



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

FIRST SECTION

**CASE OF NAZARENKO v. RUSSIA**

*(Application no. 39438/13)*

JUDGMENT

STRASBOURG

16 July 2015

**FINAL**

**16/10/2015**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Nazarenko v. Russia,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro, *President*,  
Elisabeth Steiner,  
Khanlar Hajiyeu,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque,  
Ksenija Turković,  
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 23 June 2015,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 39438/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Anatoliy Sergeyevich Nazarenko (“the applicant”), on 15 May 2013.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the termination of his paternity had deprived him of the right to contact his daughter or to lodge civil actions in defence of her rights and that he had not been informed about the date of an appeal hearing.

4. On 15 October 2013 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Ulan-Ude.

6. In 2007 the applicant’s wife N. gave birth to a daughter, A.

7. In 2010 the applicant and N. got divorced.

8. On 18 January 2011 the Oktyabrskiy District childcare and guardianship authority (hereafter “the childcare authority”) determined A.’s residence as follows: on even weeks with the applicant and on odd weeks with her mother N. In January, June, July and August A. was to live with the applicant for one week of his choice per month.

#### **A. Events preceding the termination of paternity**

9. On 22 March 2011 the applicant discovered several bruises on A.’s body. Suspecting that she had been beaten and sexually abused by N.’s new partner, he refused to return A. to N.

10. During the following year A. lived with the applicant and her paternal grandmother. On several occasions the applicant allowed N. to visit A. in his presence.

11. On 25 March 2011 the applicant complained to the police and to the Oktyabrskiy District Investigations Committee that his daughter A. had been beaten and sexually abused by N.’s partner. The Investigations Committee opened a pre-investigation inquiry.

12. The applicant and N. both applied to the Oktyabrskiy District Court of Ulan-Ude for a residence order in respect of A.

13. On 25 April 2011 A. was questioned by the investigator, assisted by a psychologist, in the framework of the pre-investigation inquiry. A. stated that she wanted to live with the applicant because he was nice, while her mother and her mother’s new partner had treated her badly. She was again questioned by the investigator, assisted by a psychologist, on 27 June and 3 August 2011 and confirmed her previous statements.

14. On 19 May 2011 the Oktyabrskiy District Court granted N.’s application for a residence order and dismissed a similar application by the applicant. The court found that both parents had so far taken an equal share in A.’s upbringing. They both had sufficient financial means and their living conditions were equally satisfactory. However, taking into account A.’s sex and age, it was preferable for her to be brought up by her mother. A child under the age of twelve could be separated from the mother only in exceptional circumstances. No such circumstances were established in the present case. N. was employed and had sufficient income. There had been no evidence of negligence or mistreatment on her part. A.’s bruises could have been received as a result of a fall or in a game and were insufficient to prove mistreatment. A criminal inquiry into the allegations of mistreatment was still pending. The court-appointed expert psychologist’s finding that A. was emotionally closer to her father and paternal grandmother than to her mother could not be taken into account in the absence of established facts of mistreatment by the mother. It was therefore in A.’s best interest to live with her mother.

15. On 20 May 2011 the childcare authority noted that A. wished to live with her father. An inspection of the applicant's flat had revealed that all conditions for A.'s normal development had been created by the applicant. The childcare authority therefore found that A. should reside with the applicant.

16. On 22 June 2011 the Supreme Court of the Buryatiya Republic upheld the judgment of 19 May 2011 on appeal. It found that, in breach of the procedure prescribed by law, the District Court had failed to consider the childcare authority's findings and opinion. The District Court had therefore committed a serious breach of procedure. However, given that the childcare authority's opinion was advisory rather than mandatory for the court, the failure to consider that opinion did not warrant a reconsideration of the judgment, which was correct in substance.

17. On 30 June 2011 the Oktyabrskiy District Investigations Committee opened criminal proceedings into the alleged mistreatment and sexual abuse of A.

18. As the applicant continued retaining A., N. applied to the Oktyabrskiy District Court for an injunction order requiring the applicant to return A. to her.

19. On 29 November 2011 the Oktyabrskiy District Court allowed N.'s request. It found that the applicant had refused to comply with the judgment of 19 May 2011, upheld on appeal. It ordered that, in compliance with that judgment, the applicant should return A. to N. On 30 January 2012 the Supreme Court of the Buryatiya Republic upheld that judgment on appeal.

20. On an unspecified date the applicant for a second time applied to the Oktyabrskiy District Court for a residence order in respect of A., asking at the same time that N.'s parental authority over A. be restricted.

21. On 23 January 2012 the Oktyabrskiy District Court dismissed the application and confirmed its previous order that A. should live with her mother, citing the same reasons as in the judgment of 19 May 2011. The court found no reasons to restrict N.'s parental authority over A. On 2 April 2012 the Supreme Court of the Buryatiya Republic upheld that judgment on appeal.

22. On 13 March 2012 N. kidnapped A. from the applicant. She has since prevented the applicant from seeing his daughter.

23. On 20 March 2012 A. was again questioned by the investigator, assisted by a psychologist. She said that she liked living with her mother and that her mother was treating her well.

24. On 23 April 2012 A. was examined by a panel of psychologists appointed by the investigator in the framework of the criminal proceedings. They found that A. did not suffer from any mental retardation or disorder. However, due to her age, level of development and her susceptibility to external influence, she was unable to give reliable testimony about her relationships with her mother, her father or her mother's new partner.

25. On 30 April 2013 the Oktyabrskiy District Investigations Committee discontinued the criminal proceedings, finding that there was no evidence of mistreatment or sexual abuse. The bruises could have been caused by a fall. According to the experts, A.'s statements that her mother's partner had treated her badly were unreliable. The witnesses had been unable to provide any information confirming the applicant's allegations of child abuse.

### **B. Termination of paternity and subsequent events**

26. The applicant for a third time applied to the Oktyabrskiy District Court for a residence order in respect of A. He also asked that N. be deprived of parental authority over A.

27. While the above proceedings were pending, N. lodged an application with the Oktyabrskiy District Court, contesting the applicant's paternity of A. and asking that his name be deleted from A.'s birth certificate and that A.'s family name and patronymic be changed.

28. On 23 July 2012 a DNA paternity test established that the applicant was not A.'s biological father.

29. On 18 September 2012 the Oktyabrskiy District Court allowed N.'s claims. It found that the applicant was not A.'s biological father and terminated his paternity over her. It ordered that the applicant's name be deleted from A.'s birth certificate and that A.'s family name and patronymic be changed to a family name and a patronymic not connected with the applicant. On 19 November 2012 the Supreme Court of the Buryatiya Republic upheld the judgment on appeal.

30. On 16 January 2013 the Oktyabrskiy District Court discontinued the proceedings on the applicant's application for a residence order and an order to deprive N. of parental authority over A. The court found that the applicant was not A.'s biological father and that he therefore had no standing under domestic law to lodge civil actions concerning the parental authority over A. or A.'s residence arrangements. The applicant was absent from the hearing because he was ill.

31. On 27 February 2013 the Supreme Court of the Buryatiya Republic upheld the decision on appeal. According to the applicant, he had not been informed of the date of the hearing. Nor had he been informed about the appeal decision until 12 March 2013.

32. On 31 May 2013 a judge of the Supreme Court of the Buryatiya Republic refused to refer the applicant's cassation appeal to the Presidium of that Court for an examination, finding no significant violations of substantive or procedural law which influenced the outcome of the proceedings. It noted, in particular, that there was a proof in the case-file that a letter had been sent to the applicant on 7 February 2013 informing him of the date of the appeal hearing. Information about the hearing date

had been also published on the court's official website. The applicant had been therefore duly informed of the date of the appeal hearing.

## II. RELEVANT DOMESTIC LAW

33. The Family Code provides that the parents act on the child's behalf and defend the child's rights and interests in any relations with persons or legal entities. They act *ex officio* as the child's legal representative in court proceedings (Article 64 § 1).

34. In case of the parents' separation, the child's residence arrangements are fixed by an agreement between them. If no such agreement can be reached, the child's residence arrangements are fixed by a court order, having regard to the child's best interests and his/her opinion on the matter. In particular, the court must take into account the child's attachment towards each of the parents and the siblings, the relationship between the child and each of the parents, the child's age, the parents' moral and other personal qualities and the possibilities each of them have for creating conditions for the child's upbringing and development (such as each parent's occupation, employment schedule, financial and family situation, etc.) (Article 65 § 3).

35. The parent residing separately from the child is entitled to maintain contact with the child and to participate in his/her upbringing and education. The parent with whom the child resides may not hinder the child's contact with the other parent, unless such contact undermines the child's physical or psychological health or moral development (Article 66 § 1).

36. A child is entitled to maintain contact with his/her parents, grandparents, brothers, sisters and other relatives. The parents' divorce, separation or the annulment of their marriage have no bearing on the child's rights. In particular, in the case of the parents' separate residence, the child is entitled to maintain contact with both of them (Article 55 § 1).

37. Grandparents, brothers, sisters and other relatives are entitled to maintain contact with the child. If the parents, or one of them, prevent close relatives from seeing the child, the childcare authority may order that the contact is maintained between the child and the relative in question. If the parents do not comply with the childcare authority's order, the relative concerned or the childcare authority may apply to a court for a contact order. The court must take a decision in the child's interests and must take the child's opinion into account. If the parents do not comply with the contact order issued by a court, they may be held liable in accordance with law (Article 67).

38. A court may deprive a parent of parental authority at the request of the other parent, a guardian, a prosecutor or social services if, among others, the parent mistreats the child by resorting to physical or psychological violence or sexual abuse (Articles 69 and 70 § 1).

39. A court may restrict a parent's parental authority and remove the child from the parent's care in the interests of the child at the request of a close relative, social services, educational institutions or a prosecutor. The parental authority may be restricted in cases where the parent represents a danger to the child (Article 73).

40. Maternity or paternity of a child may be contested before a court by the person who is recorded in the child's birth certificate as his/her mother or father, by the child's biological mother or father, by the child himself/herself once he/she attains the age of majority, by the child's guardian or, if the child's parent is legally incapable, by the parent's guardian (Article 52 § 1).

### III. RELEVANT INTERNATIONAL AND COMPARATIVE MATERIAL

#### A. United Nations documents

41. Article 3 of the Convention on the Rights of the Child, adopted in 1989 by the UN General Assembly and ratified by Russia in 1990, provides as follows:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures ...”

42. Its Article 9 provides, as far as relevant, as follows:

“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence ...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests ...”

43. In its General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), adopted on 29 May 2013 (CRC/C/GC/14), UN Committee on the Rights of the Child stated, in particular, as follows:

“13. Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the



obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.

14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:

(a) The obligation to ensure that the child's best interests are *appropriately integrated and consistently applied* in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;

(b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision ...

15. To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:

(a) Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure ...

(c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her ...

29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so ...

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words "shall be" place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken ...

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both

parents is entitled “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship ...”

## **B. Comparative law material**

44. Article 371-4 of the French Civil Code provides that if the interests of the child so require, the family affairs judge fixes the modalities of the relationship between the child and any other person, whether a relative or not, who has resided in a stable manner with the child and one of his/her parents, has participated in the child’s education, everyday care or accommodation and has developed lasting emotional bonds with him/her.

45. Article 1685 of the German Civil Code provides that any persons with whom the child has close ties may claim contact rights if they have or have had actual responsibility for the child (social and family relationship) and if this serves the best interests of the child. It is in general to be assumed that actual responsibility has been taken on if the person has been living for a long period in domestic community with the child.

46. Section 10 of the United Kingdom 1989 Children Act provides that contact rights may be claimed, in particular, by any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family, by the foster parent or any relative with whom the child has lived for a period of at least one year immediately preceding the application; or by any person with whom the child has lived for a period of at least three years.

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION**

47. The applicant complained that the termination of paternity had deprived him of the right to maintain contact with his daughter and to defend her interests in court. He relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

## A. Admissibility

48. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. Submissions by the parties

49. The Government submitted that a DNA test had established that the applicant was not A.'s biological father. The test had been carried out in accordance with the procedure prescribed by law and the Russian courts had accepted it as admissible and reliable evidence providing sufficient basis for the decision to terminate the applicant's paternity of A. There was no reason to doubt the accuracy of the DNA test.

50. The Government argued that termination of paternity was compatible with the Convention where it had been proved that a child's "legal" father was not the biological father. According to the Court's case-law, respect for family life required that biological and social reality should prevail over a legal presumption of paternity (see *Kroon and Others v. the Netherlands*, 27 October 1994, § 40, Series A no. 297-C; and *Shofman v. Russia*, no. 74826/01, § 44, 24 November 2005). Furthermore, the decision to terminate the applicant's paternity of A. had had a basis in the domestic law, namely Article 52 of the Family Code (see paragraph 40 above), which did not set any time-limit for bringing an action contesting the paternity of a child.

51. The Government further submitted that under Russian law only close relatives – parents, grandparents, great grandparents, siblings, uncles, aunts and cousins – were entitled to maintain contact with a child (see paragraph 37 above). Given that the applicant's paternity of A. had been terminated, he did not have any entitlement under the domestic law to maintain contact with her. The Government noted in this respect that the applicant had never applied to a court for a contact order. In any way, given that a conflict existed between the applicant and A.'s mother, it would not be in the best interests of the child to grant the applicant contact rights (they referred to *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003).

52. The Government also submitted that the applicant had no standing under the domestic law to apply for a court order depriving A.'s mother of parental authority. Russian law provided that only a parent, a guardian, a prosecutor or social services could apply for such a court order (see paragraph 38 above). The domestic courts' decision to discontinue the proceedings had been therefore lawful.

53. Lastly, the Government submitted that in all their decisions the domestic courts had always been guided by A.'s best interests. In particular, they had found that it was in A.'s best interest to be brought up by her mother.

54. The applicant maintained his claims.

## 2. *The Court's assessment*

55. The Court must first examine whether there existed a relationship amounting to private or family life between the applicant and A. within the meaning of Article 8 of the Convention.

56. The Court reiterates that the notion of "family life" under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other de facto "family" ties (see *Anayo v. Germany*, no. 20578/07, § 55, 21 December 2010, with further references). The existence or non-existence of "family life" for the purposes of Article 8 is essentially a question of fact depending on the real existence in practice of close personal ties (see *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII). Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto "family ties" (see *Kroon and Others v. the Netherlands*, cited above, § 30).

57. The Court has earlier found that the relationship between the foster family and the fostered child who had lived together for many months amounted to family life within the meaning of Article 8 § 1, despite the lack of a biological relationship between them. The Court took into account the fact that there had developed a close emotional bond between the foster family and the child similar to the one between parents and children and that the foster family had behaved in every respect like the child's parents (see *Moretti and Benedetti v. Italy*, no. 16318/07, §§ 49-50, 27 April 2010, and *Kopf and Liberda v. Austria*, no. 1598/06, § 37, 17 January 2012).

58. Turning to the present case, the Court notes that A. was born during the applicant's marriage with N. and was registered as his daughter. Having no doubts about his paternity of A., the applicant raised her and provided care for her for more than five years. As established by the childcare authority and expert psychologists, there was a close emotional bond between the applicant and A. (see paragraphs 14 and 15 above). Given that the applicant and A. had believed themselves to be father and daughter for many years until it was eventually revealed that the applicant was not A.'s biological father, and taking into account the close personal ties between them, the Court finds that their relationship amounts to family life within the meaning of Article 8 § 1.

59. The Court will next examine whether there has been a failure to respect the applicant's family life.

60. The Court notes that where the existence of a family tie has been established the State must in principle act in a manner calculated to enable that tie to be maintained. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005, and *K. and T. v. Finland*, cited above, § 150).

61. Moreover, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see *Glaser v. the United Kingdom*, no. 32346/96, § 63, 19 September 2000).

62. In relation to the State's obligation to implement positive measures, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action. This also applies to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see *Manic v. Lithuania*, no. 46600/11, § 101, 13 January 2015, with further references).

63. Both in the contexts of the negative and positive obligations, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Glaser*, cited above, § 63). Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, primary importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII, and *Plaza v. Poland*, no. 18830/07, § 71, 25 January 2011).

64. In the present case the applicant's paternity of A. was terminated and his name was deleted from A.'s birth certificate after it had been established that he was not her biological father. As a result the applicant lost all parental rights to A., including contact rights. Indeed, the Family Code provides that only the parents, grandparents, brothers, sisters and other relatives are entitled to maintain contact with a child (see paragraphs 35 to 37 above). As confirmed by the Government, the applicant is not entitled under the domestic law to maintain contact with A. because he is no longer

considered to be her parent or other relative. In such circumstances, the Court considers that a court application for a contact order is bound to fail on the basis of the existing domestic law.

65. The Court is concerned with the inflexibility of the Russian legal provisions governing contact rights. They set out an exhaustive list of persons who are entitled to maintain contact with a child, without providing for any exceptions to take account of the variety of family situations and of the best interest of the child. As a result a person who, like the applicant, is not related to the child but who has taken care of her for a long period of time and has formed a close personal bond with her cannot obtain contact rights in any circumstances and irrespective of the child's best interest. The Government did not give any reasons why it should have been "necessary in a democratic society" to establish an inflexible list of persons entitled to maintain contact with a child and not to make any exceptions to the application of that provision to take account of the child's best interest in the particular circumstances of each case.

66. The Court is not convinced that the best interest of children in the sphere of contact rights can be truly determined by a general legal assumption. Having regard to the great variety of family situations possibly concerned, the Court considers that a fair balancing of the rights of all persons involved necessitates an examination of the particular circumstances of the case (see, *mutatis mutandis*, *Schneider v. Germany*, no. 17080/07, § 100, 15 September 2011). Accordingly, Article 8 of the Convention can be interpreted as imposing on the member States an obligation to examine on a case by case basis whether it is in the child's best interests to maintain contact with the person, whether biologically related or not, who has taken care of him or her for a sufficiently long period of time. By denying the applicant the right to maintain contact with A. without any examination of the question of whether such contact would be in A.'s best interest, Russia has failed to comply with this obligation.

67. The Court observes that as a result of the operation of the domestic law the applicant was entirely and automatically excluded from A.'s life after the termination of his paternity. However, it considers that the person who has brought up a child for some time as his own must not be completely excluded from the child's life after it had been revealed that he was not his or her biological father, unless there are relevant reasons relating to the child's best interests to do so. No such reasons were advanced in the present case. It has never been suggested that contact with the applicant would be detrimental to A.'s development. On the contrary, it was established by both the childcare authority and expert psychologists that there existed a strong mutual attachment between the applicant and A. and that the applicant had been taking good care of the child (see paragraphs 14 and 15 above).

68. In view of the foregoing, the Court concludes that the authorities have failed in their obligation to provide a possibility for the family ties between the applicant and A. to be maintained. The complete and automatic exclusion of the applicant from A.'s life after the termination of his paternity due to the inflexibility of the domestic legal provisions – in particular the denial of contact rights without giving proper consideration to A.'s best interest – has therefore amounted to a failure to respect the applicant's family life.

There has accordingly been a violation of Article 8 of the Convention.

## II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

69. The applicant complained of the discontinuation of the judicial proceedings on his application for a residence order and an order depriving A.'s mother of parental authority. He also complained about the failure to inform him of the appeal hearing of 27 February 2013. He relied on Articles 6 § 1 and 13 of the Convention, which read as follows:

### **Article 6 § 1**

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

### **Article 13**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

70. The Government submitted that the applicant had not lodged a cassation appeal with the Supreme Court of the Russian Federation against the decision of 16 January 2013 by the Oktyabrskiy District Court and the subsequent appeal and cassation decisions of 27 February and 31 May 2013. Nor had he lodged a supervisory review complaint with the Presidium of the Supreme Court. He had not therefore exhausted the domestic remedies.

71. The Government further submitted that the applicant had no standing under the domestic law to apply for a court order depriving A.'s mother of parental authority (see paragraph 38 above) or for a residence order. The domestic courts' decision to discontinue the proceedings had been therefore lawful. Furthermore, the applicant's previous applications for a residence order had been examined by the domestic courts on the merits. The applicant had moreover been duly informed about the hearing of 27 February 2013.

72. The applicant maintained his claims.

73. The Court considers that the Government's objection as to the non-exhaustion of the domestic remedies is closely linked to the substance of the

applicant's complaints under Article 6 § 1 and 13 of the Convention and that it must be therefore joined to the merits. The Court considers that the complaints should be declared admissible and finds, in the light of its above conclusion under Article 8, that it is not necessary to examine separately the applicant's complaints under Articles 6 § 1 and 13 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

75. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection regarding the non-exhaustion of domestic remedies;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there is no need to examine the complaints under Article 6 § 1 and 13 of the Convention, nor, as a consequence, the Government's abovementioned preliminary objection.

Done in English, and notified in writing on 16 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro  
President