



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

FIRST SECTION

Application no. 66401/12
Aleksandr Vladimirovich ZHABKIN
against Russia
lodged on 16 July 2008

STATEMENT OF FACTS

The applicant, Mr Aleksandr Vladimirovich Zhabkin, is a Russian national, who was born in 1974 and lives in Tula.

A. The circumstances of the case

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

On 19 December 2000 the Tula Regional Court convicted the applicant of murder and robbery. On 13 February 2001 the Proletarskiy District Court of Tula convicted him of theft. He was sentenced to sixteen years and six months' imprisonment.

In July 2007 the applicant's ex-wife initiated civil proceedings to deprive him of parental rights over their minor son. The applicant did not attend the court's hearings personally because he was in prison, but he submitted written observations instead.

On 13 September 2007 the Privokzalnyy District Court of Tula allowed her claim. In his written observations the applicant challenged the arguments of his ex-wife. He alleged that his contacts with his son were complicated because of his imprisonment and that his ex-wife impeded his communication with him. The court held that the applicant had been convicted several times and served his sentence in prison. This fact was the evidence of his improper behaviour and bad influence in respect of his son. Furthermore, the court stated that the applicant had not written any letters to his son while in prison, had not been engaged in his education or personal development, had not provided any financial support.

On 7 February 2008 the Tula Regional Court upheld this decision on appeal. Regarding the applicant's complaint about non-attendance of the hearings, the court held that the applicant had been duly informed about the hearings, had been offered the opportunity to submit written observations and that he had not used the possibility to appoint a representative.

B. Relevant domestic law

According to Article 69 of the Family Code parents (or one of them) may be deprived of their parental rights if they (or one of them) *inter alia* fail to perform their parental obligations, in particular, in case of malicious non-payment of alimony; abuse their parental rights; abuse their children including physical and psychological abuse, violation of their sexual integrity; commit an intended crime against the life or health of their children or against the life or health of their spouses.

According to Article 71 of the Family Code parents deprived of parental rights lose all rights which are based on their kinship with the child.

According to Article 72 of the Family Code the parental rights may be restored by the court in case the parents (one of them) change their conduct, life style and (or) attitude to the education of their child.

COMPLAINTS

1. The applicant complains under Article 8 that he was deprived of parental rights in respect of his son.
2. The applicant complains under Article 6 that the authorities did not secure his attendance at the Privokzalnyy District Court of Tula.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his family life under Article 8 of the Convention as a result of the deprivation of his parental rights imposed by the domestic courts? If so, was the interference "lawful", "necessary in a democratic society" and "proportionate"? In particular,

a) did the domestic courts adduce "relevant and sufficient" reasons to justify the interference?

b) was the applicant deprived of parental rights automatically on the ground that he had been convicted? Did the courts take due account of all relevant factors in assessing the real danger to the child on the part of the applicant?

2. As regards civil proceedings before the Privokzalnyy District Court, did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, did the absence of the applicant prejudice the equality of arms principle taking into account that the adverse party was present? In particular,

a) did these proceedings necessitate the personal presence of the applicant?

b) does the national legislation stipulate the possibility for a prisoner to attend civil proceedings to which he is a party?