

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

THIRD SECTION

CASE OF SAMOYLOVA v. RUSSIA

(Application no. 46413/18)

JUDGMENT

STRASBOURG

22 February 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Samoylova v. Russia,

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

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 46413/18) 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") on 25 September 2018 by a Russian national, Ms Natalya Aleksandrovna Samoylova, born in 1977 and living in St Peterburg ("the applicant") who was represented by Ms N.A. Shvechkova, a lawyer practising in St Petersburg;

the decision to give notice of the application to the Russian Government ("the Government"), represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 25 January 2022,

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

SUBJECT-MATTER OF THE CASE

1. In 2004 the applicant married Mr V.Zh. In 2006 she gave birth to their son. The couple split up in 2007 and divorced in 2008. The child continued living with the applicant. In 2010 the Vyborgskiy District Court of St Petersburg ("the District Court") granted the applicant a residence order in respect of the child. In 2013 V.Zh. applied to the District Court seeking the child's residence to be determined as being with him. V.Zh.'s claim was granted in June 2013. In March 2014, with the assistance of the bailiffs, the boy was handed to him. The applicant, however, succeeded in challenging the June 2013 judgment (taken in her absence) and on 17 March 2015 obtained a judgment by the Kalininskiy District Court of Tuymen determining the residence of the child as being with her and obliging V.Zh to return the child to her. V.Zh. refused to comply. Enforcement proceedings were opened in September 2015.

2. Between October 2015 and February 2017 the bailiffs made unsuccessful attempts to enforce the judgment of 17 March 2015. In particular, they launched a search for V.Zh. on two occasions (October 2015 and January 2017) and visited, in vain, the latter's presumed place of residence on ten occasions (February 2016 – February 2017). They also sent requests to various domestic authorities.

3. Following the applicant's complaints about the bailiffs' failure to secure enforcement of the judgment of 17 March 2015, in February 2016 the deputy head of the Department for Examination of Complaints in Enforcement Proceedings at the Bailiffs' Service informed the applicant that the bailiff in charge of the enforcement proceedings had indeed failed to carry out enforcement proceedings in a timely manner and had been subjected to disciplinary measures. In March 2016 the Prosecutor's Office in St Petersburg established that the bailiff had failed to act in a timely manner and to take all the measures provided for by the law to secure the enforcement of the judgment of 17 March 2015. A formal warning *(представление)* was issued to the head of the Bailiffs' Service for St Petersburg. In February 2017 the Prosecutor's Office for St Petersburg further acknowledged a breach of domestic law in respect of the proceedings for enforcement of the judgment of 17 March 2015.

4. Meanwhile, in November 2016 V.Zh. again applied for a residence order in respect of the child.

5. A forensic psychological examination (report of 15 January 2018) showed that the child's emotional state was characterised by an elevated level of anxiety, a low level of emotional control, and stress connected with fear of being withdrawn from his father's family. Issues connected to relations with the mother caused tension and negative feelings. Owing to his involvement in a protracted parental conflict and being brought up by one of the parents in the absence of stable relations with the other parent, the child was developing social anxiety disorder. In order to avoid psychological trauma it was necessary for the child to have meaningful contact with both parents. The father was found to have influenced the child into having a negative image of the mother and a negative attitude towards her.

6. During the hearing of the case on 17 January 2018 S., 11 years old, was questioned and expressed the wish to continue residing with his father, with whom he had a warm and trusting relationship. He did not mind renewing contact with his mother so long as she did not continue to pursue him with the bailiffs and cause him to fear being taken away from his father.

7. On 17 January 2018 the District Court granted V.Zh.'s claim. The District Court relied on the child's residing with V.Zh. since March 2014, his wish to continue residing with his father, the opinion of the childcare authority to the effect that maintaining the child's established way of life with his father corresponded to his interests and wishes, the report of the forensic psychological examination and the report on examination of V.Zh.'s living conditions. The District Court further warned V.Zh. not to prevent the applicant from having contact with the child, participating in the latter's upbringing, and having a role in decisions about his education.

8. In June 2018 the judgment in question was upheld on appeal. The applicant's cassation appeals were rejected in November 2018 and January 2019.

9. The applicant complained under Article 8 of the Convention that the domestic authorities had for several years failed to enforce the judgment of 17 March 2015, which ultimately led to the adoption of the judgment of 17 January 2018 determining the child's residence as being with his father.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

10. The Government's objection that the applicant had failed to exhaust domestic remedies, by omitting to challenge before the court the bailiffs' actions/inaction in the enforcement proceedings, cannot be accepted. The applicant complained about the conduct of the enforcement proceedings to the Department for Examination of Complaints in Enforcement Proceedings at the Bailiffs' Service and the Prosecutor's Office (see paragraph 3 above), thereby affording the domestic authorities an opportunity to address her grievance before applying to the Court, and the Government failed to show how an application to the court with the same complaint could have provided the applicant with any redress.

11. The Court notes that the complaint about the failure of the domestic authorities to enforce the judgment of 17 March 2015 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

12. The general principles relevant for the Court's assessment have been summarised in *Gubasheva and Ferzauli v. Russia* (no. 38433/17, §§ 43-44, 5 May 2020).

13. In the light of the findings of the domestic authorities as regards the enforcement of the judgment of 17 March 2015 determining the applicant's son's residence as being with her, in particular its lack of promptness, efficiency and compliance with domestic law (see paragraph 3 above), the Court concludes that the Russian authorities failed to take, without undue delay, all the measures that they could reasonably have been expected to take to enforce the judgment in question. The protracted non-enforcement of the judgment of 17 March 2015 led to a situation where the possibility of the child's residence with his mother was compromised. There has accordingly been a violation of Article 8 of the Convention on that account.

14. In so far as the applicant complained about the ensuing judgment of 17 January 2018 determining the child's residence as being with his father, the Court finds nothing to doubt that it was based on the best interests of the child. The domestic courts assessed the time the latter spent living with his father, his relationship with each parent, his strong desire to continue living with his father, as well as fear to be withdrawn from the latter by the applicant, and concluded that it would be in the child's interests to maintain his established way of life with his father. The domestic court warned V.Zh. not

to prevent the applicant from having contact with the child and from participating in the latter's life. There is nothing to indicate that the findings reached by the domestic courts, which had the benefit of direct contact with all the persons concerned, were unreasonable and thus fell outside their wide margin of appreciation. The Court further notes that the decision at issue was reached following adversarial proceedings in which the applicant was placed in a position enabling her to put forward all arguments in support of her position and she also had access to all relevant information that was relied on by the courts (compare to *Cvetković v. Serbia*, no. 42707/10, §§ 56-65, 7 February 2017; *Malinin v. Russia*, no. 70135/14, §§ 67-78, 12 December 2017; and *Leonov v. Russia*, no. 77180/11, §§ 69-77, 10 April 2018).

15. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed compensation for non-pecuniary damage in an amount to be determined by the Court. She further claimed 2,000 euros (EUR) (160,000 Russian roubles) in respect of costs and expenses incurred before the domestic courts and before the Court.

17. The Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

18. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

19. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint about the failure of the domestic authorities to enforce the judgment of 17 March 2015 granting the applicant the residence order in respect of her son admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand 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.

Done in English, and notified in writing on 22 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President