



Malfunctions of the justice system and disclosure of information on the adoption of two children on a court's website: violation

The case concerned two applications relating to allegations of malfunctioning of the justice system. Three applicants complained, in particular, about the disclosure of their identities in judicial decisions or documents that were made public in a rape case (application no. 66158/14) and in a case concerning adoption (application no. 78042/16). The civil actions brought by the applicants against the judges concerned were not examined on the merits by the domestic courts.

In today's **Chamber judgment**¹ in the case of **X and Others v. Russia** (applications nos. 78042/16 and 66158/14) the European Court of Human Rights:

- declared the complaint under the **civil limb of Article 6 § 1 (right of access to a tribunal)** of the European Convention on Human Rights **inadmissible**, in respect of both applications (nos. 78042/16 and 66158/14);
- declared the complaints under **Article 8 (right to respect for private and family life)** and **Article 13 (right to an effective remedy)** **admissible**, in respect of application no. 78042/16 only;
- found, unanimously, that there had been a **violation of Article 8 (right to respect for private and family life)** on account of the publication of the judgment of the Regional Court disclosing information concerning the adoption of the children of applicants X and Y (application no. 78042/16) on that court's website; and a **violation of Article 13 (right to an effective remedy), read in conjunction with Article 8**, in respect of those applicants.

As regards the complaint under the civil limb of Article 6 § 1, the Court found that that provision did not apply in either case because Russian national law did not provide for any substantive right enabling litigants to claim compensation in the event of damage caused by a judicial act of a procedural nature (which right was relied upon in the present case), except in the event of unreasonable length of proceedings (which was not mentioned in the present case). The Court pointed out that to conclude otherwise would entail creating, by way of interpretation of Article 6 § 1, a substantive right lacking any legal basis in domestic law.

As regards the complaints under Articles 8 and 13 (application no. 78042/16 only), the Court found that the information on the Regional Court's website, which concerned the confidential nature of the adoption of X and Y's children, had been published in breach of national legislation, and that they had not benefited from an effective remedy under domestic law to put forward their complaint as regards the right to respect for their private and family life.

Principal facts

The case concerned two applications relating to allegations of malfunctioning of the justice system.

Application no. 66158/14 was lodged by M.B., a Russian national who was born in 1978 and lives in Russia. On an unspecified date M.B. had complained of having been raped and requested the court

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.

to gather information on the state of health of the alleged rapist (T.) in the framework of an action for damages. The relevant judge sent letters to a sickness insurance fund, to a hygiene and epidemiology centre and to a senior police officer requesting information on T. In his correspondence the judge stated that his request concerned facts relating to an alleged rape and the applicant's contamination with specific diseases, without concealing her identity.

In 2013 the applicant brought an action for damages claiming compensation, *inter alia*, for the disclosure of her personal data. However, the court declined jurisdiction for the case, noting that a judge could not be the subject of a claim for damages, even if he or she had been removed from office, for having expressed an opinion linked to the exercise of his or her duties or having given a decision, unless the judge had been found guilty of criminal wrongdoing. The court noted that in a judgment delivered in 2001 the Constitutional Court had held that judges could in fact be liable and that claims for compensation against them could be upheld if the judge had been found liable, not only under a criminal decision but also under a civil one. Nevertheless, the court found that despite the Constitutional Court's recommendation, the legislature had never adopted statutes governing the arrangements and conditions for the payment of such compensation and the courts' competences in that sphere. Consequently, the applicant's action was declared inadmissible. That judgment was upheld on appeal.

Application no. 78042/16 was lodged by X and Y, two Russian nationals who, having adopted two children, had had the latter's names changed in order to preserve their anonymity. Furthermore, when the children changed nursery schools, the head teacher of the second school disclosed the confidential nature of their adoption to her staff. Consequently, X and Y claimed damages, which they were awarded in November 2014. However, the Regional Court published the judgment on its site, without concealing the applicants' identities.

In April 2016 the judgment was removed from all public sites, and the President of the Regional Court issued two successive apologies to the applicants. The latter nevertheless lodged two actions, claiming to have sustained damage: a disciplinary action against the President of the Regional Court before the High Council of the Judiciary, and an action seeking compensation for the non-pecuniary damage which they claimed to have suffered. Subsequently, the High Council of the Judiciary declined jurisdiction for reviewing the judicial proceedings, on the grounds that no disciplinary fault had been committed giving rise to a penalty prescribed by law. The District Court declared the action for damages inadmissible, observing that compensation could be awarded for damage caused by a judge where his or her guilt had been established by criminal judgment, and that it could not examine the applicants' action.

Finally, in both applications, the actions for damages lodged by the three applicants (M.B., X and Y) against the judges concerned were not examined on the merits by the domestic courts.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicants complained of a breach of their right of access to a court in so far as, in their view, domestic law failed to provide for a right to compensation for damage caused by the malfunctioning of the justice system.

Relying on Article 8 (right to respect for private and family life), X and Y complained about the publication in full by the authorities, on the Internet, of a judicial decision containing their names and those of their adopted children, in breach of the confidentiality of the adoption process.

Relying on Article 13 (right to an effective remedy) they alleged that they had had no effective remedy by which to obtain compensation for the damage sustained.

The applications were lodged with the European Court of Human Rights on 29 November 2016 and on 16 September 2014.

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

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Paulo Pinto de Albuquerque (Portugal),
Dmitry Dedov (Russia),
María Elósegui (Spain),
Erik Wennerström (Sweden),
Lorraine Schembri Orland (Malta),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 6 § 1 (right of access to a tribunal) – *complaint relied on in both applications (nos. 78042/16 and 66158/14)*

The Court reiterated that for Article 6 § 1 to be applicable under its “civil” limb, there must be a dispute (contestation) over a “right” that can be said, at least on arguable grounds, to be recognised under domestic law, whether or not that right is secured under the Convention.

In the present case the Court noted that Article 1070 of the Civil Code determined State liability for any malfunctioning of the justice system. The first paragraph of that Article set out an exhaustive list of situations in which compensation could be awarded for damage caused by judicial decisions, irrespective of any fault on the judge’s part. The second paragraph provided that any damage caused in the framework of the administration of justice gave rise to compensation provided that the judge’s guilt had been established under a final criminal conviction.

In 2001 the Russian Constitutional Court, while upholding the constitutionality of Article 1070 of the Civil Code, ruled that the State’s liability could be engaged for judicial decisions or inaction on the part of a judge, even where the latter had not been the subject of a final criminal conviction. Thus noting a deficiency in the law, the Constitutional Court stated that the Russian Parliament should legislate in order to lay down the conditions and procedure for the State to pay compensation for damage arising out of unlawful action or inaction on the part of a court or judge and to determine which courts have jurisdiction to adjudicate cases concerning compensation for such damage.

In 2010 the lower house of the Russian Parliament, the State Duma, enacted Federal Law No. 68-FZ implementing the Constitutional Court judgment in question as regards litigants’ right to compensation for violations of their right to have their cases determined within a reasonable time and to secure the execution of enforceable judicial decisions within a reasonable period. In the other hand, neither that law nor any other legislation enshrined individuals’ substantive right to compensation for damage caused by a judicial act of a procedural nature other than damage caused by unreasonable length of proceedings.

In the instant case the Russian courts had noted that despite the Constitutional Court’s recommendation, the Russian legislature had failed to make good the deficiency in question, in terms of both introducing a substantive right to compensation for judicial malfunctions and the arrangements and procedure for lodging an action to assert such right. In that connection, the Court noted that the decisions given by the domestic courts declaring the three applicants’ claims inadmissible were neither arbitrary nor manifestly unreasonable. Moreover, the stance taken by those courts had found, firmly and unequivocally, that in the absence of a relevant substantive right they lacked jurisdiction to adjudicate the dispute.

Consequently, the Court considered that the applicants had had no right that could be said, at least on arguable grounds, to be recognised under domestic law. It also pointed out that to find otherwise

would entail creating, by way of interpretation of Article 6 § 1, a substantive right lacking any legal basis in domestic law. Accordingly, **Article 6 § 1 did not apply under its civil limb in the present case** and the complaint under that provision was inadmissible in respect of both applications.

Article 8 (right to respect for private and family life) – complaint relied on by X and Y (no. 78042/16)

The Court reiterated that the concept of “private life” was a broad term not susceptible to exhaustive definition, which covered the individual’s physical and mental integrity and could therefore embrace multiple aspects of his or her identity. It also covered personal information which individuals could legitimately expect not to be published without their consent.

In the present case, the Court considered that the disclosure of information concerning X and Y’s adoption of their children had amounted to an interference with their private life. It noted in that regard that the information on the Regional Court’s website had been published in breach of domestic legislation providing that judicial decisions given in family-law cases, including adoption cases, should not be published on the Internet. Consequently, **the Court found that there had been a violation of Article 8.**

Article 13 (right to an effective remedy), read in conjunction with Article 8 – complaint relied on by applicants X and Y (no. 78042/16)

The Court noted that X and Y had attempted, unsuccessfully, to apply to the High Council of the Judiciary, which had declined competence to review the judicial proceedings and the functioning of the court registries. According to the Government, the applicants ought to have brought criminal proceedings against the judge so that they could subsequently have brought civil proceedings under Article 1070 of the Civil Code in order to secure possible compensation. However, the Government pointed out that the impugned act had been committed by a member of the court registry rather than by a judge. In that connection, the Court noted that the provision cited by the Government (Article 1070 of the Civil Code) made the engagement of the State’s liability dependent on a criminal act committed by a judge and not by a member of the registry. Furthermore, making the engagement of State liability for malfunctioning of the justice system, in a manner contrary to fundamental rights, dependent on a criminal act by a judge meant making that right dependent on a factor which was beyond the control of the victims of that malfunctioning. Indeed, such a malfunctioning could be the result of an unintentional act which was not subject to a criminal penalty or of an action or inaction not attributable to any specific judge, and so on. The Court referred in that regard to the reasoning set out by the Russian Constitutional Court in its 2001 judgment, concluding that the constitutional right to State compensation for damage arising out of a judge’s unlawful action or inaction should not be made dependent on establishing individual fault on his or her part. Consequently, the Court considered that the remedy was not effective and found a violation of Article 13 read in conjunction with Article 8 of the Convention, in respect of X and Y.

Just satisfaction (Article 41)

The Court held that Russia was to pay X and Y 2,600 euros (EUR) in respect of non-pecuniary damage and EUR 1,460 in respect of costs and expenses.

The judgment is available only in French.

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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.