventually obtained custody of the child after the father died in a car accident.

Principal facts

The applicant in the first case was Sergey Aleksandrovich Leonov, a Russian national who was born in 1983 and lives in Moscow (Russia). The applicant in the second case was Elita Khaidovna Magomadova. She was born in 1974 and lives in Moscow.

Mr Leonov applied for a residence order in respect of his son, A., in March 2010 after his wife left him in November 2009. However, the district court handling the case first granted the wife an interim order preventing Mr Leonov from contacting his son or picking him up from his nursery and ultimately in April 2011 granted a residence order to the mother.

1. 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.

The domestic court found that Mr Leonov's arguments that he lived in a less polluted part of Moscow, that he had better living conditions and a better financial situation, or that the mother had a criminal record were not decisive in terms of granting a residence order. The child, who was only three years old, had lived for a long time with the mother. The court's decision to grant the mother the residence order was upheld on appeal in June 2011. Mr Leonov had earlier lodged an objection to the first-instance judge, alleging that she had stated that according to the established practice of the Timiryazevskiy District Court a residence order was always made in favour of the mother. The objection was dismissed.

Ms Magomadova applied for a residence order for her son in February 2014 after the father took the child to Grozny in Chechnya. Based mainly on a positive report on the father by the local childcare authority, the district court dismissed Ms Magomadova's residence order application and granted one in favour of the father, although he had not requested it. The judgment was upheld on appeal in July 2014 and a cassation appeal by Ms Magomadova was rejected in November 2014.

Previously, in September 2014, the childcare authority had written to Ms Magomadova to inform her that the childcare authority official who had drawn up the positive report on the father had been disciplined after it had been found that the report had included incorrect and incomplete information. In particular, the father's statements that he had a high income had not been checked, while the statement in the report that Ms Magomadova had not taken part in the child's upbringing had not been based on any evidence. The father died in a car crash in December 2014 and the child was returned to Ms Magomadova in 2016.

Complaints, procedure and composition of the Court

Mr Leonov, relying on Article 8 (right to respect for private and family life), complained about the courts' failure to grant him a residence order. He also complained under Article 14 (prevention of discrimination) in conjunction with Article 8 and under Article 5 of Protocol No. 7 to the Convention (equality between spouses).

Ms Magomadova complained about the issuance of a residence order in favour of the boy's father under Article 8 and Article 13 (right to an effective remedy).

Mr Leonov's application was lodged with the Court on 9 December 2011, while Ms Magomadova's was lodged on 5 December 2014.

Both judgments were given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court noted that national authorities and courts were often faced with extremely difficult tasks when having to decide between parents when it came to residence orders and that the courts in these cases could not order shared residence.

In Mr Leonov's case, it found no reason to doubt that the courts had based their decisions on the child's best interests. There was nothing to indicate that the findings of the domestic courts, which had had direct contact with the parties, were unreasonable and had thus gone beyond the wide room for manoeuvre ("margin of appreciation") which they had to decide on such matters.

Furthermore, it found that the residence order had been based on an assessment of the circumstances of the case, rather than on any judicial belief that a child's place was with the mother. The proceedings had been adversarial and Mr Leonov had been able to present his arguments. Overall, there had been no violation of his rights.

The Court came to a different conclusion as regards Ms Magomadova.

It stated that its examination of such cases had to include an assessment of whether the courts had taken an in-depth look at the entire family situation and all the relevant factors.

It noted initially the Government's argument that the domestic courts had had regard to Chechen traditions that the children of a separated couple were generally brought up by the father's family. The applicant had also referred to that argument as showing discrimination in her case. However, the Court found that the Government's argument had no support in the domestic decisions and it did not take account of it in its examination.

Otherwise, it found that the courts had inferred that because she was a single working mother with two children, she would not be able to look after her young son properly. The courts had also rejected factors such as each parent's living and financial conditions as not decisive and had not examined any other factors that might have been relevant. They had not made any assessment of the fact that the father had a criminal record, of how long the child had been living with each parent or of whether separation from his half-sister would affect him.

In addition, the courts had merely accepted the childcare authority's report on Ms Magomadova without checking whether it had been drawn up properly. It had later transpired that the report was incorrect, and that the information in it had been provided by the father and had not been checked.

Overall, the domestic courts' examination of Ms Magomadova's case had not been thorough enough, the decision-making process had been deficient and had not allowed the best interests of the child to be established. There had therefore been a violation of the applicant's rights.

Other Articles

The Court found no violation of Mr Leonov's rights under Article 14 in conjunction with Article 8 as there had been no difference of treatment on account of his sex, either in the law or in the examination of this case in particular. It also noted that Article 5 of Protocol No. 7 required States to provide a satisfactory legal framework for equal rights for spouses for such matters as their relations with their children. However, the applicant had not questioned the legal framework, just the way the courts had applied it, so his complaint was manifestly ill-founded.

The Court rejected Ms Magomadova's complaint under Article 13 as manifestly ill-founded, finding that she had been able to avail herself of a remedy under national law, which was the application for a residence order. She had also been able to apply to have the case re-opened after it transpired that the child authority's report was incorrect, but she had failed to do that.

Just satisfaction (Article 41)

The Court held that Russia was to pay Ms Magomadova 12,500 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

Separate opinion

In **Leonov v. Russia**, Judge Serghides expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.