



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

FIRST SECTION

Application no. 72931/10  
V.D. and others against Russia  
lodged on 6 December 2010

**STATEMENT OF FACTS**

The first applicant is a guardian or a foster parent in respect of the third to ninth applicants. The second applicant is a minor who was in the first applicant's care from 2001 to 2010. All applicants are Russian nationals and live in Astrakhan and are represented by Ms O. Shepeleva and Ms M. Suchkova, lawyers practising in Moscow. A list of the applicants is set out in the appendix.

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

At birth, the second applicant was diagnosed, *inter alia*, with multiple mobility impairments, mental and motor retardation. He spent the first eight months in hospital. His birth parents considered themselves unfit to attend to his needs and agreed that their son be given into the care of the first applicant.

On 23 November 2001 the administration of the Trusovskiy District of the Town of Astrakhan appointed the first applicant as the second applicant's guardian.

*1. Proceedings concerning deprivation of parental rights*

On an unspecified date the first applicant brought a claim against the second applicant's birth parents seeking that they be deprived of parental rights. The Ministry of Education and Science of the Astrakhan Region provided their expert report on the issue where they considered that the second applicant's parents "did not show any interest in his life or health condition, they did not participate in his upbringing, they did not provide any financial aid and chose not to fulfil their parental duties". According to the report, they should be deprived of their parental rights.

On 11 November 2008 the Trusovskiy District Court of Astrakhan dismissed the first applicant's claim. The court considered "the deprivation of parental rights" an extraordinary measure. In the circumstances of the case, the court did not discern any grounds justifying such deprivation. It further noted that the financial support provided by the second applicant's birth parents was insufficient and ordered that they pay the first applicant one fourth of their monthly income as child support. On 12 March 2009 the Astrakhan Regional Court upheld the said judgment on appeal.

## *2. Proceedings concerning the second applicant's custody*

### **(a) First set of the proceedings**

On 26 February 2009 the District Court dismissed the second applicant's parents' request to return their son to them. The court considered that it would be in the child's best interests that he continue to live with the first applicant. It appears that the parties did not appeal against the said judgment.

### **(b) Second set of the proceedings**

The first applicant's parents brought another claim against the first applicant and the Department of Family Policy of the Ministry of Social Development and Labour of the Astrakhan Region. They asked for their son's return and annulment of the guardianship.

On 4 March 2010 the District Court granted their claims. In particular, the court noted as follows:

"As the court established, there is no compelling evidence to show that [the second applicant's] parents cannot bring up their child with due care and attention.

The [first applicant's] allegations that the respondents refused to take [their son] from hospital without justifying reasons are without merit. Neither the statements made by the [second applicant's] parents nor relevant medical documents were presented to the court. The [respondents] denied this fact. They submitted that they had not abandoned their child. On the contrary, they wanted him to get better and to return to his family.

It follows from the materials in the case-file that [the second applicant] was given into the care of the guardian after his parent's futile attempts to provide him with due medical care and in the child's interests ... .

[The second applicant's parents] did not intend to abandon their child ... . Even though he was under the [first applicant's] guardianship, [his] family took interest in his life and health condition, they provided possible financial support.

When questioned in court, medical practitioner Z. submitted that she had known [the second applicant] since he was eight months old when he was given into the [first applicant's] care. The child suffered from a serious congenital illness and spent considerable time in hospital. Currently his condition was stable, yet serious due to his diagnosis, i.e., central nervous system disorder and mobility impairments. It was not only medical care that the child needed. He was in need of continuous and due supervision. The child had grown in the ten years. He had changed emotionally. He reacted to the people surrounding him. However, he could not take care of himself. He could not eat, drink or walk on his own. He was in need of constant care. ...

When questioned in court, expert M. submitted that it had been established in the course of supervision, that the [second applicant's] parents had learnt to identify and adequately understand the psycho-physical specific features of [their son]. [They] showed genuine interest in the child and paid attention to him. They surrounded him with truly parental love and care. The [second applicant's] parents consulted psychologists concerning the psychological condition of a child with developmental impairments, asked about requisite material and toys for him and how they should build the communication process with him.

Accordingly, the supervision established that the [second applicant's] parents communicated with [him] in a calm, sincere and benevolent manner. They had successfully established psychological contact with him. They understood adequately his psychological particularities, emotional state, needs and capabilities. When with his parents, [the second applicant] felt calm and comfortable. In the course of their interaction, they created warm and beneficial atmosphere favourable for the child's development.

According to the report on the plaintiffs' living conditions ... in a two-room flat, the conditions were found satisfactory and corresponding to the family's needs and favourable for the children's upbringing and living. The [second applicant's] parents provided the conditions necessary for [the second applicant's] living and upbringing.

...

It follows from the materials submitted that the [second applicant's] parents are a stable ... family. They are well-to-do and have adequate living. They have permanent employment, stable income. They provided positive character references from their employers and place of residence. They do not have a history of psychiatric diseases or criminal record. Accordingly they meet all the conditions and can raise the child and provide him with due care.

The court dismisses the [first applicant's] argument that the [second applicant's] parents seek to cancel the guardianship in order to obtain better social housing. This allegation was not confirmed in the course of the proceedings by the explanations provided by the [second applicant's] parents and by the fact that their minor children, including [the second applicant], own shares in the flat located at .... A new flat was assigned only to the [second applicant's] parents, not their children.

The court does not accept the argument furnished by the representative of the Ministry of Social Development and Labour of the Astrakhan Region that the child should be gradually integrated into [his parents'] family. In the court's view, such gradual integration would have a negative impact on the child's psychological state. Furthermore, it would interfere with his right to live and be brought up in his family. The [second applicant's] parents are his natural parents. They show due care and love to the child. Now they have established psychological contact with him resulting from the interaction during a considerable period of time which took place, *inter alia*, in their flat. The child adequately perceives his mother and father, in accordance his psychological development. Furthermore, the representative of the Ministry submitted that the reunification of [the second applicant] with his family served his interest.

Regard being had to the above, the court holds that the plaintiffs' claim should be granted and they should be reunited with their child in order for them to continue exercising their parental rights for the child's education and development.

... the court holds that the resolution ... on 23 November 2001 ... should be annulled."

The first applicant appealed alleging, *inter alia*, that the District Court failed to seek an expert's advice in order to determine the second applicant's opinion as regards his reintegration into his birth parents' family. On

23 June 2010 the Regional Court upheld the judgment of 4 May 2010 on appeal.

### 3. *Proceedings concerning visitation rights*

On an unspecified date the first applicant brought an action on her behalf and on behalf of the other applicants asking the court to grant them visitation rights in respect of the second applicant. In particular, she claimed that for ten years during which the second applicant had been in her care, she and all the children (other applicants) had formed a family with a special bond existing between them. On 19 April 2011 the District Court dismissed the first applicant's claim noting as follows:

“The court considers that now the [second applicant's] parents act in his interest and as it follows from the testimony of witness K., [the head of the paediatrics department of municipal children's hospital no. 1], [the second applicant] undergoes all necessary medical examinations, his parents comply with all the doctors' recommendations as regards his care and medical assistance. He practically cannot see, his hearing abilities are very poor, he suffers from severe mental retardation. He is mainly in need of due care.

According to the submissions made by [doctor] A., the [second applicant's] condition diagnosed at his birth continues to exist. Furthermore, he was later diagnosed with epilepsy. At the beginning, his epileptic convulsions were mistaken for a smile. However, the child cannot cry or smile. He can only make whining sounds. His physical development does not correspond to his age. The normal height for a child his age should be 1.30 metres and the weight – about 30 kg, while his weight is 10 kg and his height is 94 cm.

According to the report of 12 April 2011 ..., the place of residence of the [second applicant] and his parents has all the requisite conditions for [his] life and education.

...

Furthermore, [doctor] D. submitted that [the second applicant] did not demonstrate any progress in mental and intellectual development. Nor would he develop further in the future. He is seriously disabled. He is indifferent to who surrounds him. [The second applicant] is physically impaired. He does not talk. He does not laugh. He can only make crying sounds. He needs due care.

In such circumstances and regard being had to the [second applicant's] congenital and current condition, the court considers unsubstantiated the statements made by [the first applicant] and the witnesses who testified on her behalf about the existence of attachment on the part of [the second applicant] to [the first applicant] within the meaning of the family law.

According to the report prepared by [the social services], the [first applicant's] claims regarding her contacts with [the second applicant] should be dismissed.

The court considers ... that, in view of the established circumstances, the [first applicant's] claims should be dismissed.”

The first applicant appealed alleging, *inter alia*, that the court had erred, in the absence of a forensic expert examination of the matter, in its finding that the second applicant was incapable of having and forming attachments to other people.

On 8 June 2011 the Regional Court upheld the judgment of 19 April 2011 on appeal. In particular, the court noted as follows:

“When dismissing the [first applicant’s] claims, the [first-instance] court considered that, as set forth in Article 67 of the Family Code of the Russian Federation, the right of access to a child is granted to grandfathers, grandmothers, brothers, sisters and other relatives, while [the first applicant] is, as a matter of law, not regarded as a member of the family or a relative of a minor or any other person whose relationship with him is governed by the family law (guardians, custodians, *de facto* tutors) given that her guardianship had been cancelled.

The [Regional Court] upholds the above finding of the first-instance court. Pursuant to the Family Code of the Russian Federation, the right of access to a child is granted to a grandmother, a grandfather, brothers and sisters, the child’s close relatives who take part in his upbringing and education. Accordingly, the legislation protects [the relevant rights] of close relatives. The right of access to a child is not guaranteed to other persons.

When deciding the dispute, the court did not apply the law by analogy. ... [T]he members of the family, as a matter of law, are understood only as the persons directly indicated in the Family Code of the Russian Federation. The resolution of a dispute by analogy would otherwise contradict the essence of the family relationship.

When deciding the dispute, the court took into consideration the fact that the respondents provide requisite care to the minor, that they carry out necessary rehabilitation measures, medication and care. [The court] did not discern any evidence that the [minor’s] rights or interests were infringed. Accordingly, the [first applicant’s] allegations about the infringement of the child’s rights are unsubstantiated. The plaintiff did not submit any evidence showing that the [second applicant’s] parents were unfit to ensure his proper development and care.

The [first applicant’s] argument that the court failed to determine the degree of the [second applicant’s] attachment to her and to [his birth parents] cannot be taken into consideration by [the Regional Court] as lacking legal basis.

[The court] assessed all the evidence submitted by the parties. In such circumstances the plaintiff’s arguments do not rebut the court’s findings and cannot justify the quashing of its judgment.

The court did not err in application of substantive or procedural laws which could have had an impact on correct resolution of the dispute. The [first applicant’s] allegations to the contrary are without merit.

[The Regional Court] considers that the first-instance judgment does not infringe the child’s rights and corresponds to his interests.”

## COMPLAINTS

The applicants complain that, by deciding to return the second applicant to his birth parents, the national authorities failed to comply with their obligation to protect him from the treatment contrary to Article 3 of the Convention.

The applicants complain that the decisions of the national authorities to return the second applicant to his birth parents and to refuse them any contacts with him amounted to a breach of Article 8 of the Convention.

They further refer to Article 14 in respect of the above grievances.

### **QUESTIONS TO THE PARTIES**

1. Can Ms V. D., the first applicant, claim a right to represent Mr R. S., the second applicant, in the proceedings before the Court (see *Moretti and Benedetti v. Italy*, no. 16318/07, §§ 32-35, 27 April 2010)?

2. In the circumstances of the case, have the ties between the applicants amounted to “family life” within the meaning of Article 8 of the Convention (see *X. v. Switzerland*, no. 8257/78, Commission decision of 10 July 1978, Decisions and Reports (DR) 13, p. 251; and *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31)?

3. Has there been an interference with the applicants’ right to respect for their private and/or family life, within the meaning of Article 8 § 1 of the Convention?

4. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

**APPENDIX**

1. V.D. [anonymity has been granted]
2. R.S. [anonymity has been granted]
3. N.P. [anonymity has been granted]
4. A.Z. [anonymity has been granted]
5. M.R. [anonymity has been granted]
6. M.M. [anonymity has been granted]
7. L.K. [anonymity has been granted]
8. A.U. [anonymity has been granted]
9. K.S. [anonymity has been granted]