



Right to private and family life of a mother and her minor son infringed when his photo was published without authorisation

In today's **Chamber** judgment¹ in the case of **Bogomolova v. Russia** (application no. 13812/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the use of a minor's image without parental authorisation. The child's photo was featured on the cover of a regional booklet meant to inform the public about the local authorities' efforts to protect orphans and the assistance available for families looking to adopt. On behalf of herself as well as her son, Ms Bogomolova – the applicant – argued that the unauthorised use of her son's image in this publication had harmed their honour, dignity and reputation.

The Court found in particular that the domestic courts had failed to examine whether Ms Bogomolova had given her consent for the publication of the photograph, focusing instead on the authorisation she had given that her son be photographed. The Court also highlighted the false impressions and inferences which could be drawn from the context of the photograph, namely that the child pictured had been abandoned by his parents and the effect that that could have on public perception of Ms Bogomolova's relationship with her son.

Principal facts

The applicant, Tatyana Bogomolova, is a Russian national born who was born in 1978. Together with her son, born in 2001, Ms Bogomolova lives in Berezniki in the Perm region of Russia.

In November 2007, a photograph of her son was published on the cover of a booklet prepared by the Municipal Centre for Psychological, Medical and Social Services. 200 copies of the booklet, entitled "Children need a family", were circulated to inform the community about the role of the Centre in both protecting orphans and assisting families hoping to adopt.

Ms Bogomolova brought civil proceedings to complain that she, together with her son, had suffered damage to her honour, dignity and reputation. She claimed that the use of the photograph had given the impression that she had abandoned her son and that this had affected her reputation not only as a mother, but also as a schoolteacher. Furthermore, her son had become a victim of mockery amongst his peers following his appearance on the booklet. The courts dismissed her claims however, finding that the photograph had been taken with her authorisation and that she had not placed any restrictions on its use.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Bogomolova complained that the unauthorised publication of her son's photograph had infringed their right to private and family life and that the domestic courts had failed to protect these rights.

The application was lodged with the European Court of Human Rights on 9 February 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court recalled that a person's image constituted one of the chief attributes of his or her personality and that the right to protect this image was thus an essential component of personal development. As such, Article 8 presupposed the right to control the use of one's image, including the right to refuse its publication.

In the present case the Court accepted that the publication of the photograph came within the scope of Ms Bogomolova's and her son's "private life" within the meaning of Article 8.

The Court observed that, in taking their decision to dismiss Ms Bogomolova's claims, the domestic courts had established that the photograph had been taken with her authorisation and that she had not placed any restrictions or conditions on its use. However, they had failed to examine whether she had given her consent to the publication of the photograph.

Moreover, the context of the photograph could have given the false impression that the child pictured had been abandoned by his parents. This or any other inference which could be drawn from the photo could have prejudiced public perception of the familial bond that Ms Bogomolova shared with her son.

The Court therefore held that there had been a violation of Article 8 of the Convention.

Article 41 (just satisfaction)

The Court held that Russia was to pay Ms Bogomolova 130 euros (EUR) in respect of pecuniary damage, EUR 7,500 in respect of non-pecuniary damage and EUR 100 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.