



Depriving a mother who was a drug addict of her parental rights, without considering a less drastic step, was disproportionate

In today's **Chamber judgment**¹ in the case of **Y.I. v. Russia** (application no. 68868/14) 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 applicant's complaint about being deprived of her parental authority in respect of her three children because she was a drug addict. Drug addiction is a ground for removing parental authority under the Russian Family Code, and entailed her losing all contact rights.

The Court found in particular that the national courts had not sufficiently justified taking such a drastic measure, even though there were less radical solutions available under domestic law. Nor had they taken into consideration that she had no history of neglecting her children, had started rehabilitation and had not apparently been given any warnings about or support for her drug problems.

Principal facts

The applicant, Y.I., is a Russian national who was born in 1980 and lives in Moscow. She has three children by two fathers, who were born in 1999, 2011 and 2012.

On 8 October 2013 the applicant was arrested at her home on suspicion of drug trafficking. She was taken to the police station and interviewed, admitting to having started taking drugs in 2004. She had stopped in 2010 before giving birth to her two youngest children, but had relapsed and been taking heroin for the past month.

The children were immediately taken into public care. Her eldest child was subsequently taken to stay with his father. The two youngest children, whose father had been arrested at the same time as the applicant, were initially placed in a children's home and were then transferred to a foster family where they have remained ever since.

In April 2014 she was found guilty of drug trafficking and sentenced to six years' imprisonment.

In the meantime, in January 2014, the domestic courts had deprived her of parental authority, deciding that it would be dangerous to leave the children in her care. The courts referred in particular to her drug addiction and the fact that she was unemployed. In her defence, the applicant argued, providing evidence, that she had started rehabilitation treatment and found a job. The first-instance court rejected this argument as irrelevant, while the appeal court found that it had been received after the first-instance judgment.

In cassation proceedings the Presidium of the Moscow City Court upheld the lower courts' judgments, endorsing their reasoning.

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 family life), the applicant complained that the domestic courts had automatically applied the relevant domestic law in her case, under which drug addiction was a ground for removal of parental authority, without considering a less drastic alternative. She also pointed out that the law depriving her of parental authority had entailed her losing all contact rights with her children, which she argued was disproportionate.

The application was lodged with the European Court of Human Rights on 14 October 2014.

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

Paul Lemmens (Belgium), *President*,

Georgios A. Serghides (Cyprus),

Helen Keller (Switzerland),

Dmitry Dedov (Russia),

María Elósegui (Spain),

Gilberto Felici (San Marino),

Erik Wennerström (Sweden),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

It was not in dispute that depriving the applicant of her parental authority had constituted an interference with her right to respect for family life. That interference had been based on Article 69 of the Russian Family Code and had been intended to protect the rights of the applicant's children.

The Court reiterated that splitting up a family was a very serious interference. Such a measure could only be justified in exceptional circumstances, the overriding requirement being a child's best interests.

The Court was prepared to accept that the applicant's drug addiction and her being unemployed had been relevant considerations in deciding to remove her parental authority, but it was not convinced that they had been sufficient to justify taking such a drastic measure.

First, the domestic courts had chosen to ignore the evidence provided by the applicant that she intended to and had taken steps to resolve her drug addiction. The Court found such an approach striking, when the main, if not only, reason for removing her parental authority had been her addiction.

As concerned the fact that she had been unemployed, it found that financial difficulties could not in themselves be sufficient grounds for severing a parent-child bond. The court decisions had not explained how her being unemployed had affected her ability to take care of her children. Furthermore, inspections of the family flat carried out in the months after her arrest had not revealed any real defects in their living conditions, in fact the latest report had shown improvements.

The domestic courts had not given due consideration either to the fact that the applicant had consistently expressed her attachment to her children throughout the proceedings and had provided evidence showing that she had taken care of them prior to their removal and had made efforts to maintain contact afterwards. It had at the same time been shown that the children were deeply attached to their mother and their maternal grandmother, who had been living with them in the family flat. Indeed, the courts had not assessed at all the impact of the separation on the children.

Above all, the Court found it surprising that the authorities had not considered any less drastic measure, even though less radical solutions were available under the law and the applicant had no history of neglecting her children. Moreover, the childcare authorities had only started monitoring the family after her arrest in October 2013 and had neither given her any warnings about her behaviour and its consequences nor made any attempt to provide her with support.

In conclusion, the domestic authorities had failed to show that removing her parental authority had been the most appropriate option in the children's best interests. The measure had therefore been disproportionate, in violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage.

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.