



Rejection of biological father's paternity claim and refusal to revoke an adoption order violated the Convention

In today's **Chamber judgment**¹ in the case of **Uzbyakov v. Russia** (application no. 71160/13) 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 his daughter being adopted by another family and the refusal by the courts to overturn that decision.

The Court found deficiencies in the proceedings for the daughter's adoption, the applicant's subsequent paternity claim and his request to revoke the adoption order.

In particular, the court in the adoption proceedings had taken an overly formal approach, failing for instance to fully look into whether she had a father or to examine other measures apart from adoption which could have maintained the daughter's family life with her biological relatives.

Formal grounds had also been relied on in the second set of proceedings: although the courts had recognised that the applicant was the daughter's biological father, they had still refused his requests to recognise his paternity in law and revoke the adoption.

Overall, the courts had failed to carry out an in-depth examination of the relevant factors and fairly balance the rights of all the individuals involved with due regard to the circumstances of the case.

Principal facts

The applicant, Sergey Stanislavovich Uzbyakov, is a Russian national who was born in 1976 and lives in Kurganovka (Russia).

Mr Uzbyakov, originally from Uzbekistan, had five children with a woman named O.M., the youngest, D., being born in 2009. The couple and the children all lived together but because the applicant was living illegally in Russia at the time his name was not given on their birth certificates as their father.

The applicant was arrested in January 2011 and held in pre-trial detention until April of that year. During that time, in February, O.M. died and the children were taken into care the following month. The four oldest children were placed in a boarding school for orphans but D., 14 months old, was taken to a children's home.

The applicant learnt of his partner's death in March 2011 and began legal steps to have his paternity recognised. That same month D. was given into the guardianship of prospective adopters, who took her to their home town of Morshansk in Tambov Region. The other children were subsequently taken in by O.M.'s sister.

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.

In September 2011 the Morshanskiy District Court of Tambov Region authorised D.'s adoption by the couple looking after her. The court found that the birth mother was dead, that the father's name did not appear on the birth certificate, that she had been left without parental care, and had spent time in a children's home. It found no obstacles to adoption and granted a full order to that effect. The court was also informed that D.'s siblings were in the care of a foster family in Penza Region.

The applicant's paternity proceedings, begun while he was still in detention, resulted in the Kamenka Town Court of Penza Region declaring him the father of the four other children in April 2012 and returning them to him. In separate proceedings over D., the applicant found out that she had been adopted and supplemented his paternity claim with one to revoke the adoption order.

Among other things, he argued that the adoption had been granted in violation of the law and had been contrary to D.'s interests; in particular, under the law, the separation of siblings was not permitted and parents' consent was required. The Kamenskiy District custody and guardianship authority and a representative from the Representative for Human Rights in the Russian Federation supported the applicant's claim.

However, the court rejected his request in October 2012. It found that he was D.'s father but that recognising his paternity had no sense in the absence of grounds to revoke the adoption order. It found no such grounds under the law: in particular, the adoptive parents had met their legal obligations and the conditions were suitable for the child's upbringing as the couple were financially secure, had permanent jobs and proper living conditions. Appeals by the applicant were all rejected, the Supreme Court handing down the final decision in June 2013.

Complaints, procedure and composition of the Court

The applicant complained that his daughter's adoption without his knowledge and the refusal by the courts to recognise his paternity and revoke the adoption order had violated his rights protected by Article 8 (right to respect for private and family life) of the Convention.

The application was lodged with the European Court of Human Rights on 9 October 2013.

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 Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 8

The Court observed that the applicant and O.M. had lived together for 17 years. He was the biological father of all the children, and had taken care of and supported them. As regards D., he had collected her and O.M. from the maternity hospital and had been involved in D.'s upbringing for the first year of her life. The Court thus concluded that there had been a bond between the applicant and his daughter from birth which amounted to "family life" within the meaning of the Convention.

It considered that the decisive question was whether the domestic authorities had taken all the necessary and adequate steps that could reasonably have been expected of them to enable D. to lead a normal family life with her natural father and siblings.

Initial adoption proceedings

While the initial decision to take the children into care had been necessary in the circumstances, the Court doubted that the authorities had taken sufficient time to satisfy themselves that there was a viable alternative to adoption and whether, in particular, she had any relatives to live with.

For instance, the court which had authorised the adoption had been made aware of the existence of D.'s siblings and that they had been placed with another foster family. It had thus been made aware of important factual elements that it should have taken into account. It could have obtained information about the applicant and his ties with D. from the sister of the applicant's late partner or from the other children.

Furthermore, the applicant had taken legal steps to establish his paternity. In particular, in March 2011 he had lodged a claim in which he had listed the names of his five children and their dates of births with the same court which had eventually granted the adoption order.

That court had adopted a very formalistic approach, limiting itself to a mere reference to the child's birth certificate, where the information about her father was missing, and noting that the prospective adopters satisfied the requirements of the law. It had not taken any steps to inform the applicant of the proceedings, let alone make sure that he was heard, despite the serious nature of the measure in question.

The Court thus considered that the domestic authorities had shown a serious lack of diligence in the adoption procedure. It also doubted whether adoption had been in D.'s best interests, it leading to estrangement from her father at a very young age and separation from her siblings.

Proceedings on paternity and request to revoke adoption

The Court found that in these proceedings the only reason for the courts' refusal to formally recognise the applicant's paternity was, in essence, the fact that his daughter had already been adopted by third parties and that there were no formal grounds under the relevant law to revoke the adoption order.

The Court reiterated that given the great variety of possible family situations, the best interests of a child could not be determined by a general legal assumption, and that a fair balancing of the rights of all individuals involved necessitated an examination of the particular circumstances of each case.

It noted that the situation faced by the applicant of his daughter's adoption had been created by the authorities themselves after proceedings that were deficient and which revealed a serious lack of diligence. However, the courts had never examined his submission that the adoption decision had violated the law, an argument which had been supported by various public authorities.

The Court could not accept that the absence under the law of formal grounds for revoking the adoption order was a "sufficient" consideration to justify the courts' refusal to recognise his paternity and revoke the adoption order. Nor could the length of time she had been with her foster family, 18 months, be enough to warrant ruling out the possibility of reuniting her with her biological family. In that connection, the applicant had not waited an unreasonably long time before taking measures with a view to securing his family life with his children, including D.

Nor had the domestic authorities considered steps that could have minimised any potential negative effects on the child by returning her to her natural family, for instance, by gradually re-establishing contact between them and D. The relative differences in the applicant's and the adoptive family's material conditions were also not sufficient reasons to refuse his claims.

The Court concluded that the domestic authorities had breached their duty (“positive obligation”) as they had failed to carry out an in-depth examination of all the relevant factors and to fairly balance the rights of all the individuals involved with due regard to the particular circumstances of the case. That had amounted to a failure to respect the applicant’s family life and had violated Article 8.

[Just satisfaction \(Article 41\)](#)

The Court held that Russia was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage. It also held that Russia was to pay the applicant EUR 72 in respect of the administrative costs and expenses, and EUR 1,850 for the proceedings before the Court, which was to be transferred directly to the applicant’s representative’s bank account.

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.