



Ban on US nationals adopting Russian children led to unlawful discrimination

In today's **Chamber** judgment¹ in the case of **A.H. and Others v. Russia** (application nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life) of the European Convention on Human Rights

The applications were brought by 45 US nationals: both on their own behalf, and on behalf of 27 Russian children. In late 2012, the US applicants had been in the final stages of procedures to adopt the Russian children, many of whom required specialist medical care. However, after a Russian law had been passed which banned adoptions of Russians by US nationals, all of these procedures were abruptly halted. The applicants claimed that, because the proceedings had been at a late stage, a bond had already formed between the adults and children. They complained that the ban had violated their right to family life, that it had been discriminatory, and that it had amounted to ill-treatment of the children (as it prevented them from receiving specialist medical care in the US).

The Court found that the adoption ban had unlawfully discriminated against the prospective parents. In particular, this was because it had prevented the adoption of Russian children by the US applicants purely on the basis of the prospective parents' nationality; and because such a ban had been disproportionate to the Government's stated aims, given that it had been retroactive, indiscriminate, and was applied irrespective of the status of proceedings or the individual circumstances. However, the Court found inadmissible the complaint that the ban had caused ill-treatment of the children, as it found that they had received adequate medical treatment in Russia.

Principal facts

Between 2010 and 2012, the US applicants started proceedings for the adoption of certain children from Russia. Many of the prospective adoptive children suffer from serious health issues (such as Down syndrome, developmental disorder and serious physical illnesses) and require specialist medical care. In most cases, the US applicants had received a positive decision from the Russian authorities regarding their suitability to become a child's adoptive parents, and the impossibility of placing the child in a Russian family. As part of the adoption procedure, the US applicants obtained a referral to visit the child concerned, which enabled them to spend several days with him or her at the respective orphanage – where they re-affirmed their formal agreement to adopt the child. In some cases, according to the applicants, the prospective parents had formed a bond with the child even before initiating the adoption procedure, and one case concerned the adoption of the brother of a previously adopted child. By the end of 2012, most of the US applicants had completed all the requisite steps of the adoption procedure, prior to submitting the application to court.

However, on 21 December 2012 the Russian State Duma adopted the Federal Law no.272-FZ. Among other measures, this banned the adoption of Russian children by US nationals. The law entered into

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

force on 1 January 2013. Proceedings were halted in all cases where the decision on adoption had not been delivered before 1 January 2013, irrespective of the state of the proceedings.

As a result of the new law, all of the US applicants' adoption procedures were discontinued. Their attempts to pursue the applications in the Russian courts were rejected.

The law received widespread publicity, leading to a protest against it in Moscow, criticism from Amnesty International and Human Rights Watch, a letter to President Putin from 48 members of the US congress, and a Resolution in the Parliamentary Assembly of the OSCE. The law also received negative coverage in the international media: most of the critical commentators argued that it was politically motivated and detrimental to the children's interests.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained that, given that they had been at an advanced stage of the adoption procedure and a bond had already been formed between the prospective parents and the children, the application of the adoption ban to them had been an unlawful and disproportionate interference with their family life. Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8, they complained that the ban had discriminated against the prospective parents on the grounds of their US nationality. Finally, they relied on Article 3 (prohibition of ill-treatment) to complain that most of the children concerned had been in need of special medical care, and that depriving them of this by preventing them from being adopted in the United States had amounted to treatment prohibited by Article 3.

The application was lodged with the European Court of Human Rights on 22 January 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Strike Out and Admissibility

The Court struck out the application of J.R.V. and M.L.V., as they had withdrawn their complaints. The court also declared inadmissible part of one of the applications, insofar as it was submitted on behalf of the previously adopted daughter of two of the US applicants. This is because the daughter had not been a party to the adoption proceedings, and therefore could not claim to be a victim of alleged violations of the Convention.

Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life)

The Court noted that the alleged discrimination had taken place against the prospective parents (due to their US nationality), but not the children. The Court therefore found that the complaints of discrimination by the prospective parents were admissible, but that those made on behalf of the

children were inadmissible. The Court held that the prospective parents had been subjected to a discriminatory difference in treatment, in breach of Article 14 taken in conjunction with Article 8.

First, the Court held that there had been a difference between the treatment of US nationals and other foreign nationals. Though Russian law had allowed for intercountry adoption by all foreign nationals on an equal footing, Law no.272-FZ had eradicated such a right for US nationals.

Second, the Court held that this difference in treatment had been disproportionate and discriminatory. The Government had justified the ban by referring to two aims: protecting children from harm (citing a number of highly-publicised instances of ill-treatment of Russian children adopted by US nationals); and the encouragement of adoption by Russians. The Court held that, though these aims had been legitimate, it had doubts as to whether the ban had been an adequate response to them. An agreement between the USA and Russia, the Bilateral Agreement on Adoption, had only recently come into force in November 2012. The Agreement had directly addressed the problem of ill-treatment, by creating stronger legal safeguards for adoption between the two countries. The Government had failed to provide any evidence of incidents of ill-treatment having occurred after the Agreement had come into effect. Furthermore, in relation to the stated aim of encouraging more adoption by Russians, the Court noted that the Bilateral Agreement had restated the provision of Russian law, which only allowed intercountry adoption of a Russian child if it was impossible to place him or her with a family in Russia.

The Court also noted the abrupt way in which the ban had been implemented. When an adoption procedure reaches a late stage it involves considerable emotional resources, as an attachment begins to form between the adults and the child. In this case, the US applicants had been in the final stages of the adoption procedure. Given the state of the law when they had begun the procedure, they could fairly have expected their cases to have been assessed on their merits. Instead, the proceedings had been brought abruptly to an end on account of an automatic ineligibility that unexpectedly came into effect over ten days. The Government had failed to show that there had been compelling reasons to justify such a retroactive and indiscriminate blanket ban on all prospective US parents, irrespective of the status of proceedings or the individual circumstances. The measure had therefore been disproportionate to the Government's aims.

Article 8 (right to respect for private and family life)

Having regard to its finding under Article 14 taken in conjunction with Article 8, the Court held that it was not necessary to examine whether there had been a violation of Article 8 taken alone.

Article 3 (prohibition of ill-treatment)

Referring to detailed information provided by the Government concerning each of the children involved, the Court concluded that they had received adequate medical care in Russia. The applicant's complaint in this regard had therefore not disclosed any issue under Article 3, and was ruled manifestly ill-founded and inadmissible.

Just satisfaction (Article 41)

The Court held that Russia was to pay each pair of prospective parents (or, where an applicant had made their application alone, to that person individually) 3000 euros (EUR) in respect of non-pecuniary damage, and 600 US dollars (USD) in respect of costs and expenses (except in respect of two applicants, whose lawyer had acted pro bono).

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.