

File-number:

EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe
Strasbourg, France

APPLICATION

under Article 34 of the European Convention on Human Rights
and Rules 45 and 47 of the Rules of the Court

Request for priority treatment under Rule 41 of the Rules of the Court

SUMMARY OF THE APPLICATION

Mr. Vitaliy Kocherov (the first applicant) is a former resident of a social care home for people with mental disabilities. In 2007, while living at the social care home, the applicant and a woman residing at the same social care home had a child (the second applicant). Due to the child's mother's legal incapacity the girl was placed at Children's Home in St. Petersburg immediately after birth. The first applicant was never asked for his permission for the child's placement in the Children's Home, but he had accepted this, as it was not possible for him to take the girl to the social care home where he was living. The first applicant undertook immediate steps towards being released from the social care home and setting up his own household, for the particular purpose of being able to take the second applicant out of the institution and set up a proper family life with her. He has maintained close contacts with his daughter during both of their stays at the respective institutions. Following his release from the social care home and moving into his own apartment in 2012, the first applicant requested the Children's Home to surrender the second applicant to his custody to live at his apartment, which was assessed by the guardianship authority as fully meeting the child's needs. Contrary to the findings of the guardianship authority, the Children's Home refused to give custody over the child to the first applicant and requested the latter's parental rights to be restricted. The request was granted on 20 March 2012 by the Frunzenskiy District Court of St. Petersburg on the basis of the first applicant's mental disability, his status of a former resident of a social care home and allegedly low income, as well as the second applicant's mother's legal incapacity. The St. Petersburg City Court upheld the restriction order on appeal on 17 July 2012.

In the application below the applicants argue that they have been victims of violations of their rights under Article 8 of the Convention because the judicial order restricting the first applicant's parental rights was based solely on his and the child's mother's diagnosis of mental disability and his former stay at the social care home for people with mental disabilities. Contrary to the requirements of domestic law, Russian courts never established that it might be dangerous or detrimental to the interests of the second applicant to live with the first applicant, or to be in regular contact with her mother. The national authorities neglected their positive obligations under Article 8 by refusing to provide the first applicant with reasonable accommodations necessary to enable him, as a person with disability, to exercise his parental rights and duties with respect to his daughter. As a consequence of this decision the second applicant is forced to stay at the institution and the applicants are arbitrarily prevented from living as a family at their home. In the absence of any objective and reasonable justification for restricting the first applicant's parental rights, he alleges a violation of Article 14 taken in conjunction with Article 8 of the Convention.

The applicants request **priority treatment** of their application in accordance with Rule 41 of the Rules of the Court because the persistence of the violation complained of may render it impossible for the applicants to exercise their family rights in future.

THE PARTIES

A. The First Applicant

1. Surname: Kocherov
2. First name: Vitaliy Mikhailovich
3. Sex: Male
4. Occupation: Laundry Operator
5. Date and place of birth: 15 November 1966, Leningrad
6. Permanent address: 44/1 Geologicheskaya St. no. 130, St. Petersburg, Russia
7. Tel. No.: +7-812-9828915
8. Present address:

The Second Applicant

1. Surname: Sergeyeva
2. First name: Anna Vitaliyevna
3. Sex: Female
4. Occupation: N/A
5. Date and place of birth: 30 May 2007, St. Petersburg
6. Permanent address: 44/1 Geologicheskaya St. no. 130, St. Petersburg, Russia
7. Tel. No.: +7-812-9828915
8. Present address: St. Petersburg Specialized Children's Home no. 3
42 Zagrebskiy Blvd., St. Petersburg

The representative

9. Name and occupation of representative: Dmitri Bartenev, Attorney-at-Law, acting on behalf of Mental Disability Advocacy Center (MDAC)
10. Address of representative: 3 Furazhnyi Pereulok # 210, St. Petersburg 191015 Russia
11. Tel. No.: +7 905 222 8915
12. Fax No.: +7 812 680 1384

B. The High Contracting Party

13. Russia

II. STATEMENT OF THE FACTS

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- 14.1. The first applicant, Mr. Vitaliy Kocherov, has a mild intellectual disability. He had been living in St. Petersburg Psycho-Neurological Social Care Home no. 1 since 1983 until January 2012.
- 14.2. On 12 May 2007 the first applicant married Ms. Natalia Sergeyeva, a resident of the same social care home. Ms. Natalia Sergeyeva was deprived of her legal capacity in accordance with the judgment of Pushkinskiy District Court of St. Petersburg of 13 April 1999 due to her mental disability.
- 14.3. On 30 May 2007 Ms. Sergeyeva gave birth to the first applicant's daughter Anna Sergeyeva (hereinafter – “the child” or “the second applicant”). One week later Ms. Sergeyeva was placed in another hospital because of an infection from the delivery. Because the child's mother was legally incapable and because it was not possible for Mr. Kocherov to raise his child in the social care home, the newborn was placed into state custody as lacking parental care. Mr. Kocherov was not recognized as the child's father due to the mother's legal incapacity. Accordingly, since 12 July 2007 the first applicant's child has stayed in St. Petersburg Specialized Children's Home no. 3 (hereinafter – Children's Home).
- 14.4. On 7 August 2007 Mr. Kocherov obtained a new birth certificate for his child Anna Sergeyeva and was registered as the child's father. Subsequently he agreed to his child's stay in Children's Home until it would become possible for him to take care of her. While the girl continued living at the Children's Home, Mr. Kocherov maintained his relationship with his daughter: he would visit her regularly, spend time with her, take her for walks, and buy books, toys and clothes for her (*see documents 11-14*).
- 14.5. Based on Mr. Kocherov's request, on 4 December 2007 the Social Care Home no. 1, where the first applicant had resided, applied to the St. Petersburg City Administration in order to provide the first applicant with social housing with the view of his discharge from the social care home. Between 2008 and 2011, Mr. Kocherov reiterated his requests for social housing, but to no avail.
- 14.6. On 24 September 2008 the marriage between the first applicant and Ms. Natalia Sergeyeva was declared void at the request of the public prosecutor because of Ms. Natalia Sergeyeva's legal incapacity.
- 14.7. Following a claim of the first applicant, acting on his own and on behalf of his child, on 6 June 2011 the Smolninskiy District Court of St. Petersburg ordered the City Administration to provide the first applicant and his child with an apartment under a social tenancy agreement (*see document 1*). Accordingly, in November 2011 Mr. Kocherov and his daughter were provided with an apartment in St. Petersburg. On the basis of the first applicant's medical assessment (*see document 2*) in February 2012 he was discharged from the Social Care Home no. 1 and moved to his apartment where he has been living together with Ms. Natalia Sergeyeva.
- 14.8. In November 2011 the first applicant informed the Children's Home of his intention to take his child home after he had moved to his apartment. Following this information the Children's Home filed a case with the Frunzenskiy District Court of St. Petersburg with a view to restricting the first applicant's parental rights (*see document 3*). In support of this request the Children's Home indicated that the first applicant “has not yet taken the girl from the Children's Home to raise her in his family but he has been planning to raise the girl by himself”. In the view of the Children's Home it was not

advisable to give the girl to her parents' care as Ms. Natalia Sergeyeva was declared legally incapable and posed a danger to the girl's life and health and because the first applicant, due to his mental disorder, could not fully exercise his parental responsibilities. Additionally, the Children's Home submitted that based on the information from the staff the child "categorically refused to communicate with her parents, has felt fear and emotional tension when communicating with them".

- 14.9. On 28 February 2012 the guardianship authority at the first applicant's place of residence examined living conditions in his apartment (*see document 4*). In accordance with the report, the apartment was renovated, was clean and light, and all necessary furniture and home appliances were present. The first applicant's daughter was registered in this apartment and there were conditions for her living: the child had a bed, clean bed linen, there were toys and books bought matching the child's age. There were all necessary clothes in the wardrobe in accordance with the child's age and the season. A separate desk was equipped for the child.
- 14.10. On 20 March 2012 the district court granted the Children's Home request and restricted the first applicant's parental rights with regard to his daughter (*see document 5*).
 - 14.10.1. Firstly, the court held that it would be against the child's interests because she felt anxious in the presence of her parents and therefore the court concluded that it would be stressful for the girl to be placed in her parents' home as she had never lived with them and had had no chance to get used to them.
 - 14.10.2. Secondly, the district court held that the first applicant's intention to raise his daughter on his own was "premature" because until February 2012 he had lived in a specialized institution (a psycho-neurological social care home) and had no skills or experience in raising children and taking care of them.
 - 14.10.3. Thirdly, the district court also took note of the fact that the child's mother Ms. Natalia Sergeyeva, who was the first applicant's *de facto* spouse, visited the applicant's apartment freely. Because of Ms. Natalia Sergeyeva's legal incapacity the court held that the child's stay with her parents could be dangerous to her in the absence of any proof to the contrary.
 - 14.10.4. Fourthly, the district court held that taking into account the first applicant's diagnosis of his mental disability there was no reliable evidence that it would be safe for the child to live with Mr. Kocherov.
 - 14.10.5. Finally, the court held that at the time of the hearing the first applicant's monthly income was around 15,000 roubles (approximately 375 euro) which, taking into account the living wage in St. Petersburg, was not sufficient to secure normal material conditions for the child.
- 14.11. The first applicant appealed against the 20 March 2012 judgment (*see document 6*).
 - 14.11.1. With regard to the first argument of the court, the applicant submitted that it would be in any case stressful for the child, who had spent four years in the Children's Home, to start living in another place, even with an adoptive family. As for the Children's Home reference to the anxiety of the child in the presence of her parents, it was confirmed by the Children's Home during the hearing that the child's fear of her parents had ceased to exist and she was no longer afraid of being given to her father (*see document 7 at page 125*).

14.11.2. With regard to the second argument of the court, the applicant submitted that it had no lawful basis as the Family Code does not allow restricting parental rights on the basis of a parent's former or present residence in a social care home. Moreover, the law does not require biological parents to prove their ability to raise children or their housekeeping skills as a prerequisite for exercising their parental rights.

14.11.3. With regard to the third argument of the court, the applicant submitted that it was of no relevance to his case that the child's mother Ms. Natalia Sergeyeva, who would visit the children at the applicant's place of residence, was legally incapable. Legal incapacity is a formal status and does not mean that the person is dangerous to others. In any case, the mental health of the child's mother cannot serve as the basis for restricting the applicant's parental rights. It was also submitted to the court that during the child's stay at the Children's Home, her mother was allowed to visit her.

14.11.4. As to the fourth argument of the court, the applicant submitted that there was no evidence at the court's disposal of the applicant being dangerous to his daughter. On the contrary, in accordance with the medical report of the Social Care Home no. 1, which had observed the applicant for many years, his mental condition did not impair his ability to fulfil his parental responsibilities (*see documents 8-9*).

14.11.5. As to the fifth argument of the court, the applicant submitted that the court erred in establishing the applicant's welfare. His monthly income of 15,000 roubles exceeded the living wage in St. Petersburg which at the material time was 6910.90 roubles for adults and 5461.39 for children. The applicant relied on the European Court case law in *Saviny v. Ukraine* (no. 39948/06, judgment of 18 December 2008) and the relevant provisions of the UN Convention on the Rights of Persons with Disabilities.

14.12. On 17 July 2012 the St. Petersburg City Court dismissed the applicant's appeal against the 20 March 2012 judgment in a summary fashion (*see document 10*).

III. STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

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15.1. **The applicants submit that their right to respect for their family life was violated by the decision of Russian courts which restricted the first applicant's parental rights in relation to his daughter and which made it impossible for the applicants to live together at home as a family. The first applicant Mr. Kocherov also submits that the restriction imposed on his parental rights was discriminatory and therefore violated Article 14 of the Convention in conjunction with Article 8.**

Violation of Article 8

15.2. The applicants' right in question is guaranteed by Article 8 of the European Convention on Human Rights which reads:

1. Everyone has the right to respect for his ... 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.*

- 15.3. The decision of the Frunzenskiy District Court of St. Petersburg to restrict the first applicant's parental rights was based on Article 73, paragraph 2, of the Russian Family Code. This provision (*ограничение родительских прав*) reads:

Restriction of parental rights is permissible if the child's remaining with his/her parents (or one of them) is dangerous for the child for reasons beyond the parents'/parent's control (mental disorder or other chronic illness, distress, etc.).

- 15.4. In contrast, Article 71 of the Family Code allows for a complete withdrawal of parental rights (*лишение родительских прав*). However, comparing the legal consequences of the two measures envisaged in the Code shows that there is but a small difference in the practical effect on the measures on the rights of a parent: it appears that the only point on which the restriction of parental rights can be regarded as being less restrictive than the withdrawal of parental rights is that a parent subjected to the former measure has a *possibility* of retaining some personal contact with the child: Article 75 of the Family Code provides that such a parent “*may be allowed* to have contacts with the child” but only upon permission by the child's guardian or a local guardianship authority.
- 15.5. The restrictions on the first applicant's parental rights imposed by the District Court constitute a serious interference with his and the second applicant's right to respect for family life. As was highlighted by the European Court of Human Rights in *Kutzner*, the “mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life” (*Kutzner v. Germany*, application no. 46544/99, judgment of 26 February 2002, § 58). However, the measure contested by the applicants has a severe impact on the first applicant's ability to visit the second applicant and spend time with her, almost negating it.
- 15.6. According to Article 74 of the Family Code, the restriction of parental rights results in the parent's losing their right to be personally involved in the upbringing of their child. Article 75 of Family Code further provides that a parent whose parental rights are restricted “*may be allowed* to have contacts with the child” but only with the consent of the child's guardian or a local guardianship authority. The law does not *guarantee* any visiting rights to a parent whose parental rights have been restricted. Consequently, the first applicant does not have a *right* to visit and spend time with his daughter, for such visits are entirely dependent on the consent of other parties whose discretion in granting or withdrawing their consent the law does not regulate.
- 15.7. In the present case the interference with the applicants' right to respect for family life is particularly severe on account of the second applicant's young age (aged 4 at the material time). When a child is so young, “imposing serious restrictions on visiting rights could only lead to the [child]'s increased alienation from their parents.” (see *Kutzner*, § 79).
- 15.8. The applicant Mr. Kocherov submits that the restriction of his parental rights was not “in accordance with the law” as the relevant legislative provision (Article 73 of the Family Code) allows restricting parental rights only if the child's continuing with the respective parent poses *danger* to the child (see § 15.3 above). The applicant's

dangerousness with regard to his child was not demonstrated by the district court. In fact, no attempt was made by the court to assess this criterion at all. The court's decision is completely devoid of any analysis of what risk the applicant could pose to his child and in what manner – or of any evidence shedding light on this issue. Nor can any proof showing the applicant's "dangerousness" be found in the evidence on which the court relied, which includes testimonies of staff of the Children's Home and the medical opinions.

- 15.9. It appears that the District Court understood "dangerousness" of the first applicant in different ways (see §§ 14.10.1 – 14.10.5 above). Firstly, referring to the written statements of the Children's Home staff, the district court concluded that it would be "stressful" for the girl to be placed with her parents. The district court never assessed any *prima facie* evidence regarding the nature of the first applicant's communication with his daughter. However, as follows from the statement of the Children's Home (*see document 7 at page 125*) it was no longer a relevant issue as "the period of the girl's fear of her parents had passed, previously, when she had learned that she would be given to her father, she was afraid of communicating with him". In any case the applicants submit that to start living in another place, even with an adoptive family, would be case stressful for the child who had spent her entire four years of life in the Children's Home.
- 15.10. Thus, the applicants submit that a stress as a consequence of the child placement under the applicant's custody is not the lawful basis for restricting the first applicant's parental rights under Article 73(2) of the Family Code and therefore their family rights under Article 8 of the Convention were not restricted "in accordance with the law".
- 15.11. With regard to the second ground for restricting the first applicant's parental rights, namely his former history of living in a social care home, it may be understood as "dangerousness" in a passive sense, i.e. it would be dangerous for the child to live with the parent who lacks housekeeping skills. However, in the instant case the district court decided to restrict the first applicant's rights on a mere presumption that anyone who had lived in a social care home lacks adequate skills for housekeeping and raising his children. The district court disregarded the fact that before the first applicant was discharged from the social care home he had been assessed by the medical commission which had established that during his stay at the social care home since 1983 the applicant worked, and he had no contraindications to live independently or to raise his child.
- 15.12. Although the interest of a child may justify certain scrutiny of a parent's ability to raise the child, the applicants ask the European Court to conclude that the national authorities' margin of appreciation is narrower when there is a biological tie between the parent and the child. In the present case there is nothing to indicate that the first applicant would be unable to secure adequate care or living standards to his child, the second applicant. Moreover, in accordance with the guardianship authority's assessment of the first applicant's living conditions of 28February 2012 (*see document 4*) all necessary conditions related to setting up his apartment for bringing up his child had been met. The first applicant secured medical insurance and a place at a kindergarten for his daughter. Russian law does not require biological parents to prove their ability to raise children or their housekeeping skills as a prerequisite for exercising their parental rights. It follows that the applicant's Article 8 rights were not restricted "in accordance with the law" on this limb either.

- 15.13. As to the district court's finding that there was no reliable evidence that it would be safe for the second applicant to live with the first applicant, it should be noted that at no stage of the proceedings was evidence to the contrary produced. Remarkably, the only medical/psychiatric evidence the court had at its disposal – the medical report of the Social Care Home no. 1, which had observed the first applicant for many years—stated that his mental condition did not interfere with his ability to take care of his daughter and to bring her up (*see documents 8-9*).
- 15.14. With regard to the fact that the second applicant's mother Ms. Natalia Sergeyeva, who would visit the child at the applicant's place of residence, was legally incapable, Mr. Kocherov argues that this has no relevance to restricting his parental rights. Legal incapacity is a formal status and does not mean that the person is dangerous to others. Ms. Sergeyeva's parental rights were already restricted by virtue of the incapacity judgment. As follows from the district court judgment there was no single indication that Ms. Sergeyeva's mental health was in any way dangerous to the child and that is why during the child's stay at the Children's Home her mother was allowed to visit her. In any case, the mental health of the child's mother cannot serve as the lawful basis for restricting the first applicant's parental rights.
- 15.15. The applicants further argue that the district court's decision to restrict the first applicant's parental rights because at the time of the hearing his monthly income was not sufficient to secure normal material conditions for the second applicant was arbitrary. In accordance with the Resolution of the St. Petersburg Government no. 221 of 14 March 2012 the living wage in St. Petersburg was (at the material time) 6910.90 roubles for adults and 5461.39 for children. Thus, the first applicant's income of 15,000 roubles clearly exceeded these figures. In any case, as the European Court held in *Savinyy v. Ukraine*, cited above, "the mere fact that a child could be placed in a more beneficial environment for his or her upbringing does not on its own justify a compulsory measure of removal" (§ 50). The Court took the view that "[N]either can this measure be justified by a mere reference to the parents' precarious situation, which can be addressed by less radical means than the splitting of the family, such as targeted financial assistance and social counselling (*ibid.*). Taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit. It cannot, therefore, be justified without prior consideration of the possible alternatives and should be viewed in the context of the State's positive obligation to make serious and sustained efforts to facilitate the reuniting of children with their natural parents (§ 52). Accordingly, restriction of the first applicant's rights with reference to the living wage both lacked a legal basis and was not proportional in the absence of consideration of less restrictive measures.
- 15.16. The applicants further submit that the restriction of Mr. Kocherov's parental rights was not "necessary", for it served no discernable purpose and did not advance the well-being of the child in any manner. Moreover, such a decision has exposed the second applicant to an indefinite stay in an institution, rather than living with her one parent and having regular contact with the other, based solely on her parents' status as disabled persons.
- 15.17. The applicants recall that the margin of appreciation accorded to national authorities with regard to their interference with parental rights vary:

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. In particular when deciding on custody, the Court has recognised that the authorities enjoy a

wide margin of appreciation. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the rights of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed. (*Glesmann v. Germany*, Application no. 25706/03, judgment of 10 January 2008, § 103; see also *Moser v. Austria*, Application no. 12643/02, Judgement of 21 September 2006, § 66, and *Kutzner*, § 67.)

- 15.18. The measure imposed on the first applicant goes beyond the issue of custody over child - which had been resolved before the district court restricted the applicant's parental rights - and severely curtails the applicant's access to his child (see §§ 15.4-15.6). Therefore, a strict scrutiny of the domestic court's decision is called for.
- 15.19. The restriction of the first applicant's parental rights serves no discernable purpose in terms of advancing the interests and well-being of the child. It is of crucial importance that the child was already officially in the custody of the Children's Home (and the applicant had not contested this measure while he had been unable to take care of his daughter). The applicant himself recognised that living at the Children's Home was better for the child as he could not take the child to his ward shared with other male residents at the social care home. Under Russian law, even without restricting the applicant's parental rights, the Children's Home has broad powers which include the right to decide on the methods and manner of the child's upbringing and education. Remarkably, the Children's Home had not raised the issue of restricting the first applicant's parental rights for over four years while the second applicant was in its care, and decided to do so only after the first applicant had expressed his intention to take the child to his home.
- 15.20. However, the district court's decision does not explain how *further* limitation of the first applicant's rights in addition to placing the child under the state custody – the measure that was already in place – advance the interests of the child or why it was required at all. Whereas the bulk of responsibilities related to the child's care was already transferred to the guardian (the Children's Home), this additional restrictive measure curtailing the first applicant's rights was clearly unjustified.
- 15.21. The district court's failure to establish the criteria required by Russian law for restricting parental rights and to demonstrate the necessity of the restriction in question was not in any way remedied by the appellate court (the St Petersburg City Court) which, in its decision of 17 July 2012, rejected the applicant's appeal. The appeal court did not consider any evidence or carry out its own assessment of the first applicant's condition and the danger he supposedly posed to his child. The court relied completely on the statements made by the Children's Home which were not corroborated by any evidence. Therefore, the appeal decision has the same fundamental flaws as that by the District Court.
- 15.22. Consequently, the applicants submit that there has been a violation of both their rights to respect of family life, contrary to guarantees set forth in Article 8 of the Convention.

Violation of Article 14 taken in conjunction with Article 8

15.23. The first applicant Mr. Kocherov further argues that he was discriminated on the grounds of his mental disability in violation of Article 14 taken in conjunction with Article 8.

15.24. Article 14 reads:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

15.25. Although mental disability is not expressly listed in Article 14, it clearly belongs to the “other status” category of impermissible grounds for discrimination (see *Kiyutin v. Russia*, no. 2700/10, judgment of 10 March 2011, § 57). The Court has recognised people with mental disabilities as a particularly vulnerable group that has faced considerable discrimination (*Alajos Kiss v. Hungary*, Application no. 38832/06, judgment of 20 May 2010; *Kiyutin v. Russia*, § 63). The Convention on the Rights of Persons with Disabilities (CRPD), which Russia ratified on 3 May 2012, also expressly prohibits discrimination on the basis of disability (Article 5). The CRPD goes on to specifically prohibit any form of discrimination on grounds of disability in all matters relating to family and parenthood (Article 23). The applicant recalls that in the enjoyment of his right to respect for family life under Article 8 of the Convention, Article 14 “affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations” (see *Hoffmann v. Austria*, no. 12875/87, Judgment of 23 June 1993, §31). The applicant believes that the above analysis of the Russian courts’ decisions shows that the restriction on his parental rights lacked an “objective and reasonable justification”, that is, was “not justified by a ‘legitimate aim’” and lacked a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” and, therefore, it was discriminatory (see *Hoffmann*, §33).

15.26. From the reasoning of the Russian courts and the evidence they relied on, it is clear that the sole basis for the measure was his mental disorder, his history of being a resident of a social care institution for persons with mental disabilities, as well as the mental disability of the child’s mother. Indeed, the seeds of such discriminatory treatment of a parent with mental disability can be found in the legislation itself (Article 73(2) of the Family Code which was the basis for the decision lists mental disorder as one of possible causes of the need for the measure). However, the law requires much more than simply the presence of a mental disorder: the key criterion contained in the relevant provision is danger to the child arising out of the child’s remaining in her parent’s care. The applicant has already shown that the Russian courts did not advance any evidence suggesting the applicant posed danger to his child (quite to the contrary, the medical reports stated clearly that there was no danger and the applicant’s capacity as a parent was not affected). Therefore, if the applicant’s mental disability was taken out of the picture (i.e. if he did not have any), the Russian courts would not have had even an *appearance* of any ground for restricting his parental rights. Therefore, in similar circumstances any other person who does not have a mental disorder would not have been subjected to the treatment the applicant suffered.

- 15.27. In accordance with Article 23 of the UN CRPD, Russia is under an obligation to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to parenthood. In particular, the state bears a positive obligation to render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities. In the instant case the national authorities have never considered important to offer the applicant – should it be needed due to his mild intellectual disability – necessary support in exercising his parental duties. Although the applicant, as a person with certified disability, has the right to social support under Russian law, the district court decided to strip him of his parental rights entirely instead of calling for the guardianship authority to secure necessary social assistance to the applicant in the best interest of the child so as to enable reunification of the family.
- 15.28. Consequently, the first applicant submits that he was subject to a discriminatory difference in treatment in relation to his parental rights, and this difference was based simply on his mental disability and cannot be objectively and reasonably justified, and requests the Court to find a violation of Article 14 in conjunction with Article 8.

IV. STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

16. *Final decision:*

Decision of the St Petersburg City Court of 17 July 2012 rejecting the first applicant's appeal and upholding the judgment of the Frunzenskiy District Court of 20 March 2012.

17. *Other decisions (in chronological order):*

20 March 2012 Judgment of the Frunzenskiy District Court of St Petersburg restricting the applicant in his parental rights.

18. *Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.*

18.1. There are no more effective remedies available to the applicant under Russian law.

18.2. As **regards the admissibility of this application**, two issues arise under Article 35 of the Convention:

a) the standing before the Court of Mr. Kocherov (the first applicant) with regard to representing second applicant; and

b) the exhaustion of domestic remedies by the second applicant.

The applicants submit that both the requirements have been satisfied.

18.3. Since the first applicant's parental rights were restricted under Russian law he has lost the right to act on behalf of the second applicant (Article 74 of the Family Code). In the circumstances comparable to the present case the European Court held that national criteria relating to *locus standi* are not decisive for the purposes of determining biological parents' rights to introduce complaints on behalf of their children (see, *P., C. and S. against the United Kingdom*, admissibility decision, no. 56547/00, 11 December 2001). Regarding the apparent conflict of interest between a child and her parents who have lost their parental rights, the Court has previously found that children should be able to apply to the Court even, or indeed especially, if they are represented by natural parents who are in conflict with the authorities,

criticising their decisions and conduct as not being consistent with the rights guaranteed by the Convention. Otherwise, in the event of a conflict over a minor's interests between a natural parent and others persons appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention (*ibid.*). The applicants ask the Court to find these principles applicable to the present case and to declare that the first applicant has standing to act on behalf of his child (the second applicant) for purpose to apply to the European Court.

- 18.4. An appeal to the St Petersburg City Court was the last effective remedy available to the first applicant under Russian law. The second applicant was not party to the proceedings before the Frunzenskiy District Court on restricting her father's parental rights, and therefore she has no effective domestic remedy at her disposal.

V. STATEMENT OF THE OBJECT OF THE APPLICATION

- 19.1 The objective of this application is a finding by the European Court of Human Rights of violations of all rights alleged herein (Article 8 with regard to both applicants and Article 14 in conjunction with Article 8 of the Convention with regard to the first applicant). In the applicants' opinion, the most appropriate redress would be restoration of the first applicant's parental rights, releasing the second applicant into her father's custody and payment of just compensation and the reimbursement of legal fees.
- 19.2 The applicants reserve the right to submit in due course their claims under Article 41 of the Convention for their costs and expenses associated with this application as well as for their pecuniary and non-pecuniary damages.

VI. STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

20. No complaint has been submitted on behalf of the applicants to any other international procedure of investigation or settlement concerning the incidents which have given rise to this application.

VII. LIST OF DOCUMENTS

- 21.
1. Judgment of the Smolninskiy District Court of St. Petersburg of 6 July 2011.
 2. Medical report of Psycho-neurological Social Care Home No. 1, of 10 October 2011.
 3. Application of the St. Petersburg Children's Home no. 3 for restriction of the applicant's parental rights.
 4. Guardianship authority's assessment of the applicant's living conditions, 28 February 2012.
 5. Judgment of the Frunzenskiy District Court of St. Petersburg of 20 March 2012.
 6. Appeal against the 20 March 2012 judgment.
 7. Minutes of the court hearing of 20 March 2012.
 8. Report of Psycho-neurological Social Care Home No. 1, of 14 February 2012.
 9. Medical report of Psycho-neurological Social Care Home No. 1, of 22 February 2012.
 10. Decision of the St. Petersburg City Court on the applicant's appeal, of 17 July 2012.
 11. Certificate of the Children's Home no. 3 of 24 December 2009.
 12. Letter of Social Care Home no. 1 of 21 October 2010.

13. Letter of Municipal Authority no. 76 of 26 May 2011.
14. Letter of Social Care Home no. 1 of 6 June 2011.
15. Power of attorney.

VII. DECLARATION AND SIGNATURE

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

17 January 2013, St. Petersburg

On behalf of the applicants

Dmitri Bartenev,
Attorney at law