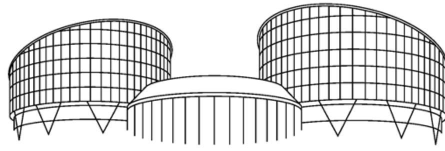

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ZELIKHA MAGOMADOVA v. RUSSIA

(Application no. 58724/14)

JUDGMENT

STRASBOURG

8 October 2019

FINAL

08/01/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Zelikha Magomadova v. Russia,

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

Vincent A. De Gaetano, *President,*
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 58724/14) 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 Zelikha Khalitovna Magomadova ("the applicant"), on 26 August 2014.

2. The applicant was represented by lawyers from the Russian Justice Initiative, a non-governmental organisation based in the Netherlands with offices in Moscow and Ingushetia, and Astreya, a legal assistance organisation based in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by Mr V. Galperin, his successor in that office.

3. The applicant complained, in particular, that the domestic authorities had deprived her of her parental authority, with reference to her lack of contact with the children, which had breached her right to respect for her family life as provided for in Article 8 of the Convention.

4. On 24 August 2015 the application was granted priority treatment under Rule 41 of the Rules of Court.

5. On 3 November 2015 the Government were given notice of the above-mentioned complaints and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lives in the village of Ishcherskaya in the Chechen Republic.

7. The applicant was married to M.B., a police officer, who died on duty in June 2006. They had five daughters: E., born in 1997; I., born in 1999; T., born in 2000; El., born in 2002, and Ir., born in 2003. They also had a son, R., who was born in 2006, three months after M.B.'s death.

A. Background events

8. After M.B.'s death the applicant continued living with their children in his privately owned house in the village of Betty-Mokh in the Chechen Republic, in close proximity to her late husband's relatives. According to the applicant, those relatives put pressure on her in an attempt to take possession of M.B.'s house and the regular payments from the State to which she was entitled as a result of losing the breadwinner in her family. In particular, according to the applicant, M.B.'s father forced her to give him a power of attorney to enable him to receive those payments on her behalf, with the result that the applicant had to ask him for money to support her children.

9. On 15 February 2010 the applicant had an altercation with E.B., M.B.'s brother, who hit her on the head several times, inflicting a craniocerebral injury. On the same day, E.B. took the applicant to her mother's place of residence in the village of Ishcherskaya and left her there. The applicant was thus separated from her children. According to her, her late husband's relatives took away her identity documents, including her passport, and her mobile telephone and personal belongings. They stated that she would get her passport back only if she renounced her parental authority in respect of her children, who remained living with M.B.'s relatives – each of M.B.'s brothers kept one of the applicant's children.

10. In the applicant's submission, such a situation came about because she had no male relatives of her own.

11. The applicant has had no access to her children since 15 February 2010.

12. On 20 March 2010 the applicant complained in writing to a district prosecutor's office about the above-mentioned events. She also sought protection from law-enforcement agencies, stating that M.B.'s relatives had threatened her with physical violence. On 16 June 2010 she sent a similar complaint to the Representative for Human Rights in the Chechen Republic. It does not appear that any action was taken in respect of those complaints.

13. On 20 April 2010 the applicant was issued with a medical certificate confirming that she had had a craniocerebral injury in 2010.

B. First set of proceedings for deprivation of parental authority and determination of the children's place of residence

14. By an administrative decision of 14 April 2010, E.B. was appointed legal guardian of the applicant's children. According to the applicant, she never consented to that decision and was unaware of it.

15. On 27 April 2010 E.B. filed a court claim for the applicant to be deprived of her parental authority in respect of the children, stating that she had grossly neglected her parental duties towards them. In particular, he claimed that she had failed to bring them up properly and provide food and adequate living conditions for them, and that she had ill-treated them. He also stated that the applicant had abandoned the children in February 2010, as she had moved to the village of Ishcherskaya, where she had been living ever since.

16. The applicant filed a counterclaim, complaining that her late husband's relatives had prevented contact between her and her children. She challenged the administrative decision of 14 April 2010 (see paragraph 14 above) and sought to have it established that her children should reside with her at her current address in the village of Ishcherskaya.

17. On 10 August 2010 the Naurskiy District Court examined the case.

18. At the hearing on 10 August 2010 the applicant maintained her claim, arguing that her late husband's relatives wished for her to be deprived of her parental authority only because they wanted to appropriate the payments to which she and her children were entitled as a result of the loss of M.B., the only breadwinner in their family. She contended that they had started those proceedings after she had annulled the power of attorney enabling them to obtain money on her behalf. The applicant described the incident of 15 February 2010 (see paragraph 9 above), and pointed out that on that date M.B.'s relatives had separated her from her children and had not allowed any contact between them since. She also said that they were trying to turn the children against her, stating that she was a bad mother and that she was immoral, as she had liaisons with unknown men. The applicant mentioned that she had had to swear on the Koran before her late husband's relatives that she was not having any such liaisons. She further insisted that she loved her children, that she wanted them to live with her, and that she would not cease in her attempts to get them back.

19. Representatives from two district custody and guardianship agencies stated that they had no evidence that the applicant had neglected her parental duties or had been unable to bring her children up for any reason, and therefore there were no grounds to deprive her of her parental authority, and such a measure would not be in the children's interests.

20. The Naurskiy District Court also ordered and examined a psychological examination and report on the applicant's children, which stated that their continued separation from their mother was a deeply traumatising event for them, causing them anxiety and stress. The report went on to note that, instinctively, the children maintained positive emotions with regard to their mother, and needed her love and care. The examination also revealed the children's lack of emotional attachment to their late father's relatives; they did not perceive those people as their family members. At the hearing, the expert confirmed the findings of the report.

21. The Naurskiy District Court then rejected E.B.'s arguments that the applicant had failed to fulfil her parental obligations, noting the absence of any evidence proving those allegations. It also found that there were no grounds to deprive the applicant of her parental authority in respect of her six children, and dismissed E.B.'s claim. The court further granted the applicant's counterclaim, annulled the administrative decision of 14 April 2010 by which E.B. had been appointed the children's legal guardian, and ordered that the children should reside with the applicant at her address in Ishcherskaya.

22. On 14 September 2010 the Supreme Court of the Chechen Republic upheld the judgment of 10 August 2010 on appeal.

C. Enforcement proceedings

23. Two writs of execution were issued on 10 August 2010; it appears that the first one ordered that the applicant's children should reside at her home address, and the second one ordered that E.B.'s legal guardianship in respect of the applicant's children should be annulled.

24. The applicant's attempt to get access to her children proved futile, as M.B.'s relatives refused to comply with the above-mentioned court decisions.

25. On 10 March 2011 the applicant wrote to the Bailiffs Service of the Chechen Republic, complaining about her inability to get access to her children, and seeking enforcement of the judgment of 10 August 2010, as upheld on appeal on 14 September 2010.

26. By a decision of 22 March 2011 the Bailiffs Service of the Nozhay-Yurt District of the Chechen Republic ("the Nozhay-Yurt Bailiffs Service") refused to institute enforcement proceedings and returned the first writ of execution to the applicant. It stated that the writ of execution submitted by the applicant did not meet the relevant requirements of the domestic legislation on the enforcement of court decisions, and, more specifically, the operative part of the judgment of 10 August 2010 "[did not] contain any requirements as regards there being an obligation on the

defendant to transfer to the claimant property or monetary sums, or to perform certain actions or abstain from performing them”.

27. On 26 May 2011 the Nozhay-Yurt Bailiffs Service took a similar decision with regard to the second writ of execution, citing the same reasons.

28. On 15 June 2011 the applicant sent a written application to the Naurskiy District Court. She pointed to the bailiffs’ arbitrary refusals to enforce the judgment of 10 August 2010 in so far as it concerned the order that her children were to reside at her address and the annulment of E.B.’s legal guardianship in respect of the children, and asked the court to clarify its judgment of 10 August 2010 accordingly.

29. On 13 July 2011 the applicant sent a similar application to the Naurskiy District Court, complaining that she had received no response to her previous application and that the judgment of 10 August 2010 remained unenforced. It does not appear that the applicant received any reply in respect of her applications.

30. According to the Government, the bailiff in charge had no formal grounds to refuse to enforce the judgment, and therefore he should be held liable in disciplinary proceedings; however, the time-limit for disciplining him had expired by the time the Government submitted their observations, therefore on 4 February 2016 he was dismissed from the bailiffs service. On 11 February 2016 the prosecutor’s office of the Nozhay-Yurt District of the Chechen Republic sent the material used in the check on the bailiff to a relevant investigative department, for further investigation and, if necessary, the institution of criminal proceedings against him for the unlawful refusal to enforce the judgment in the applicant’s favour.

D. Reopening of the case owing to newly discovered circumstances

31. On 17 June 2011, at E.B.’s request, the Naurskiy District Court quashed its judgment of 10 August 2010, with reference to “newly discovered circumstances”, stating as follows:

> “When the court gave its judgment [of 10 August 2010], it was unaware of the fact that [the applicant] cohabited with an unemployed man with no specific place of residence, and that she spent on him all the money given to her by the State to support her children because of the loss of the breadwinner in their family. [E.B.] was also unaware of that fact at the moment when the judgment [of 10 August 2010] was given. In order to support his application, [E.B.] has adduced statements of persons who can confirm that [the applicant] leads an incorrect (immoral) life.
>
> In such circumstances, the court considers that [E. B.’s] application is well founded and should be granted”.

32. The court thus ordered that the proceedings be reopened.

33. On 30 June 2011 the applicant appealed against the decision of 17 June 2011 before a higher court. She stated that the information that she

cohabited with a man was false, and that, in any event, such information could not be regarded as "newly discovered circumstances" within the meaning of the relevant provisions of domestic law on civil procedure.

34. By a decision of 26 August 2011 the Supreme Court of the Chechen Republic upheld the decision of 17 June 2011 on appeal, endorsing the reasoning of the Naurskiy District Court.

E. Second set of proceedings for deprivation of parental authority and determination of the children's place of residence

1. Psychological examination

35. In the context of the new set of proceedings, the Naurskiy District Court ordered a psychological examination of the applicant's three elder daughters.

36. In a report of 24 January 2012 the relevant experts stated that at that time the children had a clearly negative attitude towards their mother. It went on to say that the girls felt comfortable and safe living with their uncle, E. B., and that taking them out of their habitual environment might traumatise them, as adapting to new living conditions and a different environment might be quite painful. At the same time the report stated that the examination had established that there was a lack of emotional bonds between the children and the relatives they were currently living with; the children did not identify them as family members.

37. The report further stated that attempts to forcibly rupture the natural links between the children and their mother might result in detrimental effects that would negatively influence the children's future life, and that the applicant, as their mother, should have unimpeded access to them.

2. Proceedings before the court

38. At a hearing, E.B. stated that the applicant had not taken care of her children and had led an immoral life, and that she had been seen in cars with one man and with another man at a late hour. According to him, in February 2010 he had seen her in a car with a man, had had an altercation with her, and had taken her to her mother, in the village of Ishcherskaya. In E.B.'s submission, the applicant would spend the payments which she received for the loss of the breadwinner in her family on herself, whereas it was he who had supported her children financially. He also stated that since the judgment of 10 August 2010, as upheld on 14 September 2010, the applicant had not taken any steps to reunite with the children; she had come to the village where they lived several times, but had not made any attempts to see them, which, in E.B.'s view, revealed that she had neglected her parental obligations.

39. The applicant lodged a counterclaim, asking the court to determine that her children should reside with her and to annul E.B.'s guardianship in respect of them. At the hearing, she reiterated her statements made in the proceedings of 2010 (see paragraph 18 above). She also added that she had been unable to see her children after the judgment of 10 August 2010, as upheld on 14 September 2010, as all her attempts to have it enforced had proved futile – the bailiffs service had refused to take any steps with a view to enforcing it. She submitted that she had gone to the village where her late husband's relatives and her children lived, but had been afraid of visiting her children because of her late husband's relatives' threats; she had already been beaten by E.B., who had prohibited her from coming to their village. As she had no male relatives of her own, she had gone there with people who had given her a lift.

40. The court also heard a number of witnesses for the applicant and those who made statements against her, as well as representatives from district custody and guardianship agencies and a public prosecutor. It also heard the applicant's three elder daughters, who explained that they had a highly negative attitude towards their mother because she had not taken proper care of them, had led an "incorrect" life, and had abandoned them two years earlier. They also expressed their wish to stay with their uncle, E.B.

3. Judgment of 31 January 2012

41. On 31 January 2012 the Naurskiy District Court examined the case.

42. It found the allegation concerning the applicant's immoral life unconvincing, stating that the fact that certain witnesses had seen her in a car with strangers who had given her a lift on several occasions could not be considered evidence of her immorality. The court further noted that, in any event, Article 69 of the Russian Family Code (see paragraph 73 below) contained an exhaustive list of grounds for depriving a parent of his or her parental authority, and immorality was not on that list.

43. The Naurskiy District Court also found that, in the absence of any reliable evidence to that effect, it had not been proved that the applicant had ever avoided her parental duties in respect of her children. It critically assessed the statements of the applicant's three elder daughters, noting that for the last two years they had been living with E.B. and had had no contact with their mother. The court therefore rejected E.B.'s claim to have the applicant deprived of her parental authority in respect of her children.

44. With reference to the report of 24 January 2012 (see paragraphs 36-37 above), the court further observed that, given the fact that by that point the children had been living with E.B. for two years and felt comfortable living with his family, it would be in their best interests to continue living with their uncle. The applicant shared that view, stating that because of her children's extremely hostile attitude towards her, she might

have difficulties in communicating with them, and therefore she would not object if they stayed with E.B. At the same time, she asked the court to determine her contact rights with her children, so that she could take them to her home address twice a month, as well as on public and school holidays.

45. The court therefore ordered that the applicant's children should continue living at E.B.'s place of residence and that his legal guardianship in respect of them should be maintained. It further ordered that the applicant should have a right to take her children to her place of residence on the first and last weekend of the month, from 10 a.m. on Saturday until 4 p.m. on Sunday, and during public holidays, from 10 a.m. on that day until 10 a.m. on the next day. The court also ordered E.B. not to obstruct the applicant's contact with her children.

46. The judgment of 31 January 2012 was not appealed against and became final and enforceable on 1 March 2012.

F. Enforcement proceedings

47. Between 2 April and 30 July 2012 the applicant unsuccessfully attempted to obtain a writ of execution from the Naurskiy District Court.

48. On 6 June 2012 the applicant complained in writing to the Supreme Court of the Chechen Republic about the Naurskiy District Court's failure to issue her with a writ of execution. She mentioned her numerous attempts to obtain the writ of execution, and stated that, in the absence of that document, she was unable to have the judgment of 31 January 2012 executed, as E.B. refused to comply with it.

49. On 20 June 2012 the Naurskiy District Court issued the writ, but it was not given to the applicant until 30 July 2012. She immediately submitted it to the competent bailiffs service for enforcement.

50. The enforcement proceedings commenced on 6 August 2012.

51. According to the Government, on 27 August 2012 a bailiff from the Nozhay-Yurt Bailiffs Service obtained a written declaration from E.B. confirming that he would not prevent the applicant's contact with her children; E.B. was informed that he could receive an administrative punishment if he failed to comply with the judgment of 31 January 2012. A copy of the relevant document was not submitted to the Court.

52. On 13 September 2012 the applicant sent a complaint concerning the bailiffs' inactivity and failure to enforce the judgment of 31 January 2012 to the Bailiffs Service of the Chechen Republic. She complained in particular that on numerous occasions, over the telephone and in person, she had asked the bailiff in charge to ensure that the judgment was executed and to accompany her to the village where the children lived and assist her in establishing contact with them. However, the bailiff had not accompanied her even once; he had merely referred to the fact that he had imposed an obligation on E.B. not to obstruct her contact with her children, and had

invited her to seek the assistance of local custody and guardianship agencies in resolving the matter, stating that there was nothing else he could do.

53. On 8 May 2013 the applicant sent a similar complaint to the Bailiffs Service of Russia. She again described the bailiffs' inactivity and her numerous requests to have the judgment enforced.

54. By a decision of 18 June 2013 the chief bailiff of the Nozhay-Yurt Bailiffs Service rejected as unfounded a complaint made by the applicant on the same day regarding the bailiffs' inactivity. In his decision, the chief bailiff stated in particular that the applicant's request that the bailiff provide her with assistance in securing her contact with the children on weekends and public holidays, as determined by the relevant judgment, was in conflict with the relevant legislation, which provided that at weekends and on public holidays, enforcement action could only be taken in exceptional circumstances.

55. On 9 December 2013 the Nozhay-Yurt Bailiffs Service terminated the enforcement proceedings in respect of the judgment of 31 January 2012 on the grounds that that judgment had been annulled.

56. According to the Government, on 12 February 2016 the prosecutor's office of the Nozhay-Yurt District of the Chechen Republic ("the prosecutor's office") lodged an objection (*протест*) against the decision of 9 December 2013 with the acting chief bailiff of the Nozhay-Yurt Bailiffs Service. The prosecutor's office pointed out in particular that although the bailiff in charge had terminated the relevant enforcement proceedings with reference to the annulment of the judgment of 31 January 2012, there was no court decision on the annulment of that judgment in the case file, nor was there any other relevant court decision, therefore terminating the enforcement proceedings had been unlawful. Following that objection, on 18 February 2016 the Nozhay-Yurt Bailiffs Service resumed the enforcement proceedings in respect of the judgment of 31 January 2012. On the same date the Nozhay-Yurt Bailiffs Service sent an application to the Nozhay-Yurt District Court, asking it to terminate the enforcement proceedings in respect of the judgment of 31 January 2012, in view of the conflict between that judgment and the judgment of 3 October 2013 (see paragraphs 62-65 below). The outcome of that application is unknown.

G. Deprivation of parental authority

57. On an unspecified date in July 2013 E.B. filed a new claim with the Naurskiy District Court, asking for the applicant to be deprived of her parental authority in respect of her children. He stated that she had not contacted her children in over three years, nor had she participated in their upbringing or supported them financially.

1. Proceedings before the first-instance court

58. At the relevant hearing, E.B., two representatives from the custody and guardianship agencies concerned and a public prosecutor insisted that the applicant should be deprived of her parental authority. They argued that since the judgment of 31 January 2012 the applicant had not made any attempts to contact her children, including her two elder daughters who no longer lived with E.B., as they had moved to Grozny for their studies. The applicant had not attempted to meet the other children at school or seek the assistance of the relevant custody and guardianship agencies in order to get access to her children. E.B. also stated that the children did not want to see their mother, as "she [had] dishonoured them" with her immoral life.

59. The applicant contended that since her late husband's relatives had forced her to leave in 2010 she had not seen her children and had had no influence on them. After the judgment of 31 January 2012 had become enforceable she had repeatedly sought the bailiffs' assistance, asking for help in organising a meeting with the children, but the bailiff in charge had refused to accompany her to the village where her children lived, and she herself had been afraid to go there on her own because of her husband's relatives' threats of physical violence. She further stated that since M.B.'s relatives had set her children against her, her attempts to contact her two elder daughters at a medical college in Grozny, where they were studying, had proved unsuccessful, as the girls had simply refused to talk to her. The applicant firmly insisted that she had never avoided her parental obligations, nor had she ever refused to bring her children up; she reaffirmed her intention to maintain a relationship with them.

60. P., the bailiff in charge, stated that he had duly instituted enforcement proceedings in respect of the judgment of 31 January 2012, and that he had met the applicant once and had explained to her the manner in which that judgment should be executed. He had also obtained a written declaration from E.B. in which the latter had promised not to obstruct the applicant's contact with her children. The bailiff added that the applicant should have come to Nozhay-Yurt so that he could enforce the judgment, but she had only come there once and had stayed for five minutes, thus denying him sufficient opportunity to enforce the judgment.

61. The court called and examined the applicant's two elder daughters, who reiterated their statements made in the proceedings of 2012. They submitted in particular that they did not wish to see the applicant, as she "[had] brought shame on them by having relations with unknown men".

2. Judgment of 3 October 2013

62. On 3 October 2013 the Naurskiy District Court examined the case.

63. The court was not convinced by the applicant's argument that the bailiff had failed to facilitate the contact with the children which had been

determined by the judgment of 31 January 2012. It stated: that the applicant could have attempted to meet them at school or, as far as her two elder daughters were concerned, at medical college; that she could have sought the assistance of local custody and guardianship agencies; and that she could have supported the children financially, as she received payments from the State for that purpose. The court went on to note that since the judgment of 31 January 2012 the applicant had failed to do any of those things, which, in the court's view, indicated that she had avoided bringing up her children.

64. The Naurskiy District Court also referred to the opinion of the applicant's two elder daughters (see paragraph 61 above). It noted that although it had given the applicant time to improve the situation, a year and a half later her children's hostile attitude towards her had not evolved.

65. The court thus found that E.B.'s claim should be granted, as the applicant had "avoided bringing up her children", and therefore she should be deprived of her parental authority, in accordance with Article 69 of the Russian Family Code (see paragraph 73 below). It also ordered that she should pay child maintenance to support her children, and that it should be paid to E.B., the children's legal guardian.

3. *Appeal proceedings*

66. On 25 February 2014 the Supreme Court of the Chechen Republic upheld the first-instance judgment on appeal, endorsing the reasoning of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Russian Family Code

1. *Legal provisions concerning the protection of children's rights*

67. Every child, that is a person under the age of eighteen, has a right to live and be brought up in a family, in so far as this is possible, a right to know his or her parents, a right to be cared for, and a right to live with his or her parents, except where this is contrary to his or her interests. A child has a right to be brought up by his or her parents, a right to the protection of his or her interests, a right to full development, and a right to respect for his or her human dignity (Article 54).

68. A child has a right to maintain contact with his parents, grandparents, brothers, sisters and other relatives (Article 55 § 1).

69. A child is entitled to express his or her opinion on all family matters concerning him or her, including in the course of administrative or judicial proceedings. The opinion of a child over ten years old must be taken into account, except where it is contrary to his or her interests (Article 57).

2. Legal provisions concerning parents' rights and obligations

70. Parents' right to bring up their children has precedence over any other person's right to do so (Article 63 § 1).

71. A parent living separately from his or her child has a right to personal contact with the child, and a right to participate in the child's upbringing and decide on questions relating to the child's education. The parent with whom the child lives shall not obstruct the child's contact with the other parent, unless such contact may harm the child's physical and mental health and spiritual development (Article 66 § 1).

72. Parents have a right to seek the return of their child from any person who retains the child, where such retention is not based on law or is not in accordance with a court decision. In the event of a dispute, parents are entitled to file a court claim for the protection of their rights. When examining that claim, the court, with due regard to the child's opinion, is entitled to reject the claim if it finds that transferring the child to the parents would be contrary to the child's interests (Article 68 § 1).

73. Parents may be deprived of their parental authority if they: avoid their parental obligations, such as an obligation to pay child maintenance; refuse to collect the child from the maternity hospital, or any other medical, educational, social or similar facility; abuse their parental authority; mistreat the child by resorting to physical or psychological violence or sexual abuse; suffer from chronic alcohol or drug abuse; or commit a premeditated criminal offence against the life or health of their child or spouse (Article 69).

74. Parents who have been deprived of their parental authority lose all rights based on their kinship with the child in respect of whom they have been deprived of their parental authority, as well as the right to receive child welfare benefits and allowances paid by the State (Article 71 § 1).

B. Court practice

75. 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].
>
> ...
>
> 12. ... Persons who do not fulfil their parental obligations as a result of a combination of adverse circumstances, or for other reasons beyond their control,

cannot be deprived of their parental authority (for instance, [where a person has] a psychiatric or other chronic disease ...)

...

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

76. The applicant complained that the domestic authorities had deprived her of her parental authority, with reference to her lack of contact with the children, which had breached her right to respect for her family life as provided for in Article 8 of the Convention, which reads as follows:

"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

77. 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 thus argued that, by failing to lodge cassation appeals against the lower courts' decisions, the applicant had failed to exhaust the effective domestic remedies available to her.

78. 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 in August 2014, whereas the Court's

inadmissibility decision in the case of *Abramyan and Others* ((dec.), cited above) had only been delivered in May 2015.

79. 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* ((dec.), 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; and *Khusnutdinov and X v. Russia*, no. 76598/12, §§ 65-66, 18 December 2018).

80. 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 26 August 2014, that is before the Court recognised the reformed two-tier cassation appeal procedure as an effective remedy (see *Abramyan and Others* (dec.), cited above, §§ 76-96). She can no longer avail herself of the remedy in question, as the time-limit for using it has expired. Accordingly, the Court rejects the Government's objection as to non-exhaustion of domestic remedies.

81. The Court notes that this part of the application 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. *Scope of the case*

82. The Court considers it necessary to clarify at the outset that its examination of the case is limited to the part which has been declared admissible (see paragraphs 5 and 81 above), more specifically, the applicant's being deprived of her parental authority by the judgment of 3 October 2013, as upheld on appeal on 25 February 2014. However, in order to get a broader view of the developments in the applicant's case and properly consider the above-mentioned proceedings, the Court has to put them into their context, which inevitably means to some extent having regard to the earlier events as set out in paragraphs 8-56 above (see *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015, and *Lorenz v. Austria*, no. 11537/11, § 42, 20 July 2017).

2. *Deprivation of parental authority*

(a) Submissions by the parties

(i) The applicant

83. The applicant argued that depriving her of her parental authority in respect of her children had completely severed her ties with them, and had constituted an unjustified interference with her right to respect for her private life.

84. The applicant contended, in particular, that the measure in question had not been in accordance with the law. She pointed out that Article 69 of the Russian Family Code established an exhaustive list of grounds for depriving a parent of his or her parental authority (see paragraph 73 above). Moreover, in its ruling no. 10 of 27 May 1998, as amended on 6 February 2007, the Supreme Court of Russia had clearly stated that deprivation of parental authority might only take place in the event of a parent's guilty conduct (see paragraph 75 above). She insisted that she had never neglected or avoided her parental obligations, and that, contrary to the findings of the domestic courts which had determined that she was responsible for not maintaining contact with her children, the lack of contact had been the result of her being continually and arbitrarily denied access to her children, rather than her avoiding her parental obligations. Moreover, the courts had failed to demonstrate that there had been any guilty conduct on her part. Thus, in the applicant's view, there had been no basis in the national law for depriving her of her parental authority.

85. The applicant further argued that the interference in question had not been necessary in a democratic society. In particular, it had been too drastic a measure, as it had effectively and permanently curtailed her relations with her children. The authorities had not considered any less intrusive alternative measure, and had not taken into consideration the best interests of the children. As regards their best interests, the applicant relied on the findings of psychological reports in respect of the children carried out in the context of the proceedings in 2010 and 2012 (see paragraphs 20 and 36-37 above), which clearly showed that the children needed their mother's love and care, that the rupture of the natural ties between them and the applicant could provoke detrimental effects that would negatively influence their life, and that the applicant should have unimpeded access to them. Thus, depriving her of her parental authority had clearly not been in the children's best interests.

86. The applicant admitted that in view of the fact that she had been denied contact with her children for a prolonged period, she had needed time to gradually re-establish her emotional ties with them; to that end, she had needed to be able to visit her children and spend time with them. Not only had depriving her of her parental authority not served that purpose, but

it had only further alienated her from the children, in fact extinguishing any remaining family relations between them.

87. The applicant further argued that the domestic courts had failed to adduce "relevant and sufficient" reasons to justify the measure complained of. In particular, the courts had not been justified in holding her responsible for the failure to maintain contact with her children, and in relying on this fact as evidence that she had avoided her parental obligations. She stressed that ever since she had been forcibly separated from her children by her late husband's relatives, she had consistently sought access to the children and their return. In all three sets of court proceedings, as well as in two sets of enforcement proceedings, she had consistently informed the authorities of the conflict between her and her late husband's relatives, their hostile attitude towards her, and the fact that they had set the children against her and completely excluded her from their life by obstructing all contact, including telephone calls. Despite all her efforts, the authorities had remained totally idle and had failed to take any measures with a view to facilitating contact between her and the children. In particular, neither the judgment of 10 August 2010 nor that of 31 January 2012 had ever been enforced, despite the applicant's numerous requests to that end. Moreover, in the third set of proceedings that had taken place in 2013, in which she had been deprived of her parental authority, the domestic courts had held her responsible for the lack of contact between her and the children. She argued that that finding had not been based on an adequate assessment of the facts, and that the domestic courts had not struck a fair balance.

88. Lastly, the applicant argued that the decision-making process had been severely compromised, as the domestic courts had failed to seek and obtain the opinion of all of her children. She pointed out that only her two elder daughters had been heard in the proceedings of 2013. However, her four other children – T., born in 2000; El., born 2002; Ir., born in 2003, and R., born in 2006 – had been mature enough to express their opinions in the proceedings in question, as the question of depriving their mother of her parental authority had clearly affected their right to respect for their family life. In that regard, she relied on the case of *N.Ts. and Others v. Georgia* (no. 71776/12, 2 February 2016). Moreover, two of her daughters – T. and El., aged thirteen and eleven at the relevant time – had not been heard, in breach of Article 57 of the Russian Family Code, which provided that the opinion of a child over ten years old should be taken into account (see paragraph 69 above). She also submitted that relevant psychological or psychiatric examinations by independent experts should have been carried out in respect of all six children. In the absence of knowledge of the views of all the children, it had been inevitable that any consideration of their best interests would be inadequate and one-sided.

(ii) The Government

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

90. In the Government's view, the measure complained of had furthermore been "necessary in a democratic society"; it had been proportionate and had taken the children's best interests into account. They argued in particular that, under the Court's well-established case-law, the national courts were better placed to assess the relevance and substance of the evidence before them, including witnesses' statements. In that connection, the Government pointed out that in its judgment of 3 October 2013, the first-instance court had taken into account: the witness statements of E.B., who had stated that after her husband's death the applicant had not taken care of her children, had not supported them financially, had led an immoral life, and had not made any attempts to see her children after the judgment of 31 January 2012; the witness statements of the applicant, who had acknowledged that her children did not wish to have any contact with her; and the witness statements of the applicant's two elder daughters, who had expressed their wish to continue living with their uncle, E.B., and not to have any contact with the applicant. The court had also taken into account the fact that for more than a year and a half between the judgment of 31 January 2012 and that of 3 October 2013, the applicant had not taken any measures to improve the relations between her and the children; furthermore, it had relied on the opinion of a childcare authority and a public prosecutor, who had stated that the applicant had been avoiding her parental obligations and should be deprived of her parental authority.

91. The Government also contended that the decision-making process had been fair and that the applicant's procedural rights had been respected. In particular: she had been represented in the proceedings; she had had an opportunity to submit her arguments orally and in writing; and her representative had submitted applications and requests and had had access to all relevant information and documents. The Government submitted that witnesses for the applicant had been examined, yet they did not name those witnesses. They also pointed out that two of the applicant's six children had been examined by the first-instance court.

92. As regards the children who had not been examined, the Government pointed out firstly that Article 57 of the Russian Family Code only required that children who had reached the age of ten be called and

examined in a court, whereas at the relevant time only three out of the six children had reached that age. Secondly, Article 57 referred to situations where the consent of a child who had reached the age of ten was compulsory for actions taken in respect of him or her; depriving a child's parent of his or her parental authority was not one of those situations, and therefore, in the Government's view, a child's opinion on such a matter had not been necessary. Therefore, in the Government's view, the fact that only two of the applicant's children had been examined at a court hearing in the proceedings concerning deprivation of parental authority, and that no psychological or psychiatric expert examination had been carried out in respect of them in relation to those proceedings, had not compromised the decision-making process, and had been compatible with the requirements of Article 8 of the Convention.

93. The Government thus insisted that it had been clearly established that the applicant had not taken care of her children and had not supported them financially, and that there had been guilty conduct on her part, as the domestic courts had not established that there had been any obstacles preventing her from having contact with the children. The decision to deprive the applicant of her parental authority had been taken within the authorities' margin of appreciation and had not been arbitrary; it had been taken with due regard to the opinion of her children, who had not wished to have contact with their mother, and, given all relevant circumstances, it had been in their best interests. The Government concluded by submitting that a fair balance among all competing interests had been struck in the present case, and the measure complained of had been proportionate to the legitimate aim pursued.

(b) The Court's assessment

94. 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).

(i) Interference

95. It was not in dispute between the parties that depriving the applicant of her parental authority in respect of the 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 many other authorities, *Jovanovic*, cited above, § 74, or *S.S. v. Slovenia*, cited above, § 79).

(ii) "In accordance with the law" and legitimate aim

96. The Government submitted that the measure complained of had been based on Article 69 of the Russian Family Code (see paragraph 73 above), and that it had pursued the aim of the protection of the applicant's children's rights.

97. The Court has certain doubts that, in the circumstances of the instant case, the domestic courts' interpretation of Article 69 of the Russian Family Code as regards the grounds for depriving the applicant of her parental authority can be regarded as "foreseeable", or that the impugned measure was in the children's interests. However, it considers that these questions are closely linked to that of whether the measure was "necessary in a democratic society", and it therefore finds it appropriate to approach the case from that angle (for a similar approach, see *Emonet and Others v. Switzerland*, no. 39051/03, § 78, 13 December 2007, and *N.P. v. the Republic of Moldova*, no. 58455/13, § 72, 6 October 2015).

(iii) "Necessary in a democratic society"

(α) General principles

98. 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, as a recent authority, *A.B.V. v. Russia*, no. 56987/15, § 68, 2 October 2018). 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 (see *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004); everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 75, 10 January 2017). In that context, the Court has emphasised, in particular, the State's obligation to adopt measures to preserve the mother-child bond as far as possible (see *S.H. v. Italy*, no. 52557/14, § 48, 13 October 2015).

99. The margin of appreciation to be accorded 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 for 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, and *Haase v. Germany*, no. 11057/02, § 92, ECHR 2004-III (extracts)).

100. 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. It cannot satisfactorily assess this latter element without simultaneously determining 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, for instance, *Schneider v. Germany*, no. 17080/07, § 93, 15 September 2011). The Court will also have regard to whether, where appropriate, the children themselves were able to express their views (see, for instance, *Saviny v. Ukraine*, no. 39948/06, § 51, 18 December 2008).

(β) Application of these principles to the present case

101. 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. The Court reaffirms that splitting up a family is a very serious interference (see *A.K. and L. v. Croatia*, cited above, § 62). 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 v. Norway* [GC], no. 37283/13, § 209, 10 September 2019; *M.D. and Others v. Malta*, no. 64791/10, § 76, 17 July 2012, and *N.P. v. the Republic of Moldova*, cited above, § 65).

102. On the facts, the domestic courts at two levels of jurisdiction found that the applicant did not wish to take care of her children because she had failed to establish contact with them after the judgment of 31 January 2012, which had determined her contact with the children, and because she had not supported them financially. The Court will assess those findings in the more general context of the case, taking into account the events that preceded the measure complained of (see paragraph 82 above).

103. The Court notes that the applicant lost access to her children on 15 February 2010, as a result of apparently unlawful actions by E.B., her brother-in-law (see paragraph 9 above). Her applications regarding that

incident and a request for protection from law-enforcement agencies were seemingly left unanswered, and no action was taken by the authorities in that connection (see paragraph 12 above).

104. The ensuing events led to a gradual severance of the ties between the applicant and her children. In particular, E.B. made several attempts to have the applicant deprived of her parental authority in respect of the children. In the first set of proceedings, that ended with the judgment of 10 August 2010, as upheld on appeal on 14 September 2010, the domestic courts rejected his claim, referring to the absence of any evidence proving that the applicant had failed to fulfil her parental obligations. The courts ordered that the children should live with the applicant at her address (see paragraphs 21-22 above). However, that judgment was never enforced, in spite of the applicant's numerous requests to that end, as the bailiff in charge repeatedly refused to commence the enforcement procedure (see paragraphs 23-29 above). The Court notes the Government's submission that the bailiff's actions were apparently in conflict with the relevant domestic law (see paragraph 30 above).

105. The proceedings for deprivation of parental authority were eventually reopened at E.B.'s request. At this juncture, the Court notes the fact that the domestic courts at two levels of jurisdiction considered: firstly, that a statement that the applicant had been seen in the cars of unknown men on several occasions – men who had apparently given her a lift – was sufficient evidence to conclude that she was cohabiting with a man and was therefore "immoral"; and secondly, more importantly, that her allegedly "immoral" lifestyle – that is, her cohabiting with a man – constituted sufficient grounds for reopening the proceedings concerning her parental authority, on the basis of newly discovered circumstances (see paragraphs 31-32 above). In the Court's view, the domestic courts' position can hardly be found to be reconcilable with the core values of modern democratic societies. It further notes with satisfaction that, in the second set of proceedings following the reopening of the proceedings, the domestic courts dismissed the above-mentioned allegations as not pertaining to the grounds for depriving a parent of his or her parental authority as established in the relevant domestic law (see paragraph 42 above).

106. In a judgment of 31 January 2012, upheld on appeal on 1 March 2012, the domestic courts again rejected E.B.'s allegation that the applicant had avoided her parental obligations, in the absence of any reliable evidence for that allegation, and dismissed his application for her to be deprived of her parental authority. At the same time, with reference to the fact that by that time the applicant's children had been living with their paternal relatives for two years, the courts ordered that they should remain living at E.B.'s address, appointed him their legal guardian, and determined contact arrangements between the children and the applicant (see paragraph 44-45 above). The Court notes with concern that this situation – where the courts

overturned their initial findings made in the judgment of 10 August 2010, as upheld on appeal on 14 September 2010, that the children should live with their mother (the applicant), and ordered that they should remain living with their paternal relatives – was in fact prompted by the authorities' inaction in the enforcement proceedings in respect of that judgment.

107. The Court reiterates that positive obligations inherent in effective "respect" for family life 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, among other authorities, *Stasik v. Poland*, no. 21823/12, § 80, 6 October 2015). The Court has consistently held that Article 8 of the Convention includes both the right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation for national authorities to take measures to facilitate that reunion (see, among other authorities, *Y.U. v. Russia*, no. 41354/10, § 93, 13 November 2012, and *Haddad v. Spain*, no. 16572/17, § 64, 18 June 2019). Furthermore, that positive obligation will begin to weigh on the competent authorities with progressively increasing force as from the period of separation of a child from a parent, and the adequacy of a measure is thus to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between a child and the parent who does not live with him or her (see *Strand Lobben and Others*, cited above, § 208).

108. The Court further observes that the judgment of 31 January 2012 was also not executed. It is noteworthy that by 1 March 2012, the date on which that judgment became final and enforceable, the applicant had had no contact with her children for over two years, with all the consequences that might have had for relations between them, as well as for the children's physical and psychological well-being. Against this background, it was particularly important for the authorities to act with exemplary diligence and expediency when enforcing the judgment of 31 January 2012.

109. Yet, despite the applicant's numerous requests for the judgment of 31 January 2012 to be executed, the enforcement proceedings did not commence before 6 August 2012, that is more than five months after the date on which the judgment became final and enforceable (see paragraphs 46 and 50 above). Once commenced, the enforcement proceedings were ongoing for over sixteen months before they were terminated on 9 December 2013. During that period the bailiff in charge did no more than obtain a "written declaration" from E.B. confirming that the latter would not obstruct the applicant's contact with her children, and inform him of the risk that he might be found administratively liable (see paragraph 51 above). No other steps were taken, despite the fact that the applicant informed the authorities of her late husband's relatives' hostile attitude towards her and

their threats and refusal to comply with the judgment, and repeatedly sought the bailiffs' assistance in obtaining access to her children (see paragraphs 52 above). Such manifest and flagrant inaction in a situation where, as noted in the previous paragraph, exemplary diligence and expediency on the part of the authorities was crucial, is striking.

110. It is furthermore relevant that throughout all the sets of proceedings – three sets of court proceedings and two sets of enforcement proceedings – the applicant consistently reaffirmed her intention to take care of her children, and sought access to them and their return. She repeatedly informed the competent domestic authorities – law-enforcement agencies, courts and bailiffs services included – of the very tense relationship between her and her late husband's relatives, their hostile attitude and threats of physical violence and her fears in that connection, and the fact that those relatives had obstructed all contact between her and the children, including telephone communication. The applicant also sought the competent authorities' protection and assistance in that connection; in particular, on numerous occasions she attempted to have the judgments in her favour enforced (see paragraphs 12, 16, 18, 25, 28-29, 39, 47-48, 52-53 and 59 above). As the facts of the case reveal, her efforts proved futile, and her applications were mostly left unanswered, or rejected under various pretexts (see paragraphs 12, 26-29 and 54 above). Whilst fully aware of the applicant's situation, the authorities remained passive and took no tangible steps to ensure and facilitate her reunion with her children (compare *Haddad*, cited above, § 72). It is also noteworthy that, in the absence of any meaningful action on the part of the authorities, the applicant herself attempted to approach her two elder daughters who had moved to Grozny to pursue their college studies; however, that attempt failed, in view of the girls' extremely negative attitude towards their mother (see paragraph 59 above).

111. Against this background, the Court is struck by the fact that in the judgment of 3 October 2013, as upheld on appeal on 25 February 2014, the domestic courts held the applicant responsible for the failure to establish contact with her children (see paragraph 63 above). Not only did the authorities remain idle for years when faced with her situation, but in reaching that conclusion, the domestic courts chose to shift responsibility for that flagrant inaction onto the applicant. It is particularly worrying that the domestic courts relied on that finding as a reason to justify depriving the applicant of her parental authority. As concerns the courts' other conclusion – that the applicant had not supported her children financially – it is unclear whether it was based on any evidence other than E.B.'s allegation in that regard. Even assuming that that finding was accurate, the Court is not convinced that the applicant should have been held solely responsible for that fact, nor could it be regarded as sufficient grounds for depriving her of her parental authority. In particular, given the long-standing conflict

between the applicant and her late husband's relatives, it was not convincingly demonstrated in the domestic proceedings that she had had a realistic opportunity to provide financial support, communicate with her late husband's relatives, and ensure that such support would reach her children. In fact, the courts merely briefly referred to the applicant's failure to support her children financially, without elaborating on that conclusion any further.

112. In the light of the foregoing, the Court rejects the Government's argument that, in the absence of any objective obstacles, the applicant failed to have contact with her children and support them financially (see paragraph 93 above). The unreasonableness of those court findings is so striking and palpable on the face of it that they can only be regarded as grossly arbitrary. By relying on those findings as grounds for depriving the applicant of her parental authority, the courts arbitrarily applied the relevant provisions of national law. In this connection, the Court notes the ruling of 27 May 1998, where the Supreme Court of Russia stated that only in the event of proven guilty conduct might parents be deprived of their parental authority on the grounds established in Article 69 of the Russian Family Code; that parents who failed to fulfil their parental obligations for reasons beyond their control should not be deprived of their parental authority; and that even where a parent's guilty conduct was established, deprivation of parental authority should not be automatic (see paragraph 75 above).

113. The Court further finds that the relevant court decisions were also deficient, as they failed to give due consideration to the best interests of the children. It is noteworthy that the psychological reports on the children produced in the context of the proceedings in 2010 and 2012 showed the existence of emotional bonds between the applicant and her children (see paragraph 20 above) whose rupture could result in detrimental effects and negatively influence the children's future life (see paragraph 37 above), and the absence of such bonds between the children and their paternal relatives (see paragraphs 20 and 36 above). However, in the proceedings under examination, no expert opinion was ever sought on such important questions as the degree of the children's attachment to their mother, the effect which the severance of all bonds with her might have on them, her parenting abilities, and so on (compare *Strand Lobben and Others*, cited above, §§ 222-23). No reasons were advanced to explain why such a drastic measure as depriving the children's mother, their only surviving parent, of her parental authority would be in their interests, nor whether any weighty considerations relating to their health and development could justify that measure. Moreover, no attempts were made to explore the effectiveness of less far-reaching alternatives before the court sought to sever the ties between the applicant and her children by depriving her of her parental authority.

114. In fact, the first-instance court confined itself to referring briefly to the opinion of the applicant's two elder daughters, who had stated that they

did not want to see their mother, as "she [had] dishonoured them" with her immoral life (see paragraph 61 above). It is noteworthy that in the previous set of proceedings, the court had critically assessed similar statements by the applicant's daughters and had noted that they had been living with their uncle, E.B., for the last two years and had had no contact with their mother (see paragraph 43 above). However, in the proceedings under examination, the court remained silent on this point, simply ignoring the applicant's arguments that that she had had no contact with her children at all, that her late husband's relatives had set the children against her, and that her two elder daughters had refused to talk to her when she had attempted to approach them (see paragraph 59 above).

115. The Court reiterates that children are entitled to be consulted and heard on matters affecting them. In particular, as children mature and, with the passage of time, become able to formulate their own opinions, the courts should give due weight to their views and feelings, as well as to their right to respect for their private life (see *Petrov and X v. Russia*, no. 23608/16, § 108, 23 October 2018). At the same time, those views are not necessarily immutable, and their objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child. The right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination being carried out to determine their best interests. What is more, if a court based a decision on the views of children who were palpably unable to form and articulate an opinion as to their wishes – for example, because of a conflict of loyalty and/or their exposure to the alienating behaviour of one parent – such a decision could run contrary to Article 8 of the Convention (see *K.B. and Others v. Croatia*, cited above, § 143, and the authorities cited therein).

116. The Court further observes that none of the applicant's other four children – T., born in 2000; El., born in 2002; Ir., born in 2003, and R., born in 2006 – were heard by the domestic courts in the proceedings under examination. It notes the applicant's argument that the first-instance court's failure to hear T. and El., aged thirteen and eleven years at the material time, was in breach of the relevant requirements of domestic law (see paragraphs 69 and 88 above). Moreover, no expert opinion was sought in respect of the two younger children, Ir. and R., on whether it was possible, given their age and maturity, to interview them in court, if need be with the assistance of a specialist in child psychology.

117. In the light of the foregoing, the Court considers that the decision-making process was deficient and therefore did not allow the best interests of the children to be established.

118. In sum, the Court concludes that the domestic authorities overstepped the margin of appreciation afforded to them in the relevant

field. Depriving the applicant of her parental authority was arbitrary and grossly disproportionate to the legitimate aim relied on. It follows that the interference with her right to respect for her family life was not "necessary in a democratic society". Such an arbitrary interference with one of the fundamental Convention rights should not take place in a democratic State governed by the rule of law.

119. Accordingly, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. In her submission, she had suffered stress, frustration and depression on account of her continued separation from her children and the absence of any contact with them.

122. The Government submitted that no compensation should be awarded to the applicant, as her rights had not been violated.

123. The Court notes that it has found a violation of the applicant's right to respect for her family life on account of the authorities arbitrarily depriving the applicant of her parental authority. It considers that the applicant 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 claimed, that is EUR 30,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

124. The applicant was represented by lawyers from the Russian Justice Initiative and Astreya. She claimed EUR 13,943.88 for the costs and expenses incurred before the domestic courts and before the Court. She submitted a detailed invoice of costs and expenses that included: an aggregate amount of EUR 12,850 for 220 hours which the lawyers from the above-mentioned organisations had spent on preparing and presenting her case at the domestic level and before the Court, EUR 197.38 for

international courier post to the Court, and EUR 899.50 for administrative costs (7% of the legal fees).

125. The Government contested that amount, arguing that the costs could not be said to have been actually incurred, as the agreement between the applicant and her representatives stipulated that the above-mentioned amount would only be payable if the Court adopted a judgment finding a violation of her rights.

126. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, ECHR 2016, and, more recently, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017). A representative's fees are considered to have been actually incurred if an applicant has paid them or is liable to pay them (see *Ždanoka v. Latvia*, no. 58278/00, § 122, 17 June 2004, and *Merabishvili v. Georgia* [GC], cited above, § 372). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be transferred directly to the applicant's representatives' bank account.

C. Default interest

127. 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 on account of the applicant being deprived of her parental authority;

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the applicant's representatives' bank account;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Vincent A. De Gaetano
Registrar	President