



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

THIRD SECTION

CASE OF Y.I. v. RUSSIA

(Application no. 68868/14)

JUDGMENT

Art 8 • Respect for family life • Drug addict on treatment disproportionately deprived of parental authority over her children who were not neglected or in danger • Two youngest children separated from brother and placed in public care despite grandmother's wish to provide care • Authorities' failure to consider less drastic measures in children's best interest • Authorities' failure to take into account applicant's efforts to improve her situation after children's removal

STRASBOURG

25 February 2020

FINAL

12/10/2020

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

In the case of Y.I. v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Helen Keller,

Dmitry Dedov,

María Elósegui,

Gilberto Felici,

Erik Wennerström, *judges*,

and Stephen Phillips, *Section Registrar*,

Having regard to:

the application 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, Ms Y. I. (“the applicant”), on 14 October 2014;

the decision to give notice to the Russian Government (“the Government”) of the complaint concerning an automatic removal of the applicant’s parental authority and to declare inadmissible the remainder of the application;

the decision to grant priority to the above application under Rule 41 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 4 February 2020,

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

INTRODUCTION

The present case concerns deprivation of the applicant of her parental authority over her three children.

THE FACTS

1. The applicant was born in 1980 and lives in Moscow. She was represented by Mr M. Golichenko, a lawyer practising in Balashikha.

2. The Government were represented by Mr G. Matyushkin, Representative of the Russian Government before the European Court of Human Rights, and then by Mr M. Galperin, his successor in that office.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is the biological mother of I., born in 1999, A., born in 2011, and Al., born in 2012. At the material time, she was living with her three children and her mother, Ms P., in a two-room flat. She appears to

have been taking opiate drugs from 2004 onwards, and suffered from an opiate addiction.

I. THE APPLICANT'S ARREST AND CONVICTION AND THE REMOVAL OF HER CHILDREN

5. At 5.45 a.m. on 8 October 2013 the police arrested the applicant and Mr K., her partner and the biological father of A. and Al., at her home address, on suspicion of being involved in drug trafficking. The applicant's three children were at home at the time. The police took the applicant to a police station, where she remained for at least four hours. She was then released, having given an undertaking not to leave a specified location. During that period the applicant's children had been at home on their own, as the applicant's mother had been visiting her relatives in another region.

6. On 8 October 2013 a police officer interviewed the applicant. She stated, in particular, that she had started taking drugs in 2004. Initially, she had taken two types of psychotropic medicine, which she had mixed together for injections. She had stopped taking drugs in 2010 before giving birth to her two youngest children. She had then relapsed and, for about the past month, had been taking heroin. She also stated that she had regularly let her acquaintances take drugs in her kitchen.

7. At 10 a.m. on the same date, when the applicant was at home, a police officer for juvenile affairs (*инспектор по делам несовершеннолетних*) arrived. He drew up a report stating that the applicant had committed an administrative offence as she had failed duly to fulfil her parental obligations in respect of her three minor children and had been taking drugs. He also drew up three more reports stating that the children had been left unattended. Later that day, I. was taken to a children's home, and A. and Al. were taken to a children's hospital.

8. On the same date the applicant underwent a medical examination, which confirmed that she was in a state of intoxication caused by morphine and codeine.

9. On the same date the police for juvenile affairs sent the above-mentioned reports to the Khovrino district authority (*Администрация муниципального округа Ховрино*) with a request that proceedings to deprive the applicant of her parental authority in respect of I., A. and Al. be initiated.

10. On 18 October 2013 I. was taken to stay with Mr Is., his father.

11. By decisions of 23 October 2013 the Khovrino district authority ordered that A. and Al. be placed in public care, as children left without parental care. On 25 October 2013 A. and Al. were placed in a children's home.

12. On 17 January 2014, as upheld on appeal on 14 April 2014, the domestic courts deprived the applicant of her parental authority in respect of her three children (see paragraphs 34-48 below).

13. On 28 April 2014 the Golovinskiy District Court of Moscow found the applicant guilty of drug trafficking and sentenced her to six years' imprisonment. She was arrested in the court room after the judgment had been pronounced.

14. According to the Government, on 10 June 2014 A. and Al. were transferred to a foster family, where they have remained since that date.

II. THE APPLICANT'S CONTACT WITH HER CHILDREN FOLLOWING THEIR REMOVAL

15. In the applicant's submission, prior to her conviction, she had regularly visited A. and Al. in the children's home at least once a week.

16. According to the reports drawn up by staff at the children's hospital and children's home, A. and Al. missed their mother. In particular, Al. would wake up during the night, weeping and calling for her "mum". A. would often ask where his mother was and when she would take him home.

17. It is unclear whether the applicant ever saw her eldest son I. following his removal.

III. INSPECTION OF THE APPLICANT'S LIVING CONDITIONS

18. On 11 October and 18 November 2013 the Khovrino district authorities inspected the living conditions at the applicant's home address.

19. The report of 11 October 2013 stated that the flat had the necessary furniture and domestic appliances. It had two rooms: one measuring 10.4 sq. m, which was occupied by Ms P., the applicant's mother, who had been visiting relatives in another region of Russia at that point in time, and another measuring 18.7 sq. m, which was shared by the applicant and her three children. Each of the children had a separate sleeping place. The room was stuffy, as it was not properly ventilated. It was equipped with chests of drawers, a dining table with a desktop computer on it, an office chair and a linen chest. There were empty plastic bottles, ashtrays with cigarette butts and a washing up bowl on the floor. Sufficient food supplies were found in the kitchen and in the refrigerator. The report mentioned that the applicant had been present during the inspection. She had remained lying on a sofa, crying and smoking, and blamed herself for the recent events, including the removal of her children. According to the report, the applicant stated that she had taken drugs between 2003 and 2011, and then from September until 8 October 2013; in the latter period she had taken heroin, which she had received from Mr K. (see paragraph 5 above). The applicant also stated that she had intended to contact the Khovrino district authorities to find out

where her children had been taken, but had been unable to do so, as she had had to stay in bed because of withdrawal symptoms. She realised that she had a drug addiction and was ready to undergo medical treatment.

20. The report of 18 November 2013 stated that the flat had the necessary furniture and domestic appliances, and was tidy, cosy and well ventilated. Repair work had been carried out in the kitchen in the past month, and the furniture in the applicant's room had been rearranged. The inspection was carried out in the presence of Ms P., who stated that the applicant had been admitted to hospital on 31 October 2013 and was currently undergoing inpatient medical treatment in connection with her addiction. Ms P. said that the applicant loved her children and cared about them. She also mentioned that she herself was currently taking the necessary administrative steps to gain custody of her grandchildren.

IV. THE APPLICANT'S MEDICAL TREATMENT

21. On 29 October 2013 the applicant sought assistance in connection with her drug addiction in a drug rehabilitation outpatient clinic (*наркологический диспансер*).

22. An extract from the applicant's medical history file reveals that on 30 October 2013 she was admitted to a specialist clinic, where she was diagnosed with stage-two opiate addiction and withdrawal symptoms. She received treatment for her addiction until 21 November 2013, when she was discharged from the clinic. The file also states that she applied to the clinic for treatment on her own initiative, and that she had a positive attitude towards the treatment and intended to abstain from taking drugs and to lead a healthy life.

23. According to a certificate dated 5 December 2013, from December 2013 onwards, following a diagnosis of stage-two opiate addiction, the applicant was registered as an outpatient with a drug rehabilitation clinic for monitoring.

24. In the context of that monitoring, the applicant visited the drug rehabilitation clinic on 28 November 2013 and 9 January, 13 and 14 March and 10 April 2014.

25. According to the Government, the applicant received in-patient treatment for her addiction in a specialist clinic between 17 and 31 January 2014; she was discharged on the latter date as she had refused treatment. She was then readmitted to the clinic from 7 to 21 February 2014. In the applicant's submission, she had left the specialist clinic on 31 January 2014 as she had had health issues which could not be addressed there. As soon as she had received treatment for those issues, she had returned to the drug rehabilitation clinic.

V. PROCEEDINGS FOR WITHDRAWAL OF THE APPLICANT'S PARENTAL AUTHORITY

26. On 1 November 2013 the Khovrino district authority brought an action against the applicant, seeking the withdrawal of her parental authority in respect of her three children. In particular, they pointed out that since October 2013 the applicant had been monitored by the district commission for children's affairs and the protection of minors' rights as a mother who had been neglecting her parental duties by not providing her children with adequate care and financial support, and who had been taking drugs for a prolonged period of time. The authority also pointed out that the applicant was unemployed and that criminal proceedings against her were currently ongoing in relation to her suspected involvement in drug trafficking. The authority therefore insisted that leaving her children with her would put their lives and health at risk.

A. First-instance court

1. Proceedings before the first-instance court

27. A transcript of two court hearings that took place on 5 and 24 December 2013 respectively reveals that the applicant and her representative attended those hearings and made oral submissions. The applicant stated, in particular, that she loved her children and was willing to take care of them. She also stated that she had never taken drugs in front of her children; she would go to the bathroom or toilet for that purpose. She also said that she was willing to undergo rehabilitation treatment for her addiction.

28. The applicant's mother, Ms P., who participated in the proceedings as a third party, objected to the withdrawal of her daughter's parental authority. She stated that the applicant loved her children and had taken care of them to the extent that the state of her health had allowed. She also stated that she knew that, previously, her daughter had taken psychotropic drugs, but had stopped taking them during her pregnancy. Ms P. further stated that, although she shared the flat with her daughter, she had not noticed that the latter had relapsed; nor did she know that she had started taking heroin.

29. A representative of the children's home in which A. and Al. had been placed stated, in particular, that the children's grandmother had started visiting them as soon as they had been placed in that institution, whereas their mother had come for the first time on 6 December 2013, as prior to that date she had been following inpatient treatment for her addiction. Both the children's mother and grandmother had regularly visited the children and had brought them presents; the children were particularly attached to their grandmother.

30. A police officer for juvenile affairs, Ms I.P., stated that the children's mother had been taking drugs since 2004. According to Ms I.P., in 2010 she had stopped taking drugs because of her pregnancy, but had relapsed after the birth and had started taking heroin on a regular basis. The officer further stated that the children's mother had tried to stop taking drugs, but had been unable to stop for longer than a fortnight. In the context of the criminal proceedings relating to drug trafficking, a search of her flat had been carried out and packets of heroin had been found. She would allow her acquaintances to take drugs in her kitchen, in her children's presence. According to Ms I.P., the elder son, I., had been monitored by the police; two criminal cases against him had been discontinued owing to his young age.

31. The court also heard I., the applicant's elder son, who stated, in particular, that until the events of 8 October 2013, he had been living with his mother, her partner, his brother and sister and his grandmother. Their life had been "normal", there had been no "inadequacy" in his mother's behaviour; she had been taking care of the children. I. also stated that he liked living with his father and that he had good relations with his father's new family. In fact, I. would like to live with both of his parents, he could not make a choice. He stressed that he did not want his mother to be deprived of her parental authority.

32. I.'s father, Mr Is., and his wife stated that they would like I. to live with their family.

33. A transcript of the court hearing of 17 January 2014 reveals that the applicant's representative informed the court that as the applicant had been admitted to a specialist clinic for treatment for her drug addiction, she was unable to attend the hearing. She had applied to the first-instance court for an adjournment of the hearing, but her application had been rejected.

2. Judgment of 17 January 2014

34. By a default judgment of 17 January 2014 the Golovinskiy District Court of Moscow ("the District Court") examined and allowed the action against the applicant. It referred to Article 69 of the Russian Family Code (see paragraph 52 below).

35. The District Court examined the report on the applicant's arrest on 8 October 2013 (see paragraphs 5-6 above), an administrative offence report of the same date (see paragraph 7 above), and a report on her medical examination on that date (see paragraph 8 above). The court also cited the report of 11 October 2013 on the inspection of the applicant's living conditions (see paragraph 19 above), the certificate of 5 December 2013 (see paragraph 23 above), and the administrative decisions of 23 October 2013 to place A. and Al. in public care (see paragraph 11 above).

36. The court also relied on a letter from a teacher at I.'s school. The letter stated that I. had been going to that school since 1 September 2008,

and that during the period when he had been going to that school he had demonstrated a lack of ability and motivation, and had missed classes for no valid reason. The letter also stated that although I.'s mother took care of I. and enquired about his behaviour and progress, she had not had any influence on him.

37. The court admitted Ms I.P.'s statements (see paragraph 30 above) as evidence, stating that they were consistent, coherent and corroborated by the written material in the case.

38. The court examined a report on the inspection of the living conditions in Mr Is.'s flat, which confirmed that they were good, and another letter from a teacher at I.'s school, which stated that since 18 October 2013 (the date on which I. had started living with his father) his behaviour had improved, he had stopped missing classes, and he had made progress in his studies.

39. With reference to the above-mentioned pieces of evidence and witness statements, the court noted that the applicant had been taking drugs for a prolonged period of time, was unemployed, and had failed to provide her children with adequate care or financial support. It concluded that leaving the children in her care would put their health and lives at risk, and that she should therefore be deprived of her parental authority in respect of I., A. and Al.

40. The court considered that the arguments put forward by the applicant's representative and her mother that the applicant was currently undergoing medical treatment for her addiction and had positive references from her neighbours were irrelevant in the circumstances of the case, and should thus not be taken into account.

41. The court thus deprived the applicant of her parental authority in respect of her three children, and ordered that I. be placed in the care of Mr Is., his father, that A. and Al. be placed in public care, and that the applicant pay maintenance on a monthly basis to support her children financially.

B. Appellate proceedings

42. The applicant disagreed with the first-instance judgment and lodged an appeal before the Moscow City Court. She complained that the District Court had taken an overly formalistic approach and had not assessed the particular circumstances of her case, but had merely applied Article 69 of the Russian Family Code (see paragraph 52 below). It had thus withdrawn her parental authority on the sole grounds that she was a drug addict. In the applicant's view, that fact alone did not prove that she posed any danger to her children, and therefore was insufficient for the purposes of depriving her of her parental authority. The first-instance court had ignored the fact that she was undergoing rehabilitation, even though that fact was directly

relevant to her case. Lastly, she complained that she had not been given an opportunity to participate in the proceedings before the District Court, as it had rejected her application to adjourn the hearing.

43. A transcript of 14 April 2014 reveals that the applicant and her representative attended the hearing before the appellate court and submitted their arguments. They requested that the appellate court include in the case file a number of pieces of evidence proving that the applicant had changed her attitude, had found a job and had a sufficient income, and had followed rehabilitation treatment. They also requested the appellate court to call and examine the doctor who had treated the applicant at the specialist clinic where she had undergone inpatient treatment for her addiction. The appellate court dismissed that request, stating that the evidence in question had been received after the first-instance court had rendered its judgment, and that the applicant could have sought, but had not, the examination of the witness in question before the first-instance court.

44. By a decision of 14 April 2014 the Moscow City Court upheld the judgment of 17 January 2014 on appeal. It considered that the first-instance judgment was well reasoned and based on an adequate assessment of all the relevant circumstances.

45. The appellate court disagreed with the applicant's argument that her addiction to drugs had been the sole ground for depriving her of her parental authority. Her children had been taken away because she had neglected her parental duties in respect of A. and Al. and, for a prolonged period of time, had remained unemployed and had taken drugs. The appellate court referred to the applicant's words in the report of 11 October 2013 to the effect that, because of her withdrawal symptoms, she had been unable to discover her children's whereabouts (see paragraph 19 above), and to her interview of 8 October 2013 (see paragraph 6 above) which revealed that she had regularly let other people take drugs in her flat. It also referred to "other pieces of evidence which showed that [she] had taken and had dealt in drugs at her flat", without indicating what those pieces of evidence were.

46. In the appellate court's view, the foregoing considerations had been sufficient to enable the first-instance court to reach a well-founded conclusion that leaving the children in the applicant's care would put their lives and health at risk.

47. The Moscow City Court further held that the fact that the applicant had undergone rehabilitation treatment could not, on its own, be the basis for rejecting the authorities' action, as the first-instance court's judgment had been based on an assessment of the available evidence and circumstances at the time the case was decided. Moreover, the applicant would have the opportunity to seek reinstatement of her parental authority once the reasons underlying the decision to deprive her of it were no longer valid.

48. Lastly, in so far as the applicant complained about the first-instance court's refusal to adjourn the hearing to ensure her personal participation in the proceedings, the Moscow City Court noted that that did not constitute grounds for quashing the judgment, as the applicant had been represented before the first-instance court, and her representative had set out her position.

C. Cassation proceedings

49. The applicant then lodged a cassation appeal before the Presidium of the Moscow City Court. The latter received the appeal on 10 October 2014. She argued that the lower courts had applied Article 69 of the Russian Family Code in a formalistic manner, and had based their decisions solely on the fact that she had been a drug addict, whilst failing to take into consideration the fact that she had been undergoing rehabilitation treatment. Moreover, the first-instance and appellate courts had disregarded her children's right to live and be raised in their family, as guaranteed by Article 54 of the Russian Family Code (see paragraph 51 below). In particular, they had failed to demonstrate convincingly that the children's forced separation from their mother and their placement in the care of the State had been in their best interests. The applicant further argued that the courts had failed to set out any facts showing that she had neglected her parental duties at any point, and that the courts' conclusion to that end had been groundless. According to the applicant, the case material showed that, although she suffered from an opiate addiction, she was making efforts to overcome it; moreover, she had never lost interest in her children's lives, their development and upbringing. She also argued that the impugned decisions had breached her right to respect for her private and family life, as guaranteed by Article 8 of the Convention.

50. By a decision of 29 October 2014 the Presidium of the Moscow City Court upheld the judgment of 17 January 2014 and the decision of 14 April 2014, endorsing the reasoning of the lower courts.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN FAMILY CODE

51. Article 54 of the Russian Family Code ("the Code") provides that every child, that is a person under the age of eighteen, has the right to live and be brought up in a family, in so far as this is possible. He or she has the right to know his or her parents, to be cared for, and to live with his or her parents, except where this is contrary to his or her interests. A child also has the right to be brought up by his or her parents, to the protection of his or

her interests, to full development, and to respect for his or her human dignity.

52. Article 69 of the Code establishes that a parent may be deprived of parental authority if he or she avoids parental duties, such as the obligation to pay child maintenance; refuses to collect his or her child from a maternity hospital, or any other medical, educational, social or similar institution; abuses his or her parental authority; mistreats his or her child by resorting to physical or psychological violence or sexual abuse; suffers from chronic alcohol or drug abuse; or has committed a premeditated criminal offence against the life or health of his or her children or spouse.

53. By virtue of Article 71 of the Code, parents who have been deprived of their parental authority lose all rights based on their kinship with the child in respect of whom their parental authority has been withdrawn, as well as the right to receive child welfare benefits and allowances paid by the State.

54. Article 73 provides that a court may decide, in the interests of the child, to remove him or her from his or her parents (or one of them) without depriving them of their parental authority (restriction of parental authority). Parental authority is restricted when leaving the child with his or her parents (or one of them) is deemed dangerous for the child due to circumstances beyond the control of the parents (or one of them), such as mental illness or other chronic disease, or a combination of difficult circumstances. It is also possible to restrict parental authority in cases where leaving a child with his or her parents (or one of them) would be dangerous for the child on account of their behaviour, but sufficient grounds for depriving the parents (or one of them) of their parental authority have not been established. If the parents (or one of them) do not change their behaviour, the custody and guardianship authority is under an obligation to apply for the parents to be deprived of their parental authority within six months of the court decision restricting parental authority. Acting in the interests of the child, the authority may lodge the application before that deadline.

II. SUPREME COURT OF RUSSIA

55. In its ruling no. 10 on courts' application of legislation when resolving disputes concerning the upbringing of children, dated 27 May 1998, as amended on 6 February 2007, the Plenary of the Supreme Court of Russia stated, in particular:

“...

11. Only in the event of their guilty conduct may parents be deprived of their parental authority by a court on the grounds established in Article 69 of the [Russian Family Code].

Avoidance by parents of their parental duties in relation to their children's upbringing may manifest itself in [such parents'] failure to take care of [the

children's] moral and physical development, education, [and] preparation for socially useful activities.

...

Chronic alcohol or drug abuse should be confirmed by a relevant medical report ...

12. ... Persons who do not fulfil their parental obligations as a result of a combination of adverse circumstances or on other grounds beyond their control (for instance, [where the person has] a psychiatric or other chronic disease ...) cannot be deprived of their parental authority.

...

13. Courts should keep in mind that deprivation of parental authority is a measure of last resort. Exceptionally, where a parent's guilty conduct has been proved, a court, with due regard to [that parent's] conduct, personality and other specific circumstances, may reject an action for [him or her] to be deprived of his or her parental authority and urge [him or her] to alter [his or her] attitude towards bringing up [his or her] children, entrusting [a competent] custody and guardianship agency with monitoring whether [that parent] duly performs [his or her] parental duties."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant complained that that she had been deprived of her parental authority as a result of the automatic application of Article 69 of the Russian Family Code, in which a parent's drug addiction was listed among the grounds for removal of parental authority. She relied on Article 8 of the Convention, the relevant part of which reads:

"1. Everyone has the right to respect for his private and family life ...

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

57. The Government pointed out that the Russian Code of Civil Procedure, as in force at the relevant time, had established a two-tier cassation appeal procedure for appealing against court decisions taken at the first two levels of jurisdiction, which had been recognised by the Court as an effective remedy in the case of *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, 12 May 2015). They further pointed out that at the time the applicant had lodged her application with the Court, her cassation appeal had still been pending before a cassation court. They argued therefore that the application was premature and that the applicant had failed to exhaust the effective domestic remedies available to her.

58. With reference to the case of *Kocherov and Sergeyeva* (no. 16899/13, 29 March 2016), the applicant argued that when she had lodged her application with the Court, she had not known that it would consider the new cassation procedure an effective remedy. She pointed out that she had lodged her application on 14 October 2014, whereas the Court's inadmissibility decision in the case of *Abramyan and Others* (cited above) had not been delivered until May 2015.

59. The Court has rejected similar objections by the respondent Government in many cases where applicants had lodged their applications before the Court had pronounced its decision in the case of *Abramyan and Others*, cited above (see, for example, *Novruk and Others v. Russia*, nos. 31039/11 and 4 others, §§ 70-76, 15 March 2016; *Kocherov and Sergeyeva*, cited above, §§ 64-69; *McIlwrath v. Russia*, no. 60393/13, §§ 85-95, 18 July 2017; *Elita Magomadova v. Russia*, no. 77546/14, §§ 40-44, 10 April 2018; *Khusnutdinov and X v. Russia*, no. 76598/12, §§ 65-66, 18 December 2018; and *Zelikha Magomadova v. Russia*, no. 58724/14, §§ 79-80, 8 October 2019).

60. The Court does not discern any reason to reach a different conclusion in the present case. The applicant lodged her application with the Court on 14 October 2014, that is before the Court recognised the reformed two-tier cassation appeal procedure as an effective remedy (see *Abramyan and Others*, cited above, §§ 76-96). Moreover, the Government have not alleged that at the time of the events under consideration, any relevant domestic case-law had existed to enable the applicant to realise that the new remedy met the requirements of Article 35 § 1 of the Convention, and to anticipate the new exhaustion requirement rather than following the approach that had been applied by the Court until very recently. In such circumstances, the Court considers that the applicant was not required to pursue that procedure prior to lodging her application with the Court.

61. Accordingly, the Court rejects the Government's objection as to the alleged non-exhaustion of domestic remedies.

62. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

63. The applicant argued that the domestic courts had automatically applied Article 69 of the Russian Family Code on the sole ground that she had been a drug addict; they had not assessed the necessity and proportionality of a measure as harsh as deprivation of parental authority. In

particular, they had not considered applying other, less restrictive, measures. In the applicant's submission, withdrawal of parental authority should be a measure of last resort that was to be applied only where other, less intrusive, measures had failed. Indeed, Article 73 of the Russian Family Code (see paragraph 54 above) provided for restriction of parental authority, which was less drastic; however, the domestic authorities had never considered applying that measure.

64. Furthermore, the national authorities had never considered rendering social assistance and support to the applicant and her family. In particular, once the applicant's situation had become known to the Russian authorities, they had held her liable in administrative proceedings for not fulfilling her parental duties. They did not offer any social or medical support to the applicant and her family, despite the obvious fact that her hardship and difficult family situation had been caused by her drug dependence. The assessments undertaken by the child-protection authority (see paragraphs 7 and 9 above) had been focused on depriving her of parental authority, rather than identifying her family's needs and providing her with the necessary social support.

65. The domestic courts had also failed to strike a fair balance between the interests at stake, and to provide "relevant and sufficient" reasons for their decision to deprive the applicant of parental authority. In particular, they had disregarded the positive changes in her conduct after the removal of her children and, more specifically, the fact that she had started rehabilitation treatment. Moreover, they had not considered the option of leaving the children in the care of their maternal grandmother. Instead, having disregarded the evidence and witness statements proving that before the children's removal, the applicant and her children had enjoyed decent living conditions, and that her mother had been living with them and had helped her to take care of them, they authorised the children's placement in public care. Nor did the authorities take into account the fact that the children had bonds not only with the applicant but with her mother as well. The courts had also disregarded statements by the applicant's mother and her elder son that she had not been taking drugs in front of the children. In fact, the courts had attributed the risk to the children's health and development to the mere fact that the applicant had been taking drugs, and that drugs had been present and sold in her flat. Moreover, the courts had referred to her poor financial situation, which, in itself, was not a valid reason for withdrawing her parental authority.

66. The applicant concluded that the way in which the authorities had exercised their powers and dealt with her situation had been punitive rather than supportive.

67. She had been put in a position where she had been unable effectively to put forward all arguments against the withdrawal of her parental authority. In particular, the domestic courts had rejected as irrelevant the

evidence she had submitted, including positive references from her neighbours and her son's school, as well as the evidence confirming that she had commenced rehabilitation treatment.

68. The applicant also argued that in the domestic proceedings, despite the fact that she had been vulnerable in view of her drug addiction, she had not been provided with free legal aid. She had not had the benefit of legal counsel and had been represented by someone without legal education and skills, whereas the authorities had been represented by a number of officials from the child-protection authorities, who "probably [had] had legal education and skills or knowledge related to childcare cases", as well as by a prosecutor. This had put the applicant at a disadvantage.

69. Moreover, the last hearing before the first-instance court had been held despite the fact that the applicant could not attend it as she had been in a specialist clinic for rehabilitation treatment. Overall, the proceedings had been heavily dominated by public officials, with the result that the decision-making process could not be considered to have been fair.

70. The applicant stressed that as a consequence of the decision to deprive her of parental authority, she had lost all rights in respect of her children, including contact rights. The impugned measure had therefore violated her right to respect for her private and family life.

(b) The Government

71. The Government acknowledged that depriving the applicant of her parental authority had constituted an interference with her right to respect for her family life secured by Article 8 § 1 of the Convention. In their view, however, it had been justified under the second paragraph of that Article. It had a basis in domestic law, as it had been based on the Russian Family Code, in particular Article 69, on which the domestic courts had relied in their relevant decisions. It had also pursued the aim of protecting the children's rights.

72. In the Government's view, the measure complained of had also been "necessary in a democratic society"; it had been proportionate and had taken the children's best interests into account. Under the Court's well-established case-law, the national courts had a certain margin of appreciation in the field and were better placed to assess the relevance and substance of the evidence before them, including witnesses' statements. In the proceedings concerning withdrawal of the applicant's parental authority, the domestic courts had rightly considered that maintaining family ties between the applicant and her three children would be detrimental to their health and development, and that it would be in the best interests of the children to ensure their development in a safe environment. The courts had taken their decision on the basis of the adduced evidence. In particular, the first-instance court had established that the applicant had been taking drugs for a prolonged period of time, which had damaged the children's mental health;

she had let her acquaintances take drugs in her flat, where her children lived; she had neglected her children and, in particular, had not taken care of their health and mental development; she had been unemployed and had a low income; and criminal proceedings had been pending against her. The Government also referred to the applicant's previous criminal record without providing any supporting documents. In the Government's view, the foregoing proved that the withdrawal of the applicant's parental authority had not been automatic but had been based on relevant and sufficient considerations.

73. As regards the decision-making process, the Government contended that the applicant had taken part in two hearings (on 5 and 24 December 2013) before the first-instance court, where she and her representative had had an opportunity to make oral and written submissions and to lodge applications which had been examined by the courts and had received reasoned replies. As regards the last hearing on 17 January 2014, which the applicant had been unable to attend because of her hospitalisation on that date, the Government pointed out, firstly, that she had been aware of the date of the hearing and yet she had chosen to start her inpatient treatment on that date. Moreover, her representative had asked the first-instance court to postpone the hearing for two months, which, in the court's view, had been too long for a childcare dispute. In any event, the applicant had stated her case and advanced her arguments during the previous two hearings, and her representative had participated in the third hearing. In addition, the applicant and her representative had attended the hearing at which her case had been examined by the appellate court. Therefore, in the Government's view, the decision-making process had been fair and had secured the applicant's rights.

74. The Government further argued that the authorities had taken the most appropriate steps in the circumstances. In particular, the applicant's elder son had been transferred into his father's care, which according to a report drawn up by his school, had had a beneficial effect on his behaviour. The two youngest children had been transferred to a foster family; their foster parents had complied with all the requirements of the relevant law.

2. *The Court's assessment*

(a) **General principles**

75. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, for instance, *Haddad v. Spain*, no. 16572/17, § 51, 18 June 2019). There is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see *Neulinger and Shuruk* [GC], no. 41615/07, § 135, 6 July 2010, and

X v. Latvia [GC], no. 27853/09, § 96, ECHR 2013). A child's interests dictate that the child's ties with his or her family must be maintained, except in cases where the family has proved to be particularly unfit and this may harm the child's health and development (see, for instance, *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). Severing such ties means cutting a child off from his roots, which may only be done in very exceptional circumstances everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family. In that context, the Court has emphasised, in particular, the State's obligation to adopt measures to preserve the parent-child bond as far as possible (see *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004; *S.H. v. Italy*, no. 52557/14, § 48, 13 October 2015; and *Kacper Nowakowski v. Poland*, no. 32407/13, § 75, 10 January 2017).

76. At the same time, it is clearly also in the child's interest to ensure his or her development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 207, 10 September 2019). The child's best interests may, depending on their nature and seriousness, override those of the parents (see, for instance, *V.D. and Others v. Russia*, no. 72931/10, § 114, 9 April 2019).

77. It must be borne in mind that generally the national authorities have the benefit of direct contact with all the persons concerned. It is accordingly not the Court's task to substitute itself for the domestic authorities but to review, in the light of the Convention, the decisions taken and assessments made by those authorities in the exercise of their power of appreciation (see, among other authorities, *X v. Latvia* [GC], cited above, § 101, and *Strand Lobben and Others*, cited above, § 210). The margin of appreciation to be granted to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Whilst the Court recognises that the authorities enjoy a wide margin of appreciation when deciding on custody matters, stricter scrutiny is called in respect of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between parents and a child are effectively curtailed (see *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I; *Haase v. Germany*, no. 11057/02, § 92, ECHR 2004-III (extracts), and *Strand Lobben and Others*, cited above, § 211).

78. In assessing whether the impugned measure was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons given to justify the impugned measure were "relevant and sufficient" for the purposes of Article 8 § 2 of the Convention.

To that end, the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, in particular factors of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk*, cited above, § 139). In cases relating to public-care measures, the Court will also have to determine whether the decision-making process, seen as a whole, was fair and provided the applicant with the requisite protection of her interests safeguarded by Article 8 (see *Strand Lobben and Others*, cited above, § 212).

(b) Application of these principles to the present case

79. The Court notes firstly that, by its very nature, the tie between the applicant and her children comes within the notion of “family life” for the purposes of Article 8 of the Convention (see *A.K. and L. v. Croatia*, no. 37956/11, §§ 51-52, 8 January 2013, and *S.S. v. Slovenia*, no. 40938/16, § 78, 30 October 2018).

80. It was not in dispute between the parties that depriving the applicant of her parental authority in respect of her children had constituted an interference with her right to respect for family life as guaranteed by Article 8 § 1 of the Convention. Such interference constitutes a violation of that provision unless it is “in accordance with the law”, pursues one of the legitimate aims under Article 8 § 2 and can be regarded as necessary in democratic society (see, among other authorities, *Jovanovic v. Sweden*, no. 10592/12, § 74, 22 October 2015, and *S.S. v. Slovenia*, cited above, § 79).

81. The Court further accepts the Government’s argument that the measure complained of was based on Article 69 of the Russian Family Code (see paragraph 52 above), and that it pursued the aim of protecting the rights of the applicant’s children. It remains to be determined whether that measure was “necessary in a democratic society”.

82. The Court observes at the outset that depriving the applicant of her parental authority cancelled the mother-child bond between the applicant and her children, and extinguished all parental rights she had in respect of them, including the right to have contact with them (see paragraphs 53 and 70 above). The Court reaffirms that splitting up a family is a very serious interference (see *A.K. and L. v. Croatia*, § 62, and *Haddad*, § 54, all cited above). Depriving a person of his or her parental rights is a particularly far-reaching measure which deprives a parent of his or her family life with the child, and it is inconsistent with the aim of reuniting them. As noted above, such measures should only be applied in exceptional circumstances, and can only be justified if they are motivated by an overriding requirement pertaining to the child’s best interests (see *Strand Lobben and Others*, cited

above, § 209; *M.D. and Others v. Malta*, no. 64791/10, § 76, 17 July 2012; and *N.P. v. the Republic of Moldova*, no. 58455/13, § 65, 6 October 2015). This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see *S.S. v. Slovenia*, cited above, § 96).

83. In respect of the decision-making process, the Court observes that the applicant was represented throughout the proceedings in question; she also attended in person two out of three hearings before the first-instance court and the appellate court's hearing and made oral submissions (see paragraphs 27 and 43 above). A number of witnesses, including her mother and her elder son, were heard (see paragraphs 28 and 31 above). At the same time, in assessing the quality of the decision-making process leading to the splitting up the family, the Court will also have to see whether the conclusions of the domestic authorities were based on adequate evidence (see *N.P. v. the Republic of Moldova*, cited above, § 69; compare also *Strand Lobben and Others*, cited above, §§ 220 and 225).

84. In the above connection, the Court notes that the domestic courts based the impugned measure on the findings that she had been neglecting her parental responsibilities by failing to provide her children with adequate care and financial support, and, for a prolonged period of time, she had been taking drugs and had been unemployed. The authorities considered that leaving children in her care would thus put their health and development at risk, and decided that her parental authority should be withdrawn (see paragraphs 39 and 45 above). The Court is prepared to accept that those were "relevant" considerations, but is not convinced that they were also "sufficient" to justify the impugned measure in the circumstances of the present case.

85. On the facts, the applicant's three children were removed from her and placed in public institutions on 8 October 2013, when the criminal proceedings against her on suspicion of her involvement in drug trafficking had commenced (see paragraphs 5 and 7 above). The Court is prepared to accept that the children's removal and initial placement in public care was justified, given in particular that the applicant had been intoxicated on the date in question, had suffered from withdrawal symptoms on the following days, and had clearly been unable to take care of her children (see paragraphs 8 and 19 above). It does not follow, however, that that fact, in itself, constituted sufficient grounds for such a far-reaching measure as deprivation of parental authority. The Court reiterates that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see *Strand Lobben and Others*, § 208, and *Haddad*, § 54, all cited above).

86. The Court further observes that the childcare authorities started monitoring the applicant's family in connection with her allegedly negligent performance of her parental duties and lack of care for her children on an unspecified date in October 2013 – presumably after the events of 8 October 2013 – and that they instituted proceedings to deprive the applicant of her parental authority as early as 1 November 2013 (see paragraph 26 above). It does not appear that, prior to the proceedings in question, the applicant had been monitored by the childcare or any other social welfare authorities, or warned about her behaviour and the consequences it might entail. Nor does it appear that, once the applicant's situation had come to their attention, the competent authorities made any attempt to provide her with appropriate assistance. There is also no evidence that, in their relevant decisions, the domestic courts considered any of those factors.

87. The Court reaffirms that the authorities' role in the social welfare field is, precisely, to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties (see *Saviny v. Ukraine*, no. 39948/06, § 57, 18 December 2008; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013; and *S.H. v. Italy*, cited above, § 54). In the case of vulnerable persons, the authorities must show particular vigilance and afford increased protection (see, for instance, *S.S. v Slovenia*, cited above, § 84).

88. Furthermore, whilst holding that the applicant had neglected her parental obligations and, in particular, had not provided her children with adequate care, the domestic courts did not elaborate on those findings. In particular, they failed to refer to any particular situations or events where the applicant had left her children unattended, had not provided care for them or had neglected them in any way, let alone endangered their health or life by her actions or inaction. They merely relied on the applicant's own statement – made in the context of the criminal proceedings against her – that she had allowed her acquaintances to use her flat for taking drugs (see paragraph 6 above), and the oral evidence of Ms I.P., a police officer for juvenile affairs, who stated that the applicant would allow her acquaintances to take drugs in her kitchen, in her children's presence (see paragraph 30 above).

89. In the above connection, the Court notes, firstly, that it does not follow from the applicant's statement that she or her acquaintances had ever taken drugs in front of her children. It is unclear what the basis for Ms I.P.'s relevant statement was, as this latter question was not explored in any detail by the domestic courts. Secondly, the applicant, her elder son and her mother consistently stated that the applicant had not demonstrated her addiction to her family members; in particular, there had been no "inadequacies" in her everyday behaviour (see paragraphs 27, 28 and 31 above). Although those statements seemingly contradicted those of Ms I.P., in so far as the latter mentioned that drugs had been taken in the presence of

the applicant's children, the domestic courts made no attempt to obtain more information in order to clarify that important contradiction.

90. It is also relevant that the applicant consistently reaffirmed her intention to resolve her drug-addiction problem and, moreover, took steps to that end (see paragraphs 19-25, 27, 43 and 49 above). Yet, there is no indication that the domestic authorities sought any independent evidence, such as an assessment by a psychologist, to evaluate the applicant's emotional maturity and motivation to act as a responsible parent and to resolve her drug-addiction problem. Moreover, the applicant's arguments and evidence that she had commenced rehabilitation treatment were rejected by the first-instance court as irrelevant (see paragraph 40 above), and by the appellate court with reference to the fact that it had been received after the first-instance court's judgment (see paragraph 43 above). The Court finds this line of reasoning striking in a situation where the applicant's drug addiction appears to have been the main, if not the only, ground for depriving her of parental authority. The domestic courts in fact chose to ignore the evidence adduced by the applicant, instead of assessing it during the proceedings (compare *N.P. v. the Republic of Moldova*, cited above, § 75).

91. In so far as the domestic courts relied on the fact that the applicant was unemployed, the Court finds that financial difficulties cannot in themselves be regarded as sufficient grounds for cancelling a parent-child bond, in the absence of any other valid reasons (compare *Kocherov and Sergeeva*, cited above, § 119). Moreover, the relevant court decisions did not explain how the applicant's being unemployed affected her ability and capacity to take care of her children. In fact, the report of 11 October 2013, relied on by the domestic courts, does not reveal any defects in the living conditions of the applicant's family, except for the fact that the room in which she and her children lived was stuffy, untidy and poorly ventilated. Otherwise, that report indicates that the children had separate sleeping places and that there were sufficient food supplies in the kitchen and in the refrigerator (see paragraph 19 above). Moreover, the report of 18 November 2013 clearly showed subsequent improvements, stating, in particular, that the flat was tidy, cosy and well ventilated and that recent repairs had been carried out in the kitchen (see paragraph 20 above). However, no assessment of those changes, in particular whether they could be regarded as a genuine attempt on the part of the applicant to improve her situation after the children's removal, was made by the domestic courts.

92. The Court further notes the applicant's argument that under the relevant provisions of domestic law, the authorities had discretion to apply a less drastic measure and to order restriction rather than deprivation of her parental authority (see paragraphs 54 and 63 above). The Court finds it surprising that the domestic authorities did not consider that alternative, despite the fact that, as noted in paragraph 86 above, the applicant did not

have a history of neglecting her children. Nor did they give the applicant any warnings regarding the possible consequences of her allegedly negligent behaviour in respect of her children.

93. It is also relevant that the applicant consistently expressed her attachment to the children and her wish to maintain her relationship with them. Written and oral evidence was adduced to the domestic courts showing that prior to the children's removal, the applicant had taken care of them (see paragraphs 28, 31 and 36 above), and that after their removal she had expressed an interest in their lives and made an effort to maintain contact with them (see paragraph 29 above). It was also shown that the children were deeply attached to their mother and their maternal grandmother (see paragraphs 16 and 29 above), and that the maternal grandmother had been willing to keep the children in her care (see paragraph 20 above). Yet, it does not appear that the domestic courts gave due consideration to any of those aspects. In particular, when choosing the measure to be applied in the applicant's case, they did not assess the impact which the children's separation from their mother and grandmother might have on their well-being. That is particularly striking in view of the fact that the removal of the applicant's parental authority terminated her parental status and thus deprived her of any legal grounds to apply for contact orders or seek access to her children.

94. The Court furthermore observes that, as a result of the impugned measure, the children were not only separated from the applicant, their mother, but they themselves were split up, given that the oldest child was transferred into his father's care whereas two youngest children were placed in public care (see *Kutzner*, cited above, § 77; *Pontes v. Portugal*, no. 19554/09, § 98, 10 April 2012; and *S.H. v. Italy*, cited above, § 56).

95. In the light of the foregoing, the Court finds that the reasons relied on by the domestic courts were insufficient to justify depriving the applicant of her parental authority over her three children, and placing the youngest two children in public care. The domestic authorities failed to demonstrate convincingly that, despite the availability of less radical solutions, the impugned measure constituted the most appropriate option corresponding to the children's best interests. Notwithstanding the domestic authorities' margin of appreciation, the interference with the applicant's family life was therefore not proportionate to the legitimate aim pursued.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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.”

A. Damage

98. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

99. The Government argued that the claim was excessive and unreasonable, and did not correspond to the Court’s case-law. They argued that no compensation should be awarded to the applicant, as her rights had not been violated.

100. The Court notes that it has found a violation of the applicant’s right to respect for her family life on account of the deprivation of her parental authority. It considers that she has suffered non-pecuniary damage in that connection, which cannot be compensated for by a mere finding of a violation. Having regard to the particular circumstances of the case, the Court considers it appropriate to award the applicant the full amount, that is EUR 20,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

101. The applicant did not submit any claim for the costs and expenses incurred, either at the domestic level or before the Court.

102. The Court thus makes no award under this head.

C. Default interest

103. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-

- pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
- (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 25 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President