THIRD SECTION

CASE OF ROMANOV v. RUSSIA

(Application no. 76594/11)

JUDGMENT

STRASBOURG

9 July 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Romanov v. Russia,

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

 Georgios A. Serghides, *President,* Branko Lubarda, Erik Wennerström, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1.  The case originated in an application (no. 76594/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Anatolyevich Romanov (“the applicant”), on 27 October 2011.

2.  The applicant, who had been granted legal aid, was represented by Mr G. Malishevskiy, a lawyer practising in Volgograd. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  On 18 May 2015 notice of the application was given to the Government.

4.  The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

* 1. THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1974 and lives in Volgograd.

6.  On 18 August 1995 the applicant’s girlfriend A. gave birth to a son, S.

7.  On 15 May 1997 the applicant formally acknowledged his paternity of S. and was registered as his father in S.’s birth certificate.

8.  On 11 April 2002 the applicant and A. were deprived of parental authority over S. S.’s maternal grandmother R. was subsequently appointed as his guardian.

9.  In 2003 the applicant was convicted of non-payment of child maintenance. Subsequently the domestic courts on several occasions confirmed his continued obligation to pay child maintenance.

10.  On 2 November 2010 A. told the applicant that he was not S.’s father. A DNA paternity test confirmed that he was not S.’s biological father.

11.  On 3 December 2010 the applicant brought a court action for annulment of his adoption of S. On 22 December 2010 the local childcare authority stated that the applicant had not adopted S. but had recognised his paternity of him. He had known at that time that he had not been S.’s biological father.

12.  The applicant then withdrew his action for annulment of adoption and on 1 February 2011 submitted a new civil action contesting his paternity of S.

13.  On 21 March 2011 the Gorodichshenskiy District Court of the Volgograd Region allowed the applicant’s claim and terminated his paternity of S.

14.  On 26 May 2011 the Volgograd Regional Court quashed the judgment on appeal and rejected the applicant’s claim. It noted that the case was governed by the RSFSR Marriage and Family Code of 30 July 1969 because the child had been born before 1 March 1996, that is to say before the new Family Code of the Russian Federation came into effect. The RSFSR Marriage and Family Code set a one-year limitation period for an action contesting paternity, the starting point of which was calculated from the date the putative father was informed that he had been registered as the father. The applicant had voluntary acknowledged his paternity of S. in 1997. He had brought a court action contesting his paternity in 2010, that is after the expiry of the one-year time-limit. His action was therefore
time-barred.

* 1. RELEVANT DOMESTIC LAW

15.  The RSFSR Marriage and Family Code of 30 July 1969 provided that a person entered in the birth register as the father of a child could contest the paternity within one year of the date he became or should have become aware that the entry had been made (Article 49).

16.  The Family Code of the Russian Federation of 29 December 1995 (in force from 1 March 1996) provides that maternity or paternity of a child may be contested before a court by the person who is recorded in the child’s birth certificate as his/her mother or father, by the child’s biological mother or father, by the child himself/herself once he/she attains the age of majority, by the child’s guardian or, if the child’s parent is legally incapable, by the parent’s guardian (Article 52 § 1). It does not set any
time-limit for bringing an action.

17.  Resolution no. 9 of the Plenary Supreme Court of the Russian Federation of 25 October 1996 “On application by courts of the Family Code of the Russian Federation to the cases concerning paternity and child maintenance” established that, in respect of children born before 1 March 1996, the RSFSR Marriage and Family Code was applicable and, accordingly, the time-limit for contesting paternity was one year from the date the person became or should have become aware of his registration as the child’s parent.

18.  A court may deprive a parent of parental authority if he or she avoids the parental obligations, such as the obligation to pay child maintenance; refuses to collect the child from the maternity hospital, any other medical, educational, social or similar institution; abuses the parental rights; mistreats the child by resorting to physical or psychological violence or sexual abuse; suffers from chronic alcohol or drug abuse; or has committed a premeditated criminal offence against the life or health of his/her children or spouse (Articles 69 of the Family Code).

19.  The parent deprived of parental authority retains the obligation to support the child financially. The child retains property rights, including inheritance rights, to the housing and other belongings obtained as a result of his relation to the parent deprived of parental authority. The child also retains inheritance rights in respect of that parent’s property (Article 71 §§ 2 and 4 of the Family Code).

THE LAW

* 1. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20.  The applicant complained under Article 8 of the Convention that he had been unable to contest paternity because the statute-of-limitations had started to run from the date the birth had been registered. Article 8 reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A.  Admissibility

21.  The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

22.  The Government submitted that the domestic decisions had had a basis in the domestic law applicable to children born before 1 March 1996. The short one-year time-limit for contesting paternity established by that law had been in the best interest of the children. The Government further argued that the present case was different from the case of *Shofman v. Russia* (no. 74826/01, 24 November 2005). The applicant, who had not been married to S.’s mother, had recognised the paternity of S. of his own free will, although – according to the childcare authorities – he had known already at that time that he was not his biological father (see paragraph 11 above). That had been indeed the reason why the applicant had initially asked for the annulment of adoption. Moreover, S.’s maternal grandmother had stated to the domestic courts that the applicant had known from the beginning that he was not S.’s biological father. Even if the applicant had not known that he was not S.’ biological father, he ought to have had doubts about his paternity, given his girlfriend’s immoral way of life – in particular her abusive consumption of alcohol, their frequent fights and separations and her occasional relationships with other men. However, it had not been until more than fifteen years later that the applicant had lodged a civil action contesting his paternity. He had not moreover asked for an extension of the time-limit. The case was therefore similar to the cases of *Rasmussen v. Denmark* (28 November 1984, Series A no. 87); *Yildirim v. Austria* ((dec.), no. 34308/96, 19 October 1999); *Wulff v. Danmark* ((dec.), no. 35016/07, 9 March 2010); and *A.L.* *v. Poland* (no. 28609/08, 18 February 2014). Lastly, the Government submitted that S. had never lived with the applicant and had seen him occasionally only. S. was currently an adult and the applicant was no longer under an obligation to pay child maintenance. The annulment of his paternity therefore no longer had any practical implications for the applicant.

23.  The applicant asserted that he had believed that he was S.’s biological father when he had recognised his paternity of him. The reason why he had initially asked for the annulment of adoption had been that he was unassisted by counsel and could not therefore understand legal terminology. As soon as he had retained counsel and had had a legal consultation, he had amended his claim. The childcare authorities’ statement that he had known that he was not S.’s biological father had not been supported by any evidence. Nor had he had any doubts about his paternity because he and A. had been in a relationship. At that time A. had not abused alcohol and he had had no reason to believe that she had been unfaithful to him. Before 2010 he had not therefore had any doubts about his paternity of S. He had not seen S. often after his separation from A. in 2000 because A. and her relatives had prevented him from visiting his son. He submitted that the present case was therefore identical to the case of *Shofman* (cited above) where a violation of Article 8 had been found. In particular, he had been prevented from instituting proceedings to contest paternity because, when he had learned that he was not S.’s biological father, his claim had become time-barred.

24.  The Court has previously examined cases in which a man wished to institute proceedings to contest the paternity of a child. It has found on numerous occasions that proceedings concerning the establishment of or challenge against paternity concerned that man’s private life under Article 8, which encompasses important aspects of one’s personal identity (see *A.L.* *v. Poland,* cited above, § 59, with further references). In the present case the applicant sought to challenge his declaration of paternity on the basis of biological evidence. There is a link between the applicant’s wish to have his earlier acknowledgment that he was the father of S. revoked and the applicant’s private life. Accordingly, the proceedings at issue concerned the applicant’s private life and Article 8 was applicable to the facts of the present case.

25.  The Court has earlier found that Article 49 of the RSFSR Marriage and Family Code – applicable to paternity disputes involving children born before 1 March 1996 – established an inflexible one-year time-limit for contesting paternity with time running from the registration of birth irrespective of the putative father’s awareness of the circumstances casting doubt on his paternity. It made no exceptions to the application of that time‑limit and, in particular, made no allowance for men who did not become aware of the biological reality concerning the child until more than a year after the registration of the birth, automatically preventing such men from disclaiming paternity. Such an inflexible time-limit could not be considered “necessary in a democratic society” as it did not permit to take into account the particular circumstances of the case and the wishes of those concerned and therefore failed to strike a fair balance between the general interest of the protection of legal certainty of family relationships and the registered father’s right to have his paternity contested in the light of the biological evidence. It was therefore not compatible with the obligation to secure effective “respect” for private and family life (see *Shofman*, cited above, §§ 36-46).

26.  The Court is not convinced by the Government’s argument that the present case is different from *Shofman*. The Government alleges that at the time when the applicant acknowledged his paternity of S. he either knew that he was not his biological father, or should at least have had doubts about his paternity. The Court however notes that when rejecting the applicant’s claim as time-barred, the Regional Court limited its assessment to establishing that the applicant had brought a court action contesting paternity more than a year after he had been registered as S.’s father following his acknowledgment of paternity. It did not examine whether at that time the applicant had known or should have known that he was not S.’s biological father. Indeed, it directly and literally applied Article 49 of the RSFSR Marriage and Family Code which was formulated in rigid terms, admitting of no exceptions to the one-year time-limit and leaving no room for an assessment of whether the registered father had reasons to doubt his paternity or indeed knew that he was not the biological father at the moment of the registration of his paternity (see, by contrast, *A.L.* *v. Poland,* cited above, § 78, where the domestic courts had established that the applicant had recognised his paternity in full awareness that he might not have been the biological father; see also *Phinikaridou v. Cyprus*, no. 23890/02, § 63, 20 December 2007). In these circumstances, in the absence of a proper judicial review of these issues by the domestic authorities, the Court cannot speculate as to whether or not the applicant had acknowledged his paternity of S. in full awareness that he might not be the biological father (see, for a similar reasoning, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 454 and 455, 7 February 2017) and cannot therefore accept the Government’s argument based on unverified factual allegations.

27.  Nor is the Court convinced by the Government’s argument that the applicant could have asked for an extension of the time-limit. The Court notes that, as established in *Shofman*, Article 49 of the RSFSR Marriage and Family Code provided for no exceptions for the application of the one-year time-limit, including in situations where the registered father become aware of the biological reality after the expiry of that time-limit. The Government did not refer to any fact or argument, such as examples of established judicial practice, capable of persuading it to reach a different conclusion in the present case. In such circumstances an application for an extension of the time-limit was bound to fail.

28.  Given that in the present case, like in *Shofman*, the one-year time‑limit established by Article 49 of the RSFSR Marriage and Family Code was applied automatically without any assessment of the particular circumstances of the case, the Court does not see any reason to reach a conclusion different from its finding in the *Shofman* judgment.

29.  The Court finds accordingly that there has been a violation of Article 8 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A.  Damage

31.  The applicant claimed 384,806 Russian roubles (RUB) in respect of pecuniary damage, representing the amount of child maintenance he had paid to S. plus interest on that amount. He also claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

32.  The Government contested the claims.

33.  The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim (see *Ostace v. Romania*, no. 12547/06, § 58, 25 February 2014). On the other hand, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B.  Costs and expenses

34.  The applicant also claimed RUB 32,071 for the costs and expenses incurred before the domestic courts and the Court.

35.  The Government contested the claims.

36.  Regard being had to the amount of legal aid received by the applicant, the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 38 for postal expenses.

C.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the application admissible;

2.  *Holds* that there has been a violation of Article 8 of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 38 (thirty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 9 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Georgios A. Serghides
 Deputy Registrar President