

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

Центр правовой защиты МЕМОРИАЛ
Малый Каретный пер., д. 12,
Москва, 127051
РОССИЯ / RUSSIE

FIRST SECTION

ECHR-LE4.1aR
VP/ao

2 September 2010

Application no. 7075/10
Ageyev and Ageyeva v. Russia

Dear Sir and Madam,

I write to inform you that following a preliminary examination of the admissibility of the above application on 27 August 2010, the President of the Section to which the case has been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Russia and that the Government should be invited to submit written observations on the admissibility and merits of the case.

You will find enclosed an information note to applicants on the proceedings after communication of an application.

The admissibility and merits of the application should be considered at the same time, in accordance with Article 29 § 1 of the Convention and Rule 54A. Consequently, should the Court consider the application admissible and ready for determination on the merits, it may immediately adopt a judgment under Rule 54A § 2.

The President further decided to give priority to the application under Rule 41.

The Government have been requested to submit their observations by 17 January 2011. These will be sent to you in order that you may submit written observations in reply on behalf of the applicants, together with any claim for just satisfaction under Article 41 (cf. Rule 60). Under Rule 34 § 4 (a), the Government have been authorised to submit their observations in Russian if they so prefer, but they must provide the Court with a translation into English or French no later than four weeks after the above time-limit.

The Government have been requested to deal with the questions set out in the document appended to this letter (Statement of facts prepared by the Registry of the Court and Questions to the parties).

The Government have also been requested to indicate by 17 January 2011 their position regarding a friendly settlement of this case and to submit any proposals they may wish to make in this regard (Rule 62). The same request will be made of you when you receive their observations.

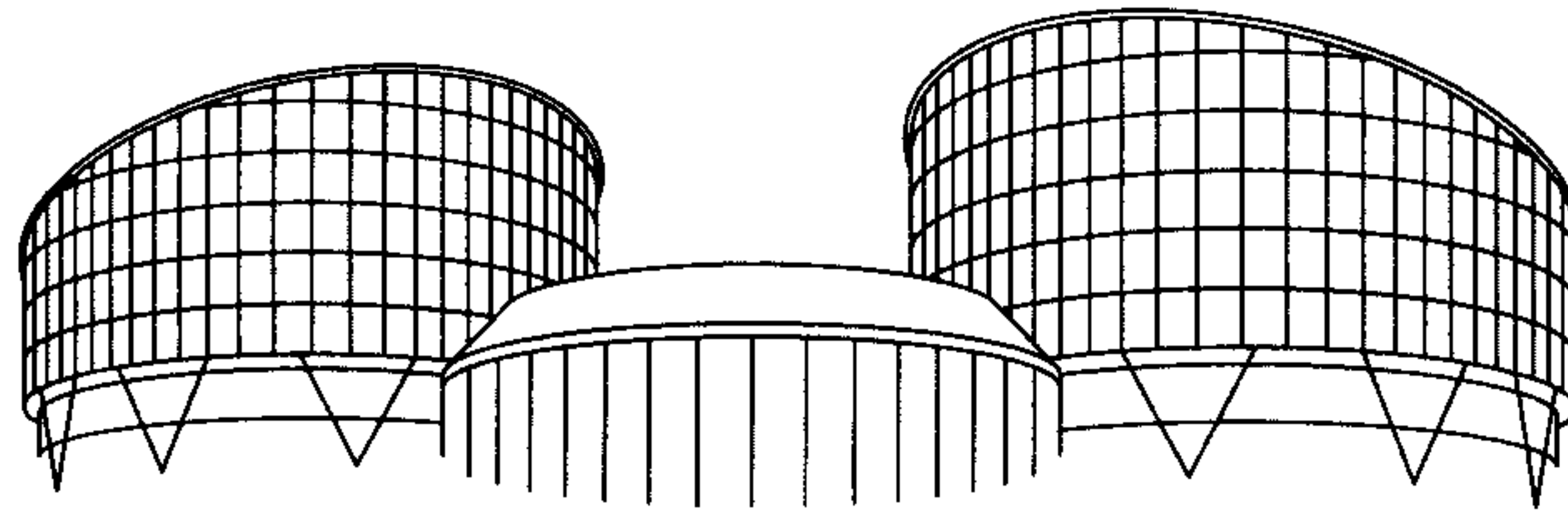
I would inform you that at this stage of the proceedings, according to Rule 34 § 3, all communications of applicants or their representatives shall as a rule be made in one of the Court's official languages, English or French.

I should draw your attention to Rule 33 of the Rules of Court, according to which documents deposited with the Registry by the parties or by any third parties are to be accessible to the public, unless the President decides otherwise for the reasons set out in Rule 33 § 2. It follows that as a general rule any information contained in the documents which you lodge with the Registry, including information about identified or identifiable persons, may be accessible to the public. Moreover, such information may appear in the Court's HUDOC data base accessible via the Internet if the Court includes it in a statement of facts prepared for notification of a case to the respondent Government, a decision on admissibility or striking off, or a judgment.

Yours faithfully,


Søren Nielsen
Section Registrar

Encs: Statement of facts and Questions
Information note



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

31 August 2010

FIRST SECTION

Application no. 7075/10
by Anton Petrovich AGEYEV and Larisa Vladimirovna AGEYEVA
against Russia
lodged on 21 January 2010

STATEMENT OF FACTS

THE FACTS

The applicants, Mr Anton Petrovich Ageyev and Mrs Larisa Vladimirovna Ageyeva, are Russian nationals who were born in 1962 and 1963 respectively and live in the village of Korobovo, in the Leninskiy District of the Moscow Region.

They are represented before the Court by Ms Nadezhda Deyeva, Ms Tatiana Chernikova and Mr Furkat Tishayev, lawyers of the Memorial Human Rights Centre practising in Moscow, and Ms Joanna Evans, Mr Philip Leach and Mr Bill Bowring, lawyers of the European Human Rights Advocacy Centre based in London.

A. The circumstances of the case

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

1. The background to the case

(a) The adoption proceedings

The applicants have been married since 1990.

In 2000 their seventeen-year-old son R., suffering from widespread vasculitis, died. Some time later the couple decided to adopt two children.

On 19 March 2008 the Nagatinskiy District Court of the city of Moscow approved the applicants' adoption of two unrelated children, a boy A. (first name), born on 7 April 2005, and a girl D. (first name), born on 11 June 2006.

Following the adoption, the children became brother and sister with their first names being changed from A. to G. and from D. to P. respectively. Their surnames and patronymic names were changed as well to reflect the surname and first names of their adoptive parents.

(b) The children's medical condition at the time of the adoption

Both children had been removed from their respective birth parents' care in their infancy. The boy was aged one year and six months at the time of the removal, whilst the girl was aged seven months. Prior to the adoption, both children lived in various foster homes and displayed slight development delays. G. was stated to be developmentally delayed in speech and motor skills and to have been neglected. It appears that G. had problems walking and often fell flat on his face. As a result he had three front teeth missing. At the time of her removal, P. was stated to have minor heart anomalies and delays in her mental and verbal skills.

(c) General information concerning the applicants' life with G. and P. prior to the incident of 20 March 2009

According to the applicants, after the adoption they lived with G. and P. as a family in a detached two-storey house in the village of Korobovo in the Leninskiy District of the Moscow Region.

The children's placement was evaluated prior to the adoption and the Leninskiy District Custody and Guardianship Agency ("the Leninskiy District Agency") made two post-adoption visits to their home in May and September 2008.

(i) Report on examination of living conditions dated 21 May 2008

On 21 May 2008 an official, E., of the Leninskiy District Agency visited the applicants' house and issued a report describing the family's living conditions. The report stated, in particular, that the house was "kept in order, that the rooms had furniture, had been recently renovated, all rooms being decorated with wood, the floor having been covered with laminated wood and soft carpets". The report mentioned that the family was well-off financially and that the children lived in a room measuring 20 square metres containing two beds, a wardrobe and many toys. The report did not mention any problems, having concluded that the living conditions were in compliance with the relevant requirements and the relations within the family were "normal".

The report was approved by head of the Leninskiy District Agency Ms F.

(ii) Report on examination of living conditions dated 12 September 2008

On 12 September official E. of the Leninskiy District Agency again visited the house and issued a report on the living conditions. The report concluded that "it was excellent that the living conditions of the children

and the relations with the family were normal and that normal conditions had been created for bringing the children up”.

Following this visit, official E. also issued a separate report stating in respect of the family that:

“... it is a good family, in which two children are being brought up. They have grown up and got a sun-tan over the summer period. They spent time with their parents in the south. The children are very cheerful and swift. The speech of P. has become more articulate, whilst G.’s has become good, with much thorough composition and expression of thoughts. The boy is very active; his hyperactivity worries their parents, they are going to show the boy to a neurologist in a medical centre for children. P. has grown more calm and tender. The children like to listen to and look at the books read aloud to them by their parents ...”

“... [the applicants] create all necessary conditions for the children. G. and P. are being correctly fed diverse food, including many vegetables and fruit. G. loves meat, whilst P. loves dairy products...”

“The children are attached to [their parents]. The family lives in a cottage situated in a suburban area, in which the children have a room, measuring some 18 square metres with two beds, a wardrobe and a table. All furniture is fit for their size and age. The children are still being fashionably and well dressed. There are even more table toys stimulating development. [The second applicant] attends with the children the educational centre for children in Moscow. The centre gives its classes four times a week. The parents are very happy because the knowledge and skills acquired during these classes gave a demonstrable result for P. and G.”

The report went on to conclude that:

“... the living conditions for the children in the family as well as the relations between the parents and children are good. The children communicate with their parents with joy. The parents love their children and take care of them.”

2. Incident of 20 March 2009

In the evening of 20 March 2009 at around 7.30 p.m. all the family was at home and the children were playing in the house.

The second applicant saw G. lying near the stairs. G. was bleeding and had burns on his face. She called the first applicant and they immediately tried to give G. first aid, having treated the wounds with hydrogen dioxide and applied plasters on the wounds. G. was put to bed.

The applicants submitted that they had not seen how the incident had occurred, but they suspected that due to their momentary lack of supervision G. might have burnt himself with hot water from an electric kettle on the second floor and had then run downstairs, falling down the steps.

At around 9 p.m. the applicants examined G. and saw that the left side of their son’s face was red, the plasters had come unstuck and the wounds on the chin and eyebrow had started bleeding again. The applicants decided that it was necessary to have him checked by a doctor.

At 9.50 p.m. the first applicant took G. to the Emergency Unit of Children’s Hospital No. 145 of Moscow. Since the Unit was not open, the first applicant took the boy to the Burn Care Centre of Children’s Hospital No. 9 named after G. N. Spiranskiy (“the Burn Care Hospital”).

From that date until 27 March 2009 G. remained in this hospital for treatment.

3. *Subsequent events*

Upon the first applicant's return, at 5 a.m. on 21 March 2009 police officers visited their house. They carried out a check and talked to the first applicant. At 8 a.m. an investigatory group arrived.

In the morning of 23 March 2009 official E., along with her colleague Ef., again visited the applicants' house. The resulting report stated that the next visit had been planned for April 2009 and that because of the incident of 21 March 2009, of which the Agency had learnt from the police on 23 March 2009, it was decided to visit the applicants immediately. The report stated in respect of the incident that:

“... G. was in the hospital, since, according to the parents, on 20 March 2009 he had spilled the kettle with boiling water on himself and having scared himself tripped and fell down the stairs. The boy was taken by [the first applicant] to [a hospital]. [The second applicant] during the visit was in a state of shock, could hardly speak and was constantly weeping. Under-aged P. was all the time nearby and did not leave her mother even for a second.”

The report further stated that the family would be visited and checked frequently and that the information about the incident should be transferred to the competent municipal authority responsible for the adoption.

On 27 March 2009, upon the applicants' request, G. was discharged from the Burn Care Hospital.

By letter of 28 March 2009 the Deputy Head of the Main Department of the Interior in the Moscow Region K. informed the head of the Golyanovo District Municipal Administration about the incident of 20 March 2009, the fact that criminal proceedings had been brought in respect of the incident, and that on 27 March 2009 G. had been discharged from the hospital and joined his family. The letter then stated that:

“With a view to avoiding any pressure from the parents on G. and infliction of any physical and mental harm on him, I would ask you to consider the possibility of removing G. from the conditions representing a threat to his life and health until the resolution of [these criminal proceedings].”

On 27 March 2009 the head of the Golyanovo District Municipal Administration, U., issued removal orders in respect of G. and P. The orders referred to the information received from the police and declared under-aged G. in need of protection by the State. They then decided to remove G. and P. from their parents because of an “immediate threat to their health and life”, resolved to apply in seven days to the court with requests to annul the adoption, and made some arrangements for the children's accommodation in State custody.

It appears that later on 27 March 2009 officials M., S. and F. of the Golyanovo District Custody and Guardianship Agency (“the Golyanovo District Agency”) visited the applicants' house. The resulting report stated that because of the incident of 21 March 2009 and the institution of criminal proceedings in this connection, as well as because of the media coverage of the case, it had been decided to visit the applicants' family and to consider the question of removing the children pending the investigation. The report then went on as follows:

“... From the interviews with the children it was established that the parents love them; the children look well groomed and clean. During the visit the children were

playing, looked gay, then watched a fairy tale, held and kissed their mother showing their love...

Given that there was no immediate threat to the life and health of the children, the children were sleeping and the family would stay under close supervision of the [Golyanovo District Agency], as well as regard being had to the pending investigation, we consider it unnecessary to remove the children and the consideration of the question should be suspended until the conclusion of the criminal case."

On 28 March 2009 the initial removal orders were apparently quashed by the head of the Golyanovo District Municipal Administration U. with reference to the report of 27 March 2009.

Later on 28 March 2009 officials G, Z and E. of the Golyanovo District Agency compiled the following report:

"... as a result of examining the housing and living conditions of the family of [the applicants], the visits of the officials of the [agency] during the period from 23 March 2009 to 28 March 2009, the review of video materials presented by the family and showing episodes of life of the parents and children, and the continuous interviews with [the applicants], the following has been established:

At present, despite repeated recommendations of the officials of the agency, the stairs connecting the first and second floors have still not been secured (according to [the applicant] it is precisely these stairs that caused serious injuries to G. who fell off them). The previous security mechanism had been taken down before the New Year period.

The injuries received by under-aged G. on 20 March 2009 are not unprecedented. Serious falls of the baby occurred previously as well, as is reflected in the video materials of the family archive, as well as being confirmed by the parents.

Given the above, as well as the institution of criminal proceedings ... in connection with the fact of infliction of the injuries in question, we consider that the parents do not fulfil the security requirements for the life and health of the under-aged and do not sufficiently control the children, who are prone to trauma due to their high activity and mobility .

Thus there are reasons to remove [the children] from their parents."

Late in the evening of 28 March 2009 official F. of the Golyanovo District Agency issued removal orders in respect of G. and P. The orders declared under-aged G. to be in need of protection by the State. They then decided to remove G. and P. from their parents because of "immediate threat to their health and life" and to inform a competent prosecutor, and made some arrangements for the children's accommodation in State custody.

On 29 March at around 9 p.m. the removal of both children took place, with both children being placed in the Vidnovskaya District Hospital.

On 31 March 2009 the children were removed from the Vidnovskaya District Hospital to exclude any possibility of the applicants contacting them and placed in the Morozovskaya City Children's Hospital.

Thereafter the applicants were involved in court proceedings by which they challenged the removal orders and the denial of access to their children by the authorities.

Simultaneously, the authorities brought court proceedings against the applicants asking the courts to annul the adoption of G. and P.

(a) Court proceedings concerning the removal orders

On 10 April 2009 the applicants challenged the removal orders. They argued that the authorities had acted unlawfully and that the orders were generally unjustified and disproportionate. The applicants specifically deplored the denial by the authorities of any possibility of visiting the children.

On 24 April 2009 the Golyanovo District Agency carried out an additional investigation into the living conditions of the applicants' family, having made an overall positive assessment and suggested securing the stairs and moving one of the baby beds.

On 27 April 2009 the Golyanovo District Municipal Administration replied to the applicants' challenge. It argued that the removal had been justified because the applicants had failed to secure the stairs and they had reason to believe that G. had bruises and injuries before the incident. It also argued that it was difficult to monitor the situation in the applicants' family constantly and that the measure was justified in view of the pending criminal proceedings.

On 28 April 2009 the Vidnovskiy District Court of the Moscow Region ("the Vidnovskiy District Court") held a hearing in the case and rejected the applicants' challenge of the removal orders as follows:

"... having before it the explanations of the participants in the proceedings, the statements of witnesses and case materials, the court finds that the [applicants'] demands are unfounded for the following reasons.

In accordance with part 1 of Article 77 of the Family Code, in case of an imminent threat to the life and health of a child [the agency] can immediately remove the child from its parents, the removal being carried out on the basis of the decision of a municipal authority ...

Taking into account the evidence collected, the court is also of the view that there were reasons to remove the children, because of an immediate threat to their life and health. On the date of the adoption of the contested removal order, the stairs [in question] had still not been secured, despite repeated warnings. Criminal proceedings have been brought in respect of [the second applicant] ... and investigative actions are being conducted. In view of this situation, with the presence of serious injuries on G. and the failure to secure the hazardous items, [the agency] had reason to issue the removal orders ..."

On 21 July 2009, upon the applicants' appeal, the Moscow Regional Court upheld the judgment of 28 April 2009, having essentially confirmed the conclusions of the first-instance court.

(b) Court proceedings concerning revocation of adoption

On 31 March 2009 the Head of the Leninskiy District Agency F. wrote a letter to the Golyanovo District Agency asking it to consider the possibility of bringing revocation proceedings in view of the recent removal of G. and P.

On 1 April 2009 the Golyanovo District Municipal Administration brought court proceedings for revocation of the adoption of G. and P. in the Preobrazhenskiy District Court of the City of Moscow ("the Preobrazhenskiy District Court").

On 15 and 27 May 2009 the Preobrazhenskiy District Court held hearings in the case.

On 16 June 2009 the Golyanovo District Agency issued a document containing its conclusions concerning the need to revoke the adoption. The document mentioned that injuries had been found on G.'s body, that criminal proceedings had been brought in respect of these injuries against the parents and that the parents had failed to treat the children or to look after their health, and suggested revoking the adoption.

On 17 June 2009 the Preobrazhenskiy District Court rendered a judgment in the case granting the claim in full. The court noted the incident of 20 March 2009 and the fact that proceedings had been brought and then noted that:

“On 28 March 2009 [the Agency] conducted a check of the applicant's house, which included a review of video materials showing episodes in the life of the parents and children and, as a result of continuous interviews with [the applicants], it has been established that the stairs [in question] have still not been secured, whilst the trauma sustained on 20 March 2009 by G. was not an unusual event because serious falls had taken place before as well.

The fact of G having fallen off the dog's kennel (in February 2009), which occurred before the incident of 20 March 2009, was not denied by the [applicants] in court.

On 28 March 2009 [G. and P.] were removed from the [applicants' family] owing to the situation in the family which posed a threat to the life and health of the children, as well as owing to the institution of criminal proceedings ...

On 30 March 2009 the Vidnovskaya District Hospital issued the results of an examination of the children from which it followed that P. had arrived at hospital in a satisfactory condition, but with wet coughs, congested pharynx, rough lung breathing, elongated exhalation, dry and whistling crackling, ... diagnosis: obstructive bronchitis. At the same time, until the removal the child had not been treated by a paediatrician, since [the applicants] had not registered the child with a hospital and did not had her examined by a paediatrician.

The examination of G. showed that his condition was satisfactory and that he was admitted suffering from consequences of skull and brain trauma as well as a thermal burn to the face and a hairy part of the head.

In the set of criminal proceedings instituted on 22 April 2009 [the second applicant] has been accused of a criminal offence under sub-part (d) part 2 of Articles 117 and 156 of the Criminal Code, whilst [the first applicant] has been accused under Article 156 of the Criminal Code.

On 31 March 2009 the children G. and P. were placed in Morozovskaya City Children's Clinical Hospital for a medical examination and treatment as a result of their transfer from the Vidnovskaya District Hospital of the Moscow Region. G. was admitted to the Morozovskaya Hospital in a condition of medium gravity.

At the time of his admission ... G. was diagnosed as follows: syndrome of hyperactivity with attention deficit, bruises on the left frontal bone and scratches on the body and extremities, balanitis, belly button hernia, seborrhoeic dermatitis. From the medical card it also appears that apart from the above-mentioned diagnosis, G. was also diagnosed with developmental delay, acute rhino-pharyngitis, functional cardiopathy, acute pancreatitis, dyskinesia of biliary pathways, low isometric myopia, acute allergic reaction (food) and adenoids of the first degree.

At the time of her admission ... P. was diagnosed as having: minimal brain dysfunction, acute rhino-pharyngitis, functional cardiopathy, reactive pancreatitis,

dyskinesia of biliary pathways, weak long-sightedness, acute allergic reaction (food). The condition at the time of admission was of medium gravity.

The above-mentioned diagnosis confirms that the [applicants] have failed to pay sufficient attention to the babies' health, did not take steps to treat them in due time and moreover did not even register them with a local polyclinic...

At the same time, as has been established by the court and follows from the statements of the [applicants], they are not keen to apply to [local] polyclinics and prefer self-treatment for both themselves and their children, as well as an uncontrolled cold-water treatment, which, according to the [agency], the prosecutor and the court, obviously does not correspond to the children's interests and actually creates danger for the life and health of the children remaining in this [family] without access to the necessary medical aid. At the same time, at the time of [adoption] they were given recommendations concerning the mandatory follow-up of each child by the respective doctors, including a paediatrician.

The fact that the [applicants] took their children to a neurologist, orthopaedist, and dentist cannot be used to conclude that they took due care of the children's health, since the examinations of the Vidnovskaya and Morozovskaya hospitals diagnosed the children to be in need of treatment by doctors and attention from the [applicants], whilst the [applicants] had not taken any such measures.

The [applicants' family] did not find time to obtain medical insurance certificates in due time and only on 10 December 2008 did they receive an insurance certificate in respect of P., and on 18 March 2009 in respect of G. This also confirms their improper attitude in respect of the children's health, and that very attitude fails to secure the protection of the children's health and creates a threat to the health and life of the children...

... under Article 141 of the Family Code the adoption may be revoked in cases where the adoptive parents avoid fulfilling their parental obligations, abuse their parental rights, treat the adopted children cruelly, and suffer from chronic alcoholism or drug addiction.

The court may revoke the adoption also in other cases taking into account the interests of the child and having regard to the children's opinion.

The court is of the view that in the present case there are grounds to revoke the adoption because the [applicants] had an improper attitude in respect of the health and security of the children, which posed and still poses a danger to the life and health of the children, including, among other things, failure to provide the children with necessary medical assistance, of which, it was established by the court, they are in need. The reckless attitude of the [applicants] in respect of the health and security of the children and strong inclination of the [applicant] towards self-treatment poses a danger to the life and health of the children and therefore the revocation of the adoption corresponds to their interests.

The fact that the [applicants] have been characterised positively, including by all witnesses questioned by the court during the examination of the case, have certain savings and property, even though they are unemployed, as well as the fact that they wish to continue the upbringing of the children, cannot serve as a basis for refusing the claim, since the claim has been proved and is made solely in the interests of the children.

The statements of witnesses [who all without exception characterised the applicants positively] ... cannot be taken into account by the court to reject the claim, since those witnesses did not witness the events of 20 March 2009 and these events pose a threat to the security of the children, create a threat to their life and health and exclude the possibility of leaving the children in the [applicants'] family.

Having examined the evidence presented ... and taking into account the opinion of the [agency] concerning the need to revoke the adoption of the children, considering an improper attitude of the [applicants] in respect of the health and security of the children, the court finds that the claim has to be granted in full, since this corresponds to the interests of the children who in the future would be able to find accommodation with another family who will take due care of them and provide them with secure conditions for life and development as well as take due care of their health and development...”

The court revoked the adoption and cancelled the respective entries in the official database concerning the parental relationship between the applicants and G. and P.

On 22 June 2009 the Preobrazhenskiy District Court issued a full version of the judgment.

It was upheld on appeal by the Moscow Regional Court on 13 August 2009.

The applicants submitted that the authorities had constantly denied them access to the children and that since their removal the children’s condition had been steadily deteriorating.

(c) Criminal proceedings against the applicants

On 26 March 2009 criminal proceedings were brought against the applicants on account of the incident of 20 March 2009.

It appears that on 5 March 2010 the merits of the criminal case were examined by the trial court.

(d) Media coverage of the case and libel proceedings

It appears that during G.’s stay in the Burn Care Hospital between 20 and 27 March 2009 the hospital’s administration on several occasions admitted a number of third persons, including journalists, photographers and various public figures to G.’s room. These third persons were allowed to interview G. and to take pictures of him and his injuries. It appears that among those admitted to see G. by the hospital’s administration was one D. G., an assistant of a well-known Russian MP.

According to the applicants, they were not informed about these visits, interviews and photo sessions, let alone asked for respective authorisations.

On 24 March 2009 a number of national media sources belonging to the same media group and including the “life.ru” web-site, and newspapers *Zhizn’* and *Tvoy den’* started publishing materials about G. and his adoptive parents’ cases, using their full names and photographs. According to the applicants, the materials included photographs of G. in the Burn Care Hospital and suggested that G.’s injuries had been due to the ill-treatment at the hands of his parents. It appears that the newspapers also learned about G.’s adoption and at once made this information public.

On the next day the other national media sources followed suit, publishing articles with the following titles: “Mother with the devil’s heart”, “I was beaten by my Mum”, “Mummy beat me up with a hot kettle full of boiling water”, “Monster-mummy is facing jail for ill-treatment of the child”, “Mummy tortured the adopted [child]”, “Mummy from Gestapo” etc.

On 30 March 2009 the applicants’ case was discussed in the Public Chamber of the Russian Federation.

On 16 April 2009 the Russia-wide TV channel “Pervyy” broadcast a show “Pust’ Govoryat” (“Let them speak”) entirely devoted to the applicants’ case with various individuals, including public persons, commenting and speculating on what had happened to G. and what should be the appropriate State reaction. D. G., the assistant of a well-known Russian MP mentioned earlier, was invited as a guest and stated the following:

“... The child was admitted to hospital with so-called multi-trauma. It means that injuries were not isolated but were multiple, including the burn on the face and heavy beatings and bruises of sexual organs. And the doctors now clearly give an assessment of these actions. They say that the child was admitted unconscious, which means that he could not sustain the pain level that he got at home. And he was at home in this condition not just for one day. And the parents brought him to the hospital not to stitch up a scratch on his face, but because he was nearly dead. This is clearly confirmed by doctors ...”

This statement was accompanied by pictures and video footage of G. in hospital.

According to the applicants, they tried to initiate criminal proceedings in respect of these actions by the media and D.G. It appears that they were unsuccessful.

It also appears that the applicants brought defamation proceedings against D. G. and the publisher of the *Tvoy den’* newspaper in connection with their statements and publications. The claim was rejected by the domestic courts at two instances on 4 March and 10 June 2010 respectively.

B. Relevant domestic law

1. Legal provisions concerning the protection of children by the State

Article 56 of the Family Code: Children’s Right to Protection

“1. Children shall have the right to the protection of their rights and legal interests.

A child’s rights and legal interests shall be protected by his parents (or substitute parents), and, in the cases stipulated in the present Code, by the Custody and Guardianship Agency, the Prosecutor and the court.

...

2. Children shall have the right to protection from abuse on the part of the parents (or substitute parents).

If the child’s rights and legal interests are violated, including where the parents (or one of them) fail to discharge or improperly discharge their duties related to the child’s upbringing and education, or where they abuse their parental rights, the child shall have the right to apply on his own initiative for the protection of the Custody and Guardianship Agency, and – upon reaching the age of 14 years – to the court.

3. Officers of organisations or other citizens who have learnt of a threat to the life or health of a child or a violation of his rights and legal interests shall be obliged to report this to the Custody and Guardianship Agency for the place of the child’s current residence. Upon receipt of such information, the Custody and Guardianship

Agency shall be obliged to take the necessary measures to protect the child's rights and legal interests."

2. Legal provisions concerning the protection of children by the State

Article 73: Restriction of Parental Rights

"1. A court may, taking into account the interests of the child, decide to remove the child from the parents (one of the parents) without stripping them of their parental rights (restricting their parental rights).

2. The restriction of parental rights is allowed when leaving the child with his parents (one of the parents) is dangerous for the child due to circumstances which do not depend on the parents (one of the parents) such as mental sickness or other chronic disease, the combination of difficult circumstances and others.

The restriction of parental rights is only possible in cases where leaving the child with the parents (one of the parents) is dangerous for the child on account of their conduct, but sufficient grounds for stripping the parents (one of the parents) of their parental rights are not established. If the parents (one of the parents) do not change their conduct, six months after a court decision restricting the parental rights the agency is under an obligation to file a claim for stripping the parents of their parental rights. Acting in the interests of the child, the agency may file such a claim before the expiry of the above-mentioned term ..."

Article 74: Consequences of the Restriction on Parental Rights

"1. Parents whose parental rights are restricted by the court shall lose the right to bring the child up in person, and also the right to the privileges and State allowances granted to citizens with children.

2. The restriction on parental rights shall not relieve the parents from the duty to maintain the child.

3. A child whose parents' (or one of them) parental rights are restricted shall retain the right of ownership of the living premises or the right to use the living premises, and shall also retain property rights, based on his kinship with his parents and with his other relatives, including the right to receive an inheritance.

4. If the parental rights of both parents are restricted, the child shall be placed in the care of the Custody and Guardianship Agency."

Article 75: The Child's Contacts with Parents whose Parental Rights are Restricted by the Court

"Parents whose parental rights are restricted by the court may be allowed to maintain contacts with the child, unless this has a negative impact on the latter. The parents' contacts with the child shall be permitted with the consent of the Custody and Guardianship Agency, or with the consent of the child's guardian (trustee), of his foster parents or of the authorities of the institution where he resides."

Article 76: Lifting the Restriction on Parental Rights

"1. If the grounds on which one or both parents' parental rights were restricted cease to exist, the court may, upon an application by the parents (or one of them) make a decision returning the child to the parents (or one of them) and lifting the restrictions stipulated by Article 74 of the present Code.

2. The court shall have the right, taking into account the child's interests, to refuse to grant the application if the child's return to the parents (or one of them) is contrary to his interests."

3. Legal provisions concerning the removal of children

Article 77: Removal of a Child in Cases of a Direct Threat to Life or Health

"1. If a direct threat exists to the child's life or health, the guardianship and trusteeship body shall have the right to remove the child from his parents (or from one of them) or from another person in whose charge he is.

The immediate removal of the child shall be carried out by the Custody and Guardianship Agency pursuant to the corresponding order of the local self-governing body.

2. When removing the child, the Custody and Guardianship Agency must inform the Prosecutor without delay, provide for the child's temporary accommodation and, within seven days of the decision of the local self-governing body to remove the child, lodge an application with the court for withdrawal or restriction of parental rights."

4. Legal provisions concerning the revocation of adoption

Article 141: Grounds for revoking a child's adoption

"1. A child's adoption may be revoked if the adopters fail to discharge the parental duties imposed on them, abuse parental rights, treat the adopted children cruelly or suffer from chronic alcoholism or drug addiction.

2. The court may also revoke a child's adoption on other grounds, proceeding from the child's interests and taking into account his opinion".

5. Legal provisions concerning the secrecy of adoption

Article 139 of the Family Code: Secrecy of child adoption

"1. The secrecy of a child's adoption is protected by the law. The judges who rendered the judgment concerning the adoption of the child, or other officials who carried out the State registration of the adoption, as well as other persons who otherwise became aware of the adoption are obliged to maintain the secrecy of the baby's adoption.

2. Persons indicated in part 1 of the present Article who disclose the adoption of the child against the will of the adoptive parents shall be held liable in accordance with the law.

Article 155 of the Criminal Code: Disclosure of the secret of adoption

"1. The disclosure of the secret of a child's adoption against the will of the adoptive parent committed by a person who was under an obligation to keep the fact of the adoption as a service-related or professional secret, or by other persons out of lucrative or base motives, shall be punishable by a fine ..., or community service ..., or an arrest ... combined with disqualification from holding certain posts or carrying out certain activities ..."

6. *Relevant criminal law provisions*

Article 156 of the Criminal Code: Non-fulfilment of obligations concerning the upbringing of a minor

“1. The non-fulfilment or improper fulfilment of duties concerning the upbringing of a minor by a parent or by another person ... if this conduct was accompanied by cruel treatment of the minor ... shall be punishable by a fine ..., or community service, or imprisonment ...”

Article 117: Torture

“1. The infliction of physical or mental suffering by systematic beatings or other violent action ... shall be punishable by a term of imprisonment ...

2. The same actions committed:

d) in respect of the person who is known to be a minor ... are punishable by ... [a heavier penalty]”.

COMPLAINTS

1. The applicants complained under Articles 3, 6, 8 and 14 of the Convention about the urgent removal of their adopted children, the revocation of the adoption and the continuous lack of access to the children following the removal. They alleged that the removal had been unlawful because the municipal authorities in question had not been authorised by the law to act in court in such cases and also owing to the vagueness of the provisions in question, that the decisions had been arbitrary, had lacked reasoning, had been based on a wrong and manifestly unreasonable assessment of evidence and had been generally disproportionate. The applicants specifically referred to the absence of a legal provision which would have enabled them to have access to the children following the removal.

2. With reference to the same Convention provisions the applicants complained in their own names and on behalf of their former adopted children about the breach of their privacy by the media and the authorities, which had widely disseminated the events of the case and had given premature, factually incorrect and defamatory assessments of what had happened. They submitted that, among other things, as a direct result of the media attention the first applicant had lost his job.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants’ rights under Article 8 of the Convention as a result of the removal proceedings? If so, was the interference “lawful” and “necessary in a democratic society”?

Were the reasons adduced to justify it “relevant and sufficient”? Did the domestic courts take due account of all relevant factors in assessing the real danger to the children? In particular, can it be said that the judicial findings relating to G.’s and P.’s medical condition and the exact degree of the parents’ responsibility in this connection were well-founded and non-arbitrary? Did the domestic courts investigate and assess the psychological impact that the separation of G. and P. from their adoptive parents would have on them and did they consider the case of each of the children in this respect separately? Did the applicants have access to G. and P. following the removal and, if not, why not?

2. Has there been an interference with the applicants’ rights under Article 8 of the Convention as a result of the proceedings for the revocation of the adoption? If so, was the interference “lawful” and “necessary in a democratic society”? Were the reasons adduced to justify it “relevant and sufficient”? Did the domestic courts take due account of all relevant factors in assessing the real danger to the children? In particular, can it be said that the judicial findings relating to G.’s and P.’s medical condition and the exact degree of the parents’ responsibility in this connection were well-founded and non-arbitrary? Reference is made in this connection to the fact that the domestic courts assessed the issues of G.’s and P.’s medical condition, the exact degree of the parents’ responsibility, and the measures to be taken in this connection, without seeking the opinion of medical experts in these fields. Did the domestic courts investigate and assess the psychological impact that the separation of G. and P. from their adoptive parents would have on them and did they consider the case of each of the children in this respect separately? Can it be said that in the circumstances of the case the revocation of adoption was the only conceivable option available to the authorities to protect the children? Reference is made in this connection to the irreversible nature of the measure in question and the implications that it may have had on the children’s condition. Have the applicants been allowed to see G. and P. following the revocation of the adoption? What is G.’s and P.’s present condition and what kind of medical and psychological aid have they been receiving since the separation?

3. In view of the Government’s answers to the first two questions, were the proceedings for removal and revocation of adoption fair, as required by Article 6 of the Convention?

4. The Government are requested to submit the entire case file in the proceedings for removal and revocation of adoption concerning the applicants’ children and also to provide any further information concerning developments in the legal proceedings between the applicants and the authorities.

5. The Government are requested to provide information, including the Burn Care Hospital logs, concerning each and every person (excluding hospital employees) who had access to G. during his stay in that hospital between 20 and 27 March 2009.

6. What was the purpose and content of the interviews that the third-party visitors had with G. and did the Burn Care Hospital officials in any way supervise them?

7. What were the rules or legal provisions governing the system of visits by third persons to minor patients in the Burn Care Hospital at the relevant time? Were the rules published or otherwise accessible and were the applicants apprised of these rules?

8. Did the nationwide dissemination of photographs, interviews and other information concerning the applicants' case, including the fact of G.'s and P.'s adoption, take place, as suggested by the applicants? Were the taking and dissemination of photographs and interviews and dissemination of the information concerning the adoption authorised by the applicants?

9. In view of the answers to questions 5 and 6, has there been an interference with the applicants' rights and the rights of G. and P. under Article 8 of the Convention as a result of unauthorised access to G. by third persons in the State hospital between 20 and 27 March 2009? If so, was the interference "lawful" and "necessary in a democratic society"? Were any reasons adduced to justify it as being "relevant and sufficient"?

10. In view of the answers to questions 5, 6 and 7, has there been an interference with the applicants' rights and the rights of G. and P. under Article 8 of the Convention as a result of the nationwide dissemination of photographs, interviews and other information concerning the applicants' case, including the fact of G.'s and P.'s adoption? Has the State fulfilled its positive obligation under Article 8, in connection with this interference, in the proceedings brought by the applicants against the *Tvoy den'* newspaper and Mr D.G.? In particular, did the applicants have any legal remedy in the Russian legal system in respect of the above-mentioned issues and, if so, was it effective within the meaning of Article 13 of the Convention?

11. The Government are requested to submit the entire case files in the criminal and civil proceedings that the applicants tried to bring in respect of the actions of the *Tvoy den'* newspaper and Mr D.G.

12. In view of the Government's answers to questions 10 and 11, were the civil defamation proceedings brought by the applicants against the *Tvoy den'* newspapers and Mr D. G. fair, as required by Article 6 of the Convention?