

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

THIRD SECTION

CASE OF VYALSHINA v. RUSSIA

(Application no. 22076/20)

JUDGMENT

STRASBOURG

22 February 2022

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



In the case of Vyalshina 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. 22076/20) 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 7 May 2020 by a Russian national, Ms Nataliya Vyacheslavovna Vyalshina, born in 1975 and living in Moscow ("the applicant"), who was represented by Ms S.I. Sidorkina, a lawyer practising in Moscow;

the decision to give notice of the complaints under Article 8 of the Convention 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 then by his successor in that office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 25 January 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns the failure of the domestic authorities to secure the applicant's contact with her daughter and the decision to maintain a residence order in respect of the latter in favour of her father.

2. In 2011 the applicant married Mr V. In March 2012 she gave birth to their daughter A.

3. In December 2012 the applicant left V. The child remained in the latter's care.

4. In March 2014 the Nikulinskiy District Court of Moscow ("the District Court") dissolved the marriage between the applicant and V. and determined A.'s place of residence as being with the latter. The judgment became final on 28 November 2014.

5. The applicant brought proceedings against V. seeking to have her contact arrangements with A. determined by the court.

6. On 28 August 2015 the District Court took an interim decision determining the contact arrangements between the applicant and the child. In November 2015 the enforcement proceedings were instituted. With the assistance of the bailiffs, between January and August 2016 the applicant could obtain access to A., twice a month.

7. On 28 March 2016 the District Court obliged V. not to thwart the applicant's communication with her daughter and established the contact arrangements.

8. On 8 September 2016 the Moscow City Court ("the City Court") modified the contact arrangements, having provided for six-month adaptation period, during which the applicant's contact with the child could take place in the presence of V., and thereafter – without the latter's presence.

9. However, in October 2016 V. took the child from the Moscow Region to the Kaliningrad Region, where they remained until January 2017.

10. Following the applicant's request, on 24 March 2017 the Bailiffs Service instituted the enforcement proceedings, which yielded no result and were terminated on 24 May 2019 (see paragraph 13 below).

11. Meanwhile, on 17 December 2017 the applicant lodged an application with the District Court for a residence order in respect of A., relying, *inter alia*, on V.'s preventing her contact with the child. V. applied for a residence order in his favour and sought to have determined a new adaptation period for the applicant's contact with the child.

12. On 11 December 2018 the District Court took into account, relying on relevant reports by childcare authorities and psychological expert examinations, that both parties had suitable living conditions and were equally capable or raising A., that A. revealed delayed speech and intellectual development caused by her congenital illness, that she had positive emotional contact with V. and no emotional bond with the applicant, that due to her age, health and developmental peculiarities she had been unable at that stage to take independent decisions and predict their possible consequences. Assessing the expert conclusions, the District Court further noted that the absence of an emotional bond with the applicant would not mean that A.'s contact with the latter would amount to a stressful situation for her, that the applicant's personal qualities and her approach to upbringing could positively influence A.'s development. The District Court went on to note that when previously determining the child's residence as being with her father V. it proceeded with the assumption that the latter did not and would not put obstacles to the applicant's contact with the child. However, V. had been persistently preventing any such contact which resulted in A.'s being completely deprived of her mother's care, especially needed by the child in view of her health issues. Relying on Article 66 § 3 of the Family Code of the

Russian Federation[1], the District Court therefore granted the applicant's claim and dismissed V.'s counterclaim.

13. On 24 May 2019 the City Court quashed the above judgment on appeal, dismissed the applicant's claim and granted V.'s claim. The City Court took into account that the child had been living with her father since birth, that she had been emotionally attached to him, that V. had been providing the child with required care, including medical care, and created adequate conditions for her upbringing and development. The City Court noted, on the other hand, that although the applicant had also been capable of taking care of the child, there had been no emotional bond between them, and that granting the residence order to her would not be in the child's best interest and would disturb her habitual lifestyle. The City Court further considered that V. could not be found as persistently failing to comply with the judgment of 8 September 2016. In particular, the judgment in question provided for the initial adaptation period for the applicant to renew her contact with the child. However, she had not provided any evidence to the effect that she ever approached V. for voluntary enforcement of the judgment of 8 September 2016, and she had applied for the institution of the enforcement proceedings only after the expiration of the adaptation period in question. The City Court therefore established a new adaptation period for the applicant's contact with the child. The City Court further warned V. about the consequences of persistent non-compliance with the judgment provided for by Article 66 § 3 of the Family Code.

14. On 26 August and 13 November 2019, respectively, the City Court and the Supreme Court of Russia refused to accept the applicant's case for examination in cassation proceedings.

15. Meanwhile, on 1 August 2019 enforcement proceedings were instituted in respect of the above judgment of the City Court.

16. Between 12 November 2019 and 12 January 2021 the bailiffs visited V.'s presumed places of residence in the Tula Region (on three occasions), the Moscow Region (on three occasions) and in Moscow (on one occasion). V. could not be found at either address. Two times a search for V. was launched – in January 2020 (terminated in March 2020) and in January 2021. Throughout this period V. remained within the bailiffs' reach, who had direct contact with V. in March 2020 and telephone communications in December 2020.

17. Meanwhile, on 31 December 2020 the Podolsk Town Prosecutor's Office lodged a submission *(представление)* with the head of the Federal

[1] Article 66 § 3 of the Family Code provides that in the event of non-compliance with a court decision, the parent guilty of non-compliance is to be subjected to measures stipulated by the legislation on administrative offences and enforcement procedure, and that in the event of persistent non-compliance with a court decision, the court can, upon a claim being lodged by the parent residing apart from the child, take a decision to place the child in his or her care, taking into account the child's interests and the child's opinion.

Bailiffs' Service for the Moscow Region, making representation against the conduct of the enforcement proceedings and noting the bailiffs' failure to properly coordinate their actions and to take exhaustive measures to secure the applicant's contact with the child.

18. The Government were unable to provide any further information on the enforcement proceedings relying on the loss of the enforcement file.

19. The applicant complained that the judgment of 24 May 2019 maintaining the residence order in respect of her daughter in favour of the latter's father and the failure of the domestic authorities to secure the applicant's contact with her daughter as determined by the judgment in question amounted to a violation of her right to respect for her family life under Article 8 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20. The Court notes that the applicant's complaint regarding the failure of the domestic authorities to secure the applicant's contact with her daughter following the judgment of 24 May 2019 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.

21. The general principles on public authorities' positive obligations to ensure the enforcement of contact rights were summarised in *Y.U. v. Russia* (no. 41354/10, §§ 92-94, 13 November 2012).

22. Since the institution of the enforcement proceedings in August 2019 the enforcement measures carried out by the bailiffs were limited to several visits to the father's presumed places of residence and the launching on two occasions of the search for him, despite the fact that the latter appears to have been within the reach of the bailiffs (see paragraph 16 above). No sanctions were applied to V. to tackle his lack of cooperation, and the enforcement materials were lost while the proceedings were still pending.

23. In such circumstances, the Court considers that the domestic authorities failed to take all the necessary steps they could reasonably have been demanded to facilitate the enforcement of the contact arrangements between the applicant and her daughter, as specified by the judgment of 24 May 2019. This conclusion is supported by the findings of the Podolsk Town Prosecutor's Office. There has accordingly been a violation of Article 8 of the Convention on that account.

24. In so far as the applicant complained about the fact that the judgment of 24 May 2019 maintained her daughter's residence as being with her father, the Court finds nothing to doubt that it was based on the best interests of the child. The domestic authorities examined a whole series of relevant factors and made a balanced and reasonable assessment of the respective interests of

each person, with a constant concern for determining what the best solution would be for the child. In particular, the City Court assessed that both parents were equally capable of taking care of the child. However, the child remained in her father's care since birth, she was emotionally attached to him and had no emotional bond with the applicant. The father was not found to be persistently failing to comply with the 2016 judgment determining the applicant's contact with her daughter, but he was warned about the consequences of such non-compliance. The City Court concluded that it was not in the child's best interests to be removed from her father and from her established way of life with him. There is nothing to indicate that the findings reached by the City Court, 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).

25. 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

26. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses incurred before the Court.

27. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 850 covering costs under all heads, plus any tax that may be chargeable to the applicant.

29. 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 24 May 2019 determining the contact arrangements between the applicant and her daughter 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 the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 850 (eight 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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