



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

FIRST SECTION

CASE OF DMITRIY RYABOV v. RUSSIA

(Application no. 33774/08)

JUDGMENT

STRASBOURG

1 August 2013

FINAL

01/11/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dmitriy Ryabov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 July 2013,

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

PROCEDURE

1. The case originated in an application (no. 33774/08) 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”) by a Russian national, Mr Dmitriy Olegovich Ryabov (“the applicant”), on 25 April 2008.

2. The applicant, who had been granted legal aid, was represented by Mr D. G. Bartenev, a lawyer practising in St Petersburg, and by Mrs B. Bukovska and Mr Yu. Marchenko, lawyers practising in Budapest, Hungary. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his parental rights had been restricted in a way that was incompatible with Articles 8 and 14 of the Convention.

4. On 27 August 2009 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application. On 23 September 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant was born in 1974 and lives in St Petersburg.

6. The applicant has a brain disorder (organic lesion of the brain provoking manic syndrome) and has been diagnosed with paranoid schizophrenia.

7. He and his wife, Ms O.R., who was also suffering from paranoid schizophrenia, had a son, D., born on 10 April 2002. It appears that on an unspecified date they separated. Ms O.R. died on 17 March 2012.

8. Soon after D.'s birth he was placed in his maternal grandparents' care. According to the applicant, because he and his wife were unable to take care of the child due to the worsening of Ms O.R.'s mental health, they agreed to place the child temporarily in the care of Ms O.R.'s parents. After the boy went to live with his maternal grandparents the applicant maintained a relationship with him. In particular, the applicant visited his son regularly, spent time with him, took him to social and cultural events and bought books, toys and clothes for him.

9. On 30 August 2006, at the request of Ms O.R.'s mother, Ms T.K., the local custody and guardianship authority appointed Ms T.K. as D.'s guardian. It appears that the applicant and his wife submitted to the authority a written objection to that measure. The relevant decision of the local custody and guardianship authority stated, in particular, that D.'s mother, Ms O.R., had been undergoing inpatient treatment in a psychiatric hospital, and that the applicant, D.'s father, had not been living with his son, and had been avoiding bringing up the child and supporting him financially.

10. On 24 October 2006 the local administration conducted an inspection of Ms T.K.'s living conditions. In the course of the inspection it was established that D. lived with his grandparents in a fully furnished two-bedroom flat, where he had his own bed and plenty of toys and children's games. During the inspection Ms T.K. stated that D.'s parents did not play any part in his upbringing. According to the results of the inspection, Ms T.K. had created the necessary conditions for D.'s upbringing and well-being.

11. On 26 October 2006 Ms T.K. brought proceedings against the applicant and Ms O.R. in an attempt to have Ms O.R.'s parental rights restricted and the applicant's parental rights terminated. The applicant lodged a counterclaim, seeking to have Ms T.K.'s guardianship of the child revoked and D. transferred to his care.

12. On 18 May 2007 the local administration conducted an inspection of the applicant's and Ms O.R.'s living conditions. In the course of the inspection it was established that they lived in a two-bedroom shared flat in which they occupied one fully furnished room of 16 sq. m. The applicant worked in a shop from 11 a.m. to 7 p.m. on weekdays. Ms O.R. worked flexible hours in a rehabilitation centre. The applicant and Ms O.R. stated that if D. were to live with them he would go to a kindergarten, and his grandmother would help bringing him up, that is she would pick him up from the kindergarten, take him out for walks and stay with him should he fall ill.

13. On 31 May 2007 Ms T.K. modified her claim, requesting the court to restrict rather than terminate the applicant's parental rights.

14. On the same date Ms O.R. made a written statement to the effect that she agreed to her mother's remaining D.'s guardian, since Ms T.K. was taking proper care of him. Ms O.R. further stated that due to her state of health and lack of work and financial means she was not in a position to bring D. up herself. She believed that her husband was not in a position to bring D. up either, due to his state of health and his way of life, as he tended to drink and spend nights away from home. A representative of the local custody and guardianship authority certified that the statement had been written in his presence.

15. In a letter of 4 June 2007 the applicant's psychiatrist replied to a request for information sent by the applicant's lawyer in the context of the aforementioned civil proceedings. The letter stated that the applicant was suffering from an organic lesion of the brain, which caused a psychiatric disorder. He had periodic mood swings, but when in remission was well balanced and could work. The applicant did not display psychotic symptoms, delirium, or intellectual or personality changes. He had never tended to behave aggressively towards himself or others. According to the psychiatrist, the applicant's condition neither impaired his ability to take care of his son and bring him up nor posed any danger to the child's life or health.

16. On 18 June 2007 the applicant further underwent an examination at St Petersburg psycho-neurological clinic no. 10. A report on the results of that examination stated that the applicant did not display any socially dangerous tendencies, and that his mental condition did not impair his ability to fulfil his parental duties.

17. On 14 August 2007 the custody and guardianship authority provided the court with the opinion that it would be in D.'s best interest for the parental rights of the applicant and Ms O.R. to be restricted.

18. On 16 August 2007 the applicant modified his counterclaim, waiving his request to have his son transferred to his care, as he had realised that it would be in the child's interests to continue living with his grandparents. He also maintained his request to have Ms T.K.'s guardianship of his son

revoked, and requested the court to determine his contact rights in respect of his son to the extent and in the manner desired by him. In particular, the applicant sought the right to visit D. at Ms T.K.'s home, with prior notification to Ms T.K. and without any restrictions on the number and length of such visits; the right to pick D. up from school with a view to their spending time together, with prior notification to Ms T.K. and indication of the amount of time the applicant intended to spend with D. and the time at which he would bring the boy back to Ms T.K.'s home; the right to have the boy overnight at weekends and public holidays not more than twice a month, with prior notification to Ms T.K. and indication of the amount of time the applicant intended to spend with D. and the time at which he would bring the boy back to Ms T.K.'s home, Ms T.K. also to have the right to visit D. at the applicant's home; the right to have the boy during school holidays and take him travelling, with prior notification to Ms T.K. and indication of the amount of time the applicant intended to spend with D. and the time at which he would bring the boy back to Ms T.K.'s home.

B. Decision of the first-instance court

19. On 29 August 2007 the St Petersburg Nevskiy District Court delivered its judgment. The applicant was not present at the hearing but was represented by counsel, who objected to the claim and supported the counterclaim. The court noted that the applicant had been present at previous hearings and had objected to the claim.

20. The court examined the adduced materials, which included the results of the inspections of living conditions; medical certificates and opinions concerning the applicant's and Ms O.R.'s health, including those cited above in paragraphs 15 and 16; the opinion of the custody and guardianship authority; a letter from D.'s kindergarten to the effect that he was being brought up by his grandparents and that his parents, who had health problems, played no part in his upbringing and showed no interest in him; a letter from a children's outpatient clinic to the effect that it was D.'s grandmother and not his parents who took him to the clinic; a letter of reference from the applicant's employer to the effect that he was polite, disciplined and cared about his son; and statements by Ms O.R. to the effect that she also had no objection to the restriction of her parental rights or to Ms T.K. remaining D.'s guardian.

21. The court also examined a number of witnesses. Witness K., a relative of Ms T.K., submitted that she often visited the latter. D. lived with Ms T.K. and the applicant and Ms O.R. visited him there. Ms T.K. provided D. with everything required for his well-being, but his parents were not involved in his upbringing. Witness M., who had no family relationship with either party, stated that D. lived with Ms T.K. and that she was not aware of any conflicts between them. D.'s mother did not live with them

and did not play a part in D.'s upbringing. The latter called his grandparents "mother" and "father". Witness O.I.R., the applicant's mother, submitted that although the defendants were ill, the applicant was able to take care of the child. She also helped with D.'s upbringing and support. Witness S., who had no family relationship with either party, stated that she knew the applicant from the time he had spent in a rehabilitation centre. The latter treated his son with respect and wanted to take care of him. Witness P., an acquaintance of Ms T.K., submitted that D. attended kindergarten. His mother had visited him there only twice in the course of a year, and during one of the visits she had behaved aggressively towards kindergarten staff. D. mostly talked about his grandparents. He rarely referred to his parents, but also never said anything negative about his father.

22. The court found that for a prolonged period of time parental duties in respect of D. had been carried out by Ms T.K., as the child had been taken by her from the maternity ward after his birth and had lived with her ever since. The court further noted that Ms O.R. had avoided bringing D. up because of her mental health, and that the applicant had neglected his parental duties for a prolonged period of time because of his mental impairment and the difficult circumstances of his life. On account of Ms O.R.'s illness the court disregarded her statements to the effect that she accepted the restriction of her parental rights. However, it allowed the claim lodged against Ms O.R. on the ground of her health and the fact that she had completely neglected her parental responsibilities.

23. The court then observed that the applicant, who was suffering from a chronic disorder with periods of both aggravation and remission, had not completely avoided bringing up and supporting his child. However, the court referred to the nature of the applicant's disorder, and considered that it could be dangerous for the boy to live with the applicant because of circumstances independent of the applicant (his brain disorder). The court therefore considered it necessary to restrict the applicant's parental rights, with reference to Article 73 of the Russian Family Code. The court rejected the applicant's lawyer's argument to the effect that it had not been proven that the applicant posed any danger to his son. It stated in this respect that Ms T.K.'s request for the applicant's parental rights to be restricted was based not only on his psychiatric condition but also on his conduct, which demonstrated that he had avoided playing a part in the child's upbringing.

24. The court further considered that D. should continue to benefit from Ms T.K.'s guardianship, and rejected that part of the applicant's claim. On the other hand, the court noted, with reference to medical evidence, that the applicant's mental health did not render contact between him and his son impossible. It therefore held, taking into account the favourable opinion of the local custody and guardianship authority in this respect, that all types of contact between the applicant and D., as requested by the applicant in his counterclaim of 16 August 2007, should be allowed. The court stipulated,

however, that they may only take place “with the consent of guardian Ms T.K.”

25. Lastly, the court also added that by virtue of Article 76 of the Russian Family Code the applicant would be able to request a court to lift the restriction of his parental rights and return his son to him if the reasons on the basis of which such restrictions had been imposed ceased to exist.

C. Appeal proceedings

26. In his appeal statement against the judgment of 29 August 2007 the applicant argued that the decision of the Nevskiy District Court to restrict his parental rights was erroneous, as it had not been shown that he posed any danger to his son. The applicant also pointed out that, in the part which allowed him to have contact with his son, the judgment was illusory, because it made those contacts dependent on the consent of D.’s guardian, Ms T.K. According to the applicant, in a situation where he was in an obvious conflict with Ms T.K. and where the latter was seeking to have his parental rights restricted, it was hardly conceivable that she would favour any contact between him and the child, and that therefore he would never be able to exercise these rights. He therefore requested the appeal court to remove the words “with the consent of guardian Ms T.K.” from the first-instance court’s judgment and to make his contact with D. dependent on the consent of the custody and guardianship authority rather than on that of Ms T.K.

27. On 25 October 2007 the St Petersburg City Court upheld the judgment of 29 August 2007 on appeal, relying in essence on the reasoning of the first-instance court. It dismissed the applicant’s argument concerning the restriction of his parental rights, referring to Articles 73 and 74 of the Family Code; the first-instance court findings to the effect that since his birth D. had lived with his grandmother, and that his parents were suffering from mental health problems and played no part in his upbringing; the opinion of the custody and guardianship authority supporting the restriction of parental rights; and the fact that the applicant himself considered that it was in D.’s interests to remain in Ms T.K.’s care.

28. The appeal court also dismissed the applicant’s argument that it would be impossible for him to have contact with his son if it were made dependent on Ms T.K.’s consent. The court noted in this respect that, under Article 75 of the Russian Family Code, contact between a child and a parent whose parental rights had been restricted was only allowed with the consent of the custody and guardianship authority or the child’s guardian. The appeal court thus concluded that the Nevskiy District Court had complied with this provision in its judgment.

D. Subsequent developments

29. On 6 December 2011 the local administration issued a statement to the effect that D. was being provided with all the requisite conditions for his well-being, upbringing, development and studies. He was a successful school student and had received a distinction upon completion of the second grade.

30. On 12 December 2011 the local administration issued another statement, to the effect that since 2007 the applicant had been able to have contact with his son as provided by the decision of the Nevskiy District Court. There had been no instances of hindrance of his visiting rights, nor had he ever applied for the restriction of his parental rights to be lifted. From an interview with D. on 9 December 2011 it appeared that he had good relations with his father, whom he had last seen two weeks ago; the next meeting was scheduled for 10-11 December 2011.

31. On 13 December 2011, when D. was in the third grade at school, his teacher provided the following information about him. D. was a hard-working, friendly and cultured boy; he received “good” and “excellent” grades for all school subjects. D. had friends among his schoolmates, and did not quarrel with anyone. During breaks between classes he was involved in games and communication with his classmates. He was also involved in extracurricular activities. Ms T.K. was D.’s guardian and at home provided due conditions for his well-being: his own room, a desk and a bed. His grandparents constantly monitored his studies. They visited school to enquire about D.’s progress. Ms T.K. regularly attended parents’ meetings at school and took D. to theatres and museums. The teacher had never met D.’s father, as he had never come to the school. From Ms T.K. she knew that D. spent almost every weekend with his father.

32. On 16 December 2011 a representative of the local custody and guardianship authority interviewed D. The latter stated that he saw his father twice a month. They would go together to a museum, a theatre, an ice-rink or a shop. His father also regularly gave him some pocket money and they talked on the telephone approximately once a month. In response to the questions D. also stated that his grandparents helped him with his homework and they had taken care of him when he was ill, whereas his father had not visited him during his illness.

33. On the same date the same representative of the local custody and guardianship authority interviewed Ms T.K. She stated that the applicant saw D. twice a month and that during D.’s illness he had enquired after him on the telephone but had not been to visit him. She further submitted that the applicant only helped to bring D. up by paying child support, but did not help D. with his studies. Ms T.K. stated that in her view the applicant did not “actively” show affection towards his son.

34. On the basis of the two interviews the representative of the local custody and guardianship authority concluded that the applicant saw his son twice a month, and that there had been no hindrance of the visiting rights determined by the decision of the Nevskiy District Court of 29 August 2007. The applicant was passive in his relationship with his son. He was not helping him with his studies, nor had he visited him when he was ill. The applicant had not expressed any wish to take his son to live with him and to bring him up himself.

II. RELEVANT DOMESTIC LAW

35. 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 the 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 (or one of the parents) is dangerous for the child due to circumstances which do not depend on the parents (or one of the parents) such as a psychiatric disorder or other chronic illness, a combination of difficult circumstances, or other reasons.

Restriction of parental rights is also possible in cases where leaving the child with the parents (or one of the parents) is dangerous for the child on account of the parent’s conduct, but sufficient grounds for stripping the parents (or one of the parents) of their parental rights have not been established. If the parents (or 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 the claim for the parents to be stripped of their parental rights before the expiry of the above-mentioned term.

3. A claim for the restriction of parental rights may be brought by close relatives of the child as well as by organs and agencies responsible under the law to protect the rights of minors ... [as well as] by educational agencies or a prosecutor.” ...

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 Contacts 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' contacts shall be permitted with the consent of the custody and guardianship authority, or with the consent of the child's guardian (trustee), of his foster parents or of the authority 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 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 interests, to refuse granting the application if the child's return to one or both parents is contrary to his [her] interests." ...

THE LAW

ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

36. The applicant complained under Article 8 of the Convention that his right to respect for his family life had been violated. He claimed, in particular, that the restriction imposed by the domestic courts on his parental rights in respect of his son D. was not "in accordance with the law" and not justified, as it had not been convincingly shown that he posed any danger to his son. He also alleged that, in so far as the relevant court decisions allowed him to have contact with his son in a manner and to the extent requested by him, those decisions were illusory and meaningless, as they ordered that contact may only take place with the consent of the child's guardian, Ms T.K., who in fact was hostile towards the applicant and had explicitly requested the domestic courts to restrict his parental rights in an

attempt to minimise his contact with the boy. The applicant also complained that the restriction in question was discriminatory on the ground of his mental disability and therefore in violation of Article 14, taken in conjunction with Article 8 of the Convention.

Articles 8 and 14 of the Convention read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

37. The Government contested that argument. As regards Article 8, they stated that the restriction of the applicant’s parental rights was “in accordance with the law” being based on Article 73 of the Family Code. The Government further argued that the interference was proportionate and “necessary in a democratic society” since it had the lawful aim of protecting the health and rights of a minor. The domestic courts established that the applicant and his spouse had not been fulfilling their parental duties due to their psychiatric disorders and difficult circumstances of life, and that D. had been in his grandmother’s care since his birth. The courts took into account the applicant’s representative’s arguments as well as all the relevant factors, and reached a reasonable decision to restrict the applicant’s parental rights. The Government pointed out that the applicant had withdrawn his claim to transfer his son into his care, as since the latter had been living with his grandmother from the day he was born, his separation from the grandmother could lead to a psychological trauma. Furthermore, the restriction of parental rights was a temporary measure that could be lifted should the circumstances change. However, the applicant never applied to have it lifted.

38. The Government further pointed out that under Article 36 of the Civil Code the guardian of a minor must live together with the latter, ensure his/her upbringing, support and education, provide him/her with medical care if required, and protect his/her rights and interests. So that the guardian could effectively fulfil these responsibilities, Article 75 of the Family Code

subjected contact between the child and the parent(s) with restricted parental rights to the consent of either the guardian or, where a guardian has not been appointed, to the authority in whose care the child has been placed. Therefore, the decision to grant the applicant the right of contact with the child subject to the guardian's consent was in accordance with the domestic law. Should the applicant consider that the guardian had withheld consent unreasonably, it was open to him to challenge her actions before the custody and guardianship authority. However, the applicant did not make any complaints about the guardian's conduct. Furthermore, the applicant had been communicating with his son regularly by telephone; his son spent every other weekend with him, as well as some days every summer. Accordingly, there was no evidence that the applicant's rights of contact had in any way been hindered by the guardian.

39. As regards Article 14, the Government maintained that the applicant had not been subjected to discriminatory treatment, since the decision on the restriction of his parental rights was not based solely on his health. The courts took into account his entire conduct, including his failure to fulfil his parental duties, which the applicant did not contest.

40. The applicant argued that the decision to restrict his parental rights was neither lawful nor proportionate, since the domestic courts had no evidence that he posed any danger to his son. On the contrary, it could be seen from his medical records that his condition did not preclude him from fulfilling his parental duties. He further maintained that this restriction was unnecessary since, under the domestic law, it was not a precondition for appointing Ms T.K. as D.'s guardian. In his view, the courts had based their decisions solely on his health, which was unjustified and discriminatory. As regards subjecting his visiting rights to the consent of the guardian, the applicant conceded that so far he had not been impeded in any way from having contact with his son. However, he still maintained that placing such a condition on contact constituted an undue limitation of his rights, since the guardian could deny him contact with the child at any moment.

A. Admissibility

41. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 8

(a) Restriction of the applicant's parental rights

42. The Court observes that it was not disputed between the parties that the restriction of the applicant's parental rights amounted to an interference with his right to respect for his family life, as guaranteed by Article 8 § 1 of the Convention. The Court takes the same view.

43. The applicant argued that the interference was not "in accordance with the law", as required by Article 8 § 2 of the Convention, as it had not been convincingly shown that he posed any danger to his son, whereas under the Family Code this was a prerequisite for restriction of parental rights.

44. The Court observes that under Article 73 of the Family Code a court may restrict parental rights where leaving the child with his/her parents is dangerous for the latter, because of circumstances which do not depend on the parents or their own conduct, but there are not sufficient grounds for stripping them of parental rights. It notes that in the decision of 29 August 2007 the St. Petersburg Nevskiy District Court found that it could be dangerous for D. to live with the applicant because of the circumstances independent of the applicant, that is his psychiatric disorder, and that the applicant had not been properly fulfilling his parental duties. Accordingly, the Court considers that the decision may be regarded as "in accordance with the law" in conformity with Article 8 § 2 of the Convention.

45. The Court further finds that the interference was aimed at protecting the "health or morals" and the "rights and freedoms" of the child and thus pursued aims that are legitimate under Article 8 § 2. It remains to be examined whether the refusal of parental contact can be considered "necessary in a democratic society".

46. The Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and contact issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their discretionary powers (see *Hokkanen*

v. *Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, and *Kutzner v. Germany*, no. 46544/99, §§ 65-66, ECHR 2002-I).

47. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of contact, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Sahin v. Germany* [GC], no. 30943/96, § 65, ECHR 2003-VIII; *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII; and *Kutzner*, cited above, § 67).

48. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII).

49. In the present case, the domestic courts adduced relevant reasons to justify their decisions restricting the applicant's parental rights, namely his mental health, the fact that since his birth D. had been in the care of Ms T.K., and that the applicant had not been actively involved in the child's upbringing.

50. The Court considers that it cannot satisfactorily assess whether those reasons were "sufficient" for the purposes of Article 8 § 2 without, at the same time, determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, pp. 28-29, § 64; *Elsholz*, cited above, § 52; and *T.P. and K.M. v. the United Kingdom*, cited above, § 72).

51. In the proceedings before the Nevskiy District Court and the St. Petersburg City Court, the applicant was in a position to put forward all the arguments against the restriction of his parental rights and had access to all the relevant information upon which the courts had relied (see, *mutatis mutandis*, *T.P. and K.M. v. the United Kingdom*, cited above, §§ 78-83, and *P., C. and S. v. the United Kingdom*, no. 56547/00, §§ 136-38, ECHR 2002-VI).

52. The evidential basis for the domestic courts' decisions included medical opinions, the opinion of the custody and guardianship authority, the letters from D.'s kindergarten and the children's clinic, the results of the inspections of living conditions, the statements of Ms O.R., the letter of reference from the applicant's employer, and the statements of five witnesses examined at the hearing. Having regard to this body of evidence, the domestic courts concluded that D. should remain in Ms T.K.'s care and that the applicant's parental rights should be restricted for the following reasons: (i) from his birth D. had been living with Ms T.K.; (ii) although, by contrast to Ms O.R., the applicant had not completely neglected his parental duties, he had not been actively involved in D.'s upbringing; (iii) taking into account the foregoing and the applicant's medical condition, leaving D. in his care could pose a danger to D.'s well-being. At the same time, the courts granted the applicant visiting rights as requested by him, having found that his condition did not preclude him from having contact with his son.

53. The Court observes that the applicant neither objected to Ms T.K.'s remaining D.'s guardian nor asked for D. to be transferred to his care; in fact he specifically modified his counterclaim in this respect. Furthermore, Article 76 of the Family Code provides that restriction of parental rights may be lifted at the request of a parent should the grounds for such a restriction cease to exist. The applicant's right to seek lifting of this measure was emphasised in the decision of the first-instance court (see paragraph 25 above). However, the applicant has never applied to have the restriction lifted.

54. Having regard to the foregoing and to the respondent State's margin of appreciation, the Court is satisfied that the domestic courts' procedural approach was reasonable in the circumstances and provided sufficient material to reach a reasoned decision on the question of restriction of parental rights, and that the applicant had the requisite safeguards to secure the right to respect for his family life. The Court thus finds that the interference was "necessary in a democratic society" within the meaning of Article 8 of the Convention.

55. Accordingly, there has been no violation of Article 8 of the Convention in this respect.

(b) Contact with the child with the guardian's consent

56. The Court observes that it was not disputed between the parties that the decision determining the applicant's visiting rights in respect of D. and subjecting them to the consent of Ms T.K. amounted to an interference with his right to respect for his family life, as guaranteed by Article 8 § 1 of the Convention. The Court takes the same view.

57. It further observes that under Article 75 of the Family Code parents whose rights have been restricted can maintain contact with the child unless this would have a negative impact on the latter. Such contact could be

permitted either with the consent of the custody and guardianship authority, or of the child's guardian, his foster parents or another authority in whose care the child had been placed. Accordingly, the Court considers that the impugned measure may be regarded as being "in accordance with the law" in conformity with Article 8 § 2 of the Convention.

58. The Court further finds that the interference was aimed at protecting the "health or morals" and the "rights and freedoms" of the child, and thus pursued aims that are legitimate under Article 8 § 2. It remains to be examined whether it can be considered "necessary in a democratic society".

59. The Court takes note of the Government's submissions that the provision of Article 75 of the Family Code, subjecting contact between the child and the parent(s) with restricted parental rights to the consent of the guardian, is aimed at securing the effective fulfilment of the parent's responsibilities *vis-à-vis* the ward. Given that this provision specifically applies to parents whose parental rights have been restricted, the Court does not find it unreasonable that the guardian should have the opportunity to deny such a parent contact with the child in a particular situation where specific circumstances might give reasons to believe that such contact would be detrimental for the child. At the same time the power of the guardian to withhold his/her consent must be subject to safeguards against abuse of this right. As pointed out by the Government, the applicant had the opportunity to challenge the guardian's conduct before the custody and guardianship authority, which was not contested by the applicant. Accordingly, the Court is satisfied that the required safeguards were put in place.

60. It further observes that the applicant never challenged the conduct of Ms T.K. since, as he admitted, there had never been any instances of her withholding consent for the applicant to have contact with D. under the Nevskiy District Court decision of 29 August 2007, nor had she otherwise hindered the applicant's rights of contact with his son.

61. On the basis of the foregoing, and having regard to the respondent State's margin of appreciation, the Court is satisfied that the contested provision subjecting the applicant's contact with D. to the consent of Ms T.K. was "necessary in a democratic society" within the meaning of Article 8 of the Convention.

62. Accordingly, there has been no violation of Article 8 of the Convention in this respect either.

2. Article 14 in conjunction with Article 8 of the Convention

63. The Court notes that when deciding on the restriction of the applicant's parental rights the domestic courts relied on his state of mental health as corroborated by medical certificates (see paragraph 20 above) as well as on his conduct as regards fulfilment of his parental duties. In particular, the domestic courts took into account the fact that since his birth

D. had been living with his grandmother Ms T. K. under her care and that the applicant, although not neglecting his parental duties altogether, had not been actively involved in D.'s upbringing either, which was corroborated by numerous pieces of evidence, including witness statements.

64. The Court thus finds that the domestic courts based their decisions on a number of elements, which included but were not limited to the applicant's mental health. Accordingly, there is no indication of discriminatory treatment in the present case.

65. Therefore, there has been no violation of Article 14 taken in conjunction with Article 8 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that there has been no violation of Article 14 of the Convention in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 1 August 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President