

Numéro de dossier  
*File-number*

**COUR EUROPÉENNE DES DROITS DE L'HOMME**  
**EUROPEAN COURT OF HUMAN RIGHTS**  
**ЕВРОПЕЙСКИЙ СУД ПО ПРАВАМ ЧЕЛОВЕКА**

Conseil de l'Europe - *Council of Europe*  
Strasbourg, France - *Страсбург, Франция*

**REQUÊTE**  
**APPLICATION**  
**ЖАЛОБА**

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,  
ainsi que des articles 45 et 47 du Règlement de la Cour

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

*в соответствии со статьей 34 Европейской Конвенции по правам человека  
и статьями 45 и 47 Регламента Суда*

**IMPORTANT:** La présente requête est un document juridique et peut affecter vos droits et obligations  
*This application is a formal legal document and may affect your rights and obligations.*

**ВАЖНО:** Данная жалоба является официальным юридическим документом и может повлиять на Ваши права и обязанности.

## 1. LES PARTIES

### *THE PARTIES*

### *СТОРОНЫ*

#### A. LE REQUÉRANT / LA REQUÉRANTE

##### *THE APPLICANT*

##### *ЗАЯВИТЕЛЬ*

1. Nom de famille / *Surname* / *Фамилия заявителя* **Galaeva**  
Prénom (s) / *First name (s)* / *Имя(имена) и отчество* **Marina Ivanovna**  
Sexe: **féminin**                      *Sex: female*                      *Пол: женский*  
Nationalité / *Nationality* / *Гражданство* **Russian**  
Profession / *Occupation* / *Род занятий* **retired**  
Date et lieu de naissance / *Date and place of birth* / *Дата и место рождения* **06 May 1959**

2. Nom de famille / *Surname* / *Фамилия заявителя* **Galaev**  
Prénom (s) / *First name (s)* / *Имя(имена) и отчество* **Sergei Alexandrovich**  
Sexe: **masculin**                      *Sex: male*                      *Пол: мужской*  
Nationalité / *Nationality* / *Гражданство* **Russian**  
Date et lieu de naissance / *Date and place of birth* / *Дата и место рождения* **30 March 1998**

3. Nom de famille / *Surname* / *Фамилия заявителя* **Zudov**  
Prénom (s) / *First name (s)* / *Имя(имена) и отчество* **Arkadiy Alexandrovich**  
Sexe: **masculin**                      *Sex: male*                      *Пол: мужской*  
Nationalité / *Nationality* / *Гражданство* **Russian**  
Profession / *Occupation* / *Род занятий* **construction worker (монтажник)**  
Date et lieu de naissance / *Date and place of birth* / *Дата и место рождения* **14 December 1962**

*Domicile / Permanent address / Постоянный адрес*

*Nom et prénom du / de la représentant(e)<sup>1</sup>*

*Name of representative\* / Имя и фамилия представителя\**

*Adresse du / de la représentant(e) / Address of representative / Адрес представителя*

#### B. LA HAUTE PARTIE CONTRACTANTE

##### *THE HIGH CONTRACTING PARTY*

##### *ВЫСОКАЯ ДОГОВАРИВАЮЩАЯСЯ СТОРОНА*

The Russian Federation

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<sup>1</sup> Si le / la requérant(e) est représenté(e), joindre une procuration signée par le / la requérant(e) en faveur du / de la représentant(e).

*A form of authority signed by the applicant should be submitted if a representative is appointed.*

*Если заявитель действует через представителя, следует приложить доверенность на имя представителя, подписанную заявителем.*

**2. EXPOSÉ DES FAITS**  
**STATEMENT OF THE FACTS**  
**ИЗЛОЖЕНИЕ ФАКТОВ**

1. Igor Galaev (hereinafter – the child), grandson of Marina Ivanovna Galaeva, son of Arkadiy Alexandrovich Zudov and brother of Sergei Alexandrovich Galaev, was born on 26 October 2000 (see Appendix 4)
2. After the birth, his mother, Vera Rostislavovna Galaeva, daughter of Marina Ivanovna Galaeva, refused to take care of him. His father, Arkadiy Alexandrovich Zudov, was not aware of his existence then and had no contact with either the mother or the grandmother. The child was placed in an orphanage.
3. At the time, Marina Ivanovna was raising and providing for Igor's brother, Sergei Alexandrovich, then only 2 years of age, who had also been rejected by his mother Vera Rostislavovna. Although Marina Ivanovna has been his legal guardian since 4 September 2006, she has been taking care of him since he was born.
4. Despite numerous requests to the local authorities, Marina Ivanovna Galaeva was denied any information on where Igor had been placed. It took her two years, given that she had to provide for another young child and that she suffered from temporary health problems, to find out by herself in autumn of 2002, without any assistance from the Russian authorities, where her grandson was being cared for. Indeed, Marina Ivanovna gave birth to a still-born child at about the same time as Igor was born, with the physical repercussions that can normally be expected from such an event, as well as having to cope with the departure of her husband from the family home.
5. Nevertheless, she persevered to find her grandchild and after finally finding the location of the orphanage, in autumn 2002, visited him straight away in the orphan house. She was granted permission by the director of the institution to see her grandchild for the first time.
6. Immediately after that first visit, Marina Ivanovna Galaeva requested in a written letter to the Department of Legal Guardianship of the Administration of the Chkalovskiy district of Ekaterinburg (*otdel opeki administratsii Chkalovskogo raiona goroda Ekaterinburga*) (hereinafter – the Department), that she be granted permission to legally adopt Igor. Her request was rejected on the basis of improper housing : no running water, outdoor lavatory and insufficient square meters.
7. Nonetheless, from that first visit on, Marina Ivanovna visited Igor at least once a month, sometimes more often. Meanwhile, she worked on improving her housing conditions to be able to legally adopt her grandchild. During her visits, she spent time with the child and brought him clothes. She also brought food for him as well as for the seven other children in his group.
8. In 2004, she was forced to stop her visits to the orphanage as her daughter (mother of Igor) got terminally ill and Marina Ivanovna had to take care of her.
9. At that time, when she was forced to stop her visits, she wrote a second letter to the Department asking not to give Igor away to adoption and keep him at the orphanage, as she wanted to legally adopt him as soon as she had the adequate means to take care of him. The child suffers from a minor paralysis on his right arm and right leg.
10. Despite expressing her intention in regards to her grandchild to the authorities in charge, on 15 December 2004, a judgment on the adoption of Igor Galaev was issued and he was

adopted by citizens of the United Kingdom (see Appendix 5). The facts show that Marina Ivanovna and Arkadiy Alexandrovich were not aware of the adoption process for the child and that the judgment on the adoption was based on two fraud documents:

- a written statement signed by the father (Arkadiy Alexandrovich Zudov), as mentioned in the birth certificate of Igor Galaev, on 4 November 2004, where he announced the renunciation of his parents rights on the child and where he “agreed” to his adoption by other persons.

- a document written on 1 November 2004 on behalf of Marina Ivanovna Galaeva stating that “I do not object against the adoption of Galaev Igor Arkadievich born on 26.08.2000...”. (“Я не возражаю против усыновления Галаева Игоря Александровича, 26.08.2000 г.р.”).

11. On 20 July 2006, the daughter of Marina Ivanovna (mother of Igor), died from tuberculosis, according to the death certificate, combined with a low immune system as she also suffered from AIDS.

12. On 4 September 2006, Marina Ivanovna completed the legal adoption of Sergei Alexandrovich (see Appendix 6) and immediately went back to the orphanage to see Igor. The child was not there. Upon her demand she was then informed that the child had been given to adoption, but neither where or to whom.

13. When Marina Ivanovna then contacted the Department to enquire about the two letters she had sent, she was told by Petrova Valentina (representative of the Department) that they had been lost and that it was not possible to get a copy.

14. In 2007, expertise No 1325/06-1 and expertise No 167пр-07 (see Appendix 7) showed that the statements of 1 November 2004 and the statement of 4 November 2004 were in fact neither written or signed by Marina Ivanovna Galaeva and Arkadiy Alexandrovich Zudov respectively. At the time the father was still not aware of the existence of the child as the experts used a sample of his signature obtained from his work place.

15. On 10 September 2007, the authorities refused to initiate a criminal case on the illegal adoption (see Appendix 7).

16. In spring 2008, Marina Ivanovna requested to the police that the father of the child, Arkadiy Alexandrovich, be found and informed of the situation.

17. On 19 October 2009, the applicants then filed a claim before the Sverdlovsk oblast court to ask for a reconsideration of the judgment on adoption of 15 December 2004 based on the newly discovered facts, the fraud documents, according to Chapter 42 of the Russian Civil Procedural Code. *Revision of the Valid Judgments, Rulings, and Decisions Rendered by Presidium of the Court with Supervisory Authority on the Basis of Newly Discovered Facts*. Their claim was rejected on procedural grounds without consideration on the merits on 22 October 2009, based on Article 394 of the Russian Civil Procedural Code (see Appendix 8).

18. On 27 October 2009 (5 November 2009 as stamped by the court on the application), the applicants appealed the decision of 22 November 2009 of the Sverdlovsk oblast court before the Supreme Court of the Russian Federation. They argued the violation of their rights under Article 8(1), 6(1) and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention/ECvHR) and Article 15(4) of the Russian Constitution (see Appendix 9), but the argument was declared irrelevant without due analysis and justification. The Supreme Court maintained on 27 April 2010 the previous decision of 22 October 2009 and refused to consider the application on reconsideration of the

judgment based on Article 394 of the Russian Civil Procedural Code (see Appendix 10).

**3. EXPOSE DE LA OU DES VIOLATION(S) DE LA CONVENTION ET / OU DES  
PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS A L'APPUI  
STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND / OR  
PROTOCOLS AND OF RELEVANT ARGUMENTS  
ИЗЛОЖЕНИЕ ИМЕВШЕГО(ИХ) МЕСТО, ПО МНЕНИЮ ЗАЯВИТЕЛЯ,  
НАРУШЕНИЯ(ИЙ) КОНВЕНЦИИ И/ИЛИ ПРОТОКОЛОВ К НЕЙ И  
ПОДТВЕРЖДАЮЩИХ АРГУМЕНТОВ**

Marina Ivanovna Galaeva, Arkadiy Alexandrovich Zudov and Sergei Alexandrovich Galaev claim that:

**(1) the judgment on adoption based on fraud documents violated their right to respect for family life guaranteed by Article 8(1) of the Convention, and**

**(2) the failure of the Russian Federation to further investigate the judgment on adoption, after the expertise confirmed that the documents were a fraud, is in breach of the positive obligations set out for the State by Article 8(1) of the Convention (right to respect for family life).**

*“Article 8(1). Everyone has the right to respect for his private and family life, his home and his correspondence.”*

**(3) The Sverdlovsk oblast court and the Supreme Court's refusals to reopen the case and reconsider the judgment on the adoption is a breach to Article 6(1) of the Convention (right to a court), and**

**(4) the Supreme Court's failure to address the applicants' only legal argument that the guarantees of the Convention should prevail over national laws, as ordered by Article 15(4) of the Constitution of the Russian Federation, is a violation of their right to a fair trial, in breach of Article 6(1) and in breach of the obligation set out for the State by Article 1 of the ECvHR.**

*“Article 6(1). In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

*“Article 1. The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”*

**(5) the limitations on the access to a court set by Article 394 of the Civil Procedural Code of the Russian Federation combined with the refusal of the courts to make the guarantees of the Convention prevail over domestic laws is a failure by the State to provide an effective national remedy in breach of Article 13 (right to an effective remedy).**

*"Article 13. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

**(6) According to Rule 41 of the Rules of the Court entered into force on 1<sup>st</sup> June 2010, the applicants request that, taking into account the urgency of the adoption matter at stake, priority be given to the present application.**

**(1) The judgment on adoption based on fraud documents violated the right to family life of the applicants guaranteed by Article 8(1) of the Convention (right to respect for family life).**

**(1Ai) Notion of 'family life' under Article 8(1) in the case-law of the European Court of Human Rights (hereinafter – the Court/ECtHR)**

By protecting the right to respect for family life, Article 8 of the Convention presupposes the existence of a family.<sup>2</sup> In *Bronda v. Italy*, the Court stated that the mutual enjoyment by parent and child of each other's company constitutes an essential element of the guarantees provided by Article 8 and that this principle also applies between a child and its grandparents.<sup>3</sup>

Indeed, the Court has specified that the notion of 'family life' under Article 8 includes ties between near relatives such as ties between grandparents and grand-children, since a grandparent can play a "considerable part in family life"<sup>4</sup>.

In *Marckx v. Belgium*, the government challenged the family ties between the child and her grandparents, arguing that there was in fact no evidence of the existence of such a relationship in the present or in the past. The Court disagreed, stating that "there is nothing to prove the absence of actual relations between Alexandra and her grandmother before the latter's death; in addition, the information obtained at the hearings suggests that Alexandra apparently has such relations with an aunt."<sup>5</sup>

In *Angela and Rodney Price v. the United Kingdom*, the Commission also stated that there was evidence that more than a "bare relationship" existed between the applicants and their grandson.

They loved him, showed interest and concern for his and his parents' welfare, and until his reception into care maintained close and regular access to him. The applicants' conduct after D.'s reception into care indicates the strength of their attachment to him. There is clear evidence that "family life" existed between the applicants and their grandson.<sup>6</sup>

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<sup>2</sup> *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 31.) See also *Johnston and Others v. Ireland*, Application no. 9697/82, 18 December 1986, para. 55.

<sup>3</sup> *Bronda v. Italy*, Application no. 22430/96, 9 June 1998, para. 51.

<sup>4</sup> *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 45, *Scozzari and Giunta v. Italy*, Applications nos. 39221/98 and 41963/98, 13 July 2000, para. 221.

<sup>5</sup> *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 46.

<sup>6</sup> *Angela and Rodney Price v. the United Kingdom*, Application to the Commission no. 12402/86, Admissibility and Merits, Article 8 (Art. 8) of the Convention, 9 March 1988.

Moreover, in the matter, cohabitation between the members of a family is not a *sine qua none* condition for the existence of 'family life', as “it cannot conversely be argued that the absence of cohabitation is evidence that no family life existed.”<sup>7</sup>

Furthermore, in *Moustaquim v. Belgium* the ECtHR also acknowledged that 'family life' could exist between siblings and survive to frequent separations and strained relationships.<sup>8</sup>

Finally, the Court has clearly established in its case-law that the right to respect for family life enshrined in the Convention makes no distinction between the legitimate family and the illegitimate family. “Such a distinction would not be consonant with the word "everyone", and this is confirmed by Article 14 (art. 14) with its prohibition, in the enjoyment of the rights and freedoms enshrined in the Convention, of discrimination grounded on "birth".”<sup>9</sup>

### **(1Aii) Application of the notion of ‘family life’ to *Galaeva v Russia* (the facts)**

Where biological ties exist, there should be a strong presumption that family life also exists<sup>10</sup> and apart from the natural parents, other close family relationships are assumed unless their absence is evident or proven.<sup>11</sup> Indeed, “in the Court’s opinion, "respect" for "family life" requires that biological and social reality prevail over a legal presumption.”<sup>12</sup> Hence, although Marina Ivanovna was not the legal guardian of her grandson Igor, the facts show that in addition to being his biological grandmother, she played a “considerable part in family life” of the child and therefore had a close relationship with him that amounted to 'family life' according to the standards of the Court's case-law.

As recognized by the Court in *Angela and Rodney Price v. the United Kingdom*, Marina Ivanovna's conduct after the taking of Igor into public care showed the “strength of her attachment to him”. She persisted, despite the obstacles, to establish and maintain close and regular access to him while he was in the orphanage. The facts of her visits also show that she cared for him, showed interest and concern for his welfare as well as his mother's welfare. Indeed, it should be emphasized that the only reason why she stopped her visits to the child was because of the burden imposed upon her by her own daughter's sickness (mother of Igor). Nevertheless, the second letter written to the Department shows that this was only temporary and that more than a “bare relationship” continued to exist between Marina Ivanovna and her grandson as she still had the intention to legally adopt him.

Moreover, following the Court's reasoning in *Marckx v. Belgium*, where the family ties that the child had with an aunt were taken into consideration to establish the existence of a family life

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7 Ibid.

8 *Moustaquim v. Belgium*, Application no. 12313/86, 18 February 1991, para.35-36.

9 *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 31. See also *Johnston and Others v. Ireland*, Application no. 9697/82, 18 December 1986, para. 55.

10 Leach, Philip. *Taking a Case to the European Court of Human Rights*, Blackstone's Human Right Series, London, 2001, pp.150-151.

11 P. van Dijk and G.J.H. van Hoof. *Theory and Practice of the European Convention on Human Rights*, Third Edition, The Hague, Kluwer Law International, 1998, p.507.

12 *Kroon and others v. the Netherlands*, Application no. 18535/91, 27 October 1994, para. 40.

between the child and her grandmother<sup>13</sup>, the family relationship that Marina Ivanovna had at the time and still has up to this day with Igor's brother should also be emphasized here. Indeed, there is a certain existence of a *de jure* and *de facto* family life between Sergei Alexandrovich and his grandmother, as she has been taking care of him in the family home since he was born and is now, since 2006, his legal guardian, in addition to being his biological grandmother.

Furthermore, it should be stressed that the individuals responsible for the two fraud documents felt the need to forge not only the false renunciation by the natural parents of their rights on their child, but also a false statement by Marina Ivanovna saying that she did not object to the adoption of her grandchild. This, in addition with the fact that the authorities relied on the latter fraud document to issue the 15 December 2004 judgment on the adoption of Igor, is an implicit recognition of Marina Ivanovna's family rights in regards to her grandson.

As for the family ties between the child and his brother, they should be understood as inherent to the family life established between Marina Ivanovna and Igor. Indeed, given the very young age of Sergei Alexandrovich at the time of the stated facts and taking into account that he, without a doubt, was and is part of Marina Ivanovna's family, the relationship that he had with Igor, via their grandmother, amounted to family life. It should be emphasized that an essential aim of the latter efforts to legally adopt Igor and take care of him within the family home was to enable both of her grandsons to grow up together and foster between them a strong and healthy family relationship.

The fact that Igor does not have the same father as Sergei Alexandrovich is of no relevance in this case since the right enshrined in Article 8(1) does not make any distinction between the legitimate and the illegitimate family.

### **(1B) The right to 'respect for family life' under Article 8(1) of the ECvHR and its application to *Galaeva v Russia***

#### **(1Bi) The right to 'respect for family life' and the recognition by the State**

As a general principle established in the ECtHR case-law, in regards to a family tie with a child, "the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth or as soon as practicable thereafter the child's integration in his family."<sup>14</sup>

The United Nations Convention on the Rights of the Child<sup>15</sup>, a legally binding instrument ratified by the Russian Federation on 16 August 1990, also states in its preamble that : "*Convinced that the family, as the fundamental group of society and the natural environment for the growth and*

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13 *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 46.

14 *Kroon and others v. the Netherlands*, Application no. 18535/91, 27 October 1994, para. 32, *Keegan v. Ireland*, Application no. 16969/90, 26 May 1994, para. 50, *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 31, *Johnston and Others v. Ireland*, Application no. 9697/82, 18 December 1986, para. 72.

15 United Nations, Convention on the Rights of the Child, Adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990, Article 5.



*well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.*

Furthermore, the case-law of the ECtHR has determined that the essential ingredient of family life is the right to live together so that family relationships may 'develop normally'<sup>16</sup> and so that members of the family may mutually enjoy 'each other's company'<sup>17</sup>. “Respect for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally.”<sup>18</sup>

Article 8 of the Convention on the Rights of the Child also recognizes the “right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”<sup>19</sup> while Article 5 provides that :

*States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*

Conclusively, since the existence of a 'family life' has been demonstrated, the judgment on the adoption of Igor delivered by the Russian authorities on 15 December 2004 is a failure by the State to enable family ties to develop normally between the child and his grandmother and the child and his brother. Indeed, their right to respect for family life was violated under Article 8(1) of the Convention since the State failed to protect their family relationship with the results that not only were they prevented from enjoying each other's company, but also that Marina Ivanovna was denied the right to raise her grandchild within her family values and traditions.

### **(1Bii) The right to 'respect for family life' and the taking of the child into public care**

The right to respect for family life protects the contact between family members. Moreover, the ECtHR established in its case-law that “the natural family relationship is not terminated by reason of the fact that the child is taken into public care.”<sup>20</sup> In *Olsson v. Sweden*, the Court pointed out the following:

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16 *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 31.

17 *Olsson v. Sweden (I)*, Application no. 10465/83, 24 March 1988, para. 59, see also *W v. the United Kingdom*, Application no. 9749/82, 8 July 1987, para. 59.

18 *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979, para. 45, *Scozzari and Giunta v. Italy*, Applications nos. 39221/98 and 41963/98, 13 July 2000, para. 221.

19 United Nations, Convention on the Rights of the Child, Adopted by the United Nations General Assembly on 20 November 1989 and entered into force on 2 September 1990, Article 8.

20 *W. v. the United Kingdom*, Application no. 9749/82, 8 July 1987, para. 59, see also *Margareta and Roger Andersson*, A.226-A, para 72, 25 February 1992, *Eriksson v. Sweden* judgment of 22 June 1989, Series Application no. 156, p. 24, para. 58.

As for the remaining aspects of the implementation of the care decision, the Court would first observe that there appears to have been no question of the children's being adopted. The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family.<sup>21</sup>

In the case of *Galaeva v. Russia*, not only was there no question of Igor being adopted, but Marina Ivanovna explicitly requested that he not be adopted as she wanted to be granted his legal guardianship. Therefore, the placement of the child in the orphan house should have been a temporary measure and the State actions should have been consistent with the ultimate aim of integrating Igor in his family, which is Marina Ivanovna and Sergei Alexandrovich, as soon as possible. Instead he was given to adoption without the applicants' knowledge, in breach of Article 8(1) of the Convention.

Apart from the judgment on the adoption of 15 December 2004, which is a failure by the State to protect and act in support of the normal development of the family ties previously established, it should be stressed that other numerous actions by the State authorities ran counter to the aim of reuniting the family. As stated by the ECtHR, "the ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other."<sup>22</sup> Therefore, the fact that Marina Ivanovna was repeatedly denied information on the location of her grandchild, before and after the illegal adoption, should also be taken into consideration, as well as the fact that her letters written to the authorities were not considered and allegedly lost.

Moreover, there is no such thing as a right to adopt and as declared by Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights:

Not all orphaned children need adoption, the vast majority of them are cared for by their extended family or close community. Also, not all children in collective centres and other residential facilities are "abandoned", a sizeable proportion of them are placed there temporarily. Generally less than 10 per cent of children in so-called "orphanages" are true orphans.<sup>23</sup>

Furthermore, in accordance with international standards, "inter-country adoption should only take place if all efforts to find a suitable care setting for the child in his or her own community and country have failed."<sup>24</sup>

Article 21 of the Convention on the Rights of the Child also provides that:

*States Parties that recognize and/or permit the system of adoption (...) shall: (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*

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21 *Olsson v. Sweden (1)*, Application no. 10465/83, 24 March 1988, para. 81.

22 *Ibid.*

23 Council of Europe Commissioner's Human Rights Comment, Council of Europe Commissioner for Human Rights, Thomas Hammarberg, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php blogId=1&postId=37&highlight=adoption](http://commissioner.cws.coe.int/tiki-view_blog_post.php blogId=1&postId=37&highlight=adoption)

24 Council of Europe Commissioner's Human Rights Comment, Council of Europe Commissioner for Human Rights, Thomas Hammarberg, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php blogId=1&postId=37&highlight=adoption](http://commissioner.cws.coe.int/tiki-view_blog_post.php blogId=1&postId=37&highlight=adoption)

In addition, the *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*<sup>25</sup>, adopted by the United Nations General Assembly and therefore reflecting the views and opinion of all its member state provides the following :

*Article 3. The first priority for a child is to be cared for by his or her own parents.*

*Article 4. When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents...should be considered.*

Conclusively, in addition with the ECtHR case-law, international standards as regards to inter-country adoption also point to the fact that there has been a failure by the Russian authorities to respect the family life of Marina Ivanovna Galaeva and Sergei Alexandrovich Galaev, since Igor was given away in adoption while he still had a family in his country of origin that had a clearly expressed will to take care of him. Therefore, reasonable efforts were not put in by the State to support the reunion of the family, as provided by the guarantees of Article 8(1), and the judgment on adoption of 15 December 2004 is a violation of the applicants' right to respect for their family life.

### **(1Biii) The right to 'respect for family life' and the adoption proceedings**

In addition, the judgment on the adoption of Igor Galaev was a breach to Article 8(1) by the very way the proceedings took place. Indeed, as underlined by the Court, when reaching a decision on the adoption of a child, the competent authorities must include the views and interests of the natural parents.<sup>26</sup> Moreover, “the decision-making process must therefore, in the Court’s view, be such as to secure that their views and interests are made known to and duly taken into account by the local authority and that they are able to exercise in due time any remedies available to them.”<sup>27</sup>

Thus, in the case of *Galaeva v. Russia*, taking into account the serious nature of the decision that was taken, it is obvious that Igor's natural parent, Arkadiy Alexandrovich Zudov, was not sufficiently involved in the proceedings and that he was not provided with the requisite protection of his interests. Indeed, the authorities had the obligation to contact and inform the child's natural father of the adoption proceedings to provide him with the opportunity to express his views and interest in the inter-country adoption of his biological son, even if he previously had no relationship with him for the reason that he was not aware of his existence.

Moreover, Arkadiy Alexandrovich's reaction after being informed of the situation in 2008, that is his involvement in the subsequent proceedings before the Sverdlovsk oblast court, the Supreme Court and the present application to the ECtHR, show that he in fact wishes to express his views and interests in Igor, a right that he was denied by the Russian authorities in their conduct of the adoption proceedings, in breach of Article 8(1).

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<sup>25</sup> *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, A/RES/41/85, adopted by the United Nations General Assembly on its 95<sup>th</sup> Plenary Session on 3 December 1986.

<sup>26</sup> *W. v. the United Kingdom*, Application no. 9749/82, 8 July 1987, para. 63.

<sup>27</sup> *Ibid.*

The Convention on the Rights of the Child also provide that:

*Article 21. "States Parties that recognize and/or permit the system of adoption (...) shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;*

Hence, as Igor's grandmother with whom he had closes family ties, Marina Ivanovna's right to express her views and interests in the adoption proceedings was also violated under Article 8(1).

**(2) The failure of the authorities of the Russian Federation to further investigate the judgment on adoption, after the expertise confirmed that the documents were a fraud, is in breach of the positive obligations set out for the State by Article 8(1) of the Convention.**

**(2A) Notion of 'positive obligations' under Article 8(1) in the case-law of the ECtHR**

The guarantees of Article 8, as underlined by the ECtHR on numerous occasions, do not merely provide negative obligations for the contracting states not to interfere with the family life of individuals. Indeed, the right to respect for family life under Article 8(1) also implies positive obligations for the contracting states inherent in effective 'respect' for family life.<sup>28</sup>

In *Airey v. Ireland*, the Court stated that although Ireland did not 'interfere' with Mrs. Airey's private life, the State had failed to act and provide her with the means to effectively protect her right to private and family life. Hence, the Court ruled that her rights under Article 8(1) were violated.<sup>29</sup> In *Kroon v. the Netherlands*, the ECtHR stated "that in the instant case it has been established that the relationship between the applicants qualifies as "family life". There is thus a positive obligation on the part of the competent authorities to allow complete legal family ties to be formed...as expeditiously as possible"<sup>30</sup>, and even though the margin of appreciation left to the State.<sup>31</sup>

However, the notion of 'positive obligations' under Article 8 is not clear-cut and may vary from case to case.<sup>32</sup> Therefore, in the absence of any clear definition, the following principle should be applied to determine whether or not there is a positive obligation for the contracting State: "Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole."<sup>33</sup> Furthermore, the impact on the applicant's

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28 *X and Y v. the Netherlands*, Application no. 8978/80, 26 March 1985, para. 23, *Airey v. Ireland*, Application no. 6289/73, 9 October 1979, para. 32.

29 *Airey v. Ireland*, Application no. 6289/73, 9 October 1979, para. 31-33.

30 *Kroon and others v. the Netherlands*, Application no. 18535/91, 27 October 1994, para. 36.

31 *Ibid.*, para.40.

32 *Johnston and Others v. Ireland*, Application no. 9697/82, 18 December 1986, para. 72, *Cossey v. United Kingdom*, Application no. 10843/84, 29 September 1990, para. 37.

33 [Kroon and others v. the Netherlands, Application no. 18535/91, 27 October 1994, para. 31-32](#), [Keegan v. Ireland, Application no. 16969/90, 26 May 1994, para. 49](#), [W. v. the United Kingdom, Application no. 9749/82, 8 July 1987, para. 62](#).

right must be serious and significant.<sup>34</sup>

**(2B) The existence of a positive obligation for the state to investigate in *Galaeva v. Russia***

In 2007, expertise No 1325/06-1 and expertise No 167pp-07 (see reference to these expertises in Appendix 7) showed that the statements of 1 November 2004 and the statement of 4 November 2004 were in fact neither written or signed by Marina Ivanovna Galaeva and Arkadiy Alexandrovich Zudov respectively. Therefore, it proved that the judgment on the adoption of Igor Galaev was unlawful and that the child was illegally given to inter-country adoption.

Nonetheless, in spite of this new evidence, no action was undertaken by the Russian authorities to further investigate the circumstances of the illegal judgment on adoption. One must recall that although Article 8 does not provide for specific procedural requirements, the Court is still entitled to have regard on the process of authority's decision-making “to determine whether it has been conducted in a manner that, in all the circumstances, is fair and affords due respect to the interests protected by Article 8 (art. 8).”<sup>35</sup> Moreover, as highlighted by the ECtHR, to ensure that “it is based on the relevant considerations and is not one-sided and, hence, neither is nor appears to be arbitrary.”<sup>36</sup>

Therefore, when examining the Russian authorities' decision-making, which is the decision not to further investigate the illegal judgment on adoption after new indisputable evidence had been revealed by the expertises, it should be emphasized that the impact on the applicants' right in *Galaeva v. Russia* is considerable. Indeed, what is at stake here is the illegal removal of a young child from his family and his placement in another country. The seriousness of the impact on the applicants' rights in matters of adoption such like the one at hand is therefore extremely high. “This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences.”<sup>37</sup>

Moreover, it is as much in the concern and in the interest of the community than in the interest of the applicants that Russian authorities investigate such abuse, that raise the issue of the illegal trade of Russian children, when they come to their attention. As stressed by Mr Thomas Hammarberg, “there are unscrupulous agencies, “orphanages”, officials and other parties which engage in the lucrative business of procuring babies and young children for adoption, creating an artificial pool of such children to meet the demand”.<sup>38</sup> Therefore, the failure to investigate and prosecute the responsible individuals is likely to lead to more violations of the rights of Russian families under Article 8(1).

Finally, apart from the case-law of the ECtHR, the positive obligation of the Russian authorities to address the serious issue of the illegal trade of Russian children by further investigating the fraudulent judgment on adoption is supported by the Convention on the Rights of the Child:

<sup>34</sup> [X and Y v. the Netherlands, Application no. 8978/80, 26 March 1985, para. 23.](#)

<sup>35</sup> *W. v. the United Kingdom*, Application no. 9749/82, 8 July 1987, para. 62.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Council of Europe Commissioner's Human Rights Comment, Council of Europe Commissioner for Human Rights, Thomas Hammarberg, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?blogId=1&postId=37&highlight=adoption](http://commissioner.cws.coe.int/tiki-view_blog_post.php?blogId=1&postId=37&highlight=adoption)

*Article 11. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*

*Article 35. States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*

At last, in *W. v. the United Kingdom*, the Court considered that:

In conducting its review in the context of Article 8 (art. 8) it may also have regard to the length of the local authority's decision-making process and of any related judicial proceedings. As the Commission has rightly pointed out, in cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue.<sup>39</sup>

Therefore, in a matter such as the one at play in *Galaeva v. Russia*, the Russian authorities had not only a positive obligation to undertake a thorough examination of the facts and evidence surrounding the judgment on the adoption of Igor Galaev, but they were also required to do so speedily. In both aspects, the Russian authorities failed to meet the requirements and fulfill their positive obligation under Article 8(1) of the Convention which resulted in the violation of the applicant's right to respect for family life.

### **(3) The Sverdlovsk oblast court and the Supreme Court's refusals to reopen the case and reconsider the judgment on the adoption is a breach to Article 6(1) of the Convention**

#### **(3A) 'Right to a court' under Article 6(1) in the case-law of the ECtHR (the law)**

The meaning of Article 6(1) and the extent of the protection it offers must receive a broad interpretation.<sup>40</sup> Incidentally, the Court has underlined many times that the guarantees of Article 6(1) include the 'right to a court' for individuals who believe that there has been an unlawful interference with one of their (civil) right, in regards to which they could not submit an adequate claim to an independent and impartial tribunal established by law.<sup>41</sup>

Indeed, it has been established and reaffirmed numerous times that the essential element of Article 6(1) is that it embodies the 'right to a court', one aspect of which being the right of access, that is the right to institute proceedings before a court in regards to civil rights or obligations.<sup>42</sup> Therefore, when considering an issue where the right of access is at play, the Court will follow these principles:

- Firstly, the right of access to the courts protected by Article 6(1) is not absolute and by its nature calls for regulation by the State. The regulation may vary in time and in place according to the needs and resources of the community and of the individuals.
- Secondly, although the State enjoys a certain margin of appreciation in establishing and maintaining such regulation, it is the Court that makes the final decision as to their compliance

<sup>39</sup> [W. v. the United Kingdom, Application no. 9749/82, 8 July 1987, para. 65.](#)

<sup>40</sup> *Delcourt v. Belgium*, Application no. 2689/65, 17 January 1970, para. 25.

<sup>41</sup> *Athanassoglou and Others v. Switzerland*, Application no. 27644/95, 6 April 2000, para. 43, *Le Compte, Van Leuven and De Meyere v. Belgium*, Application no. 6878/75 and 7238/75, 23 June 1981, para. 44, *Golder v. United Kingdom*, Application no. 4451/70, 21 February 1975, para. 36.

<sup>42</sup> *Golder v. United Kingdom*, Application no. 4451/70, 21 February 1975, para. 36, *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65.

with the Convention's requirements. "It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired."

- Thirdly, will not comply with Article 6(1) a limitation that doesn't pursue a legitimate aim or doesn't show a sufficient and reasonable proportionality between the means employed and the aim sought to be achieved.<sup>43</sup>

Finally, in order for the 'right to a court' embodied by Article 6(1) to apply in civil matters, the Court has developed, in a well-established case-law, the following three requirements:

- (a) the existence of a *dispute*;
- (b) the dispute must deal with a *civil* issue within the meaning of the Convention and the case-law of the ECtHR;
- (c) the dispute must have to do with *rights and obligations*, which, although it is arguable, have a legal basis in domestic law.<sup>44</sup>

### **(3Ai) Notion of 'dispute' in the case-law of the ECtHR**

The existence of a dispute (*contestation* in the French version) is a *sine qua non* condition in order for the guarantees of Article 6(1) to come into play in a civil matter. Furthermore, as stated by the Court in its case-law, the dispute must be: "genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question: mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play."<sup>45</sup> Indeed, the proceedings must legally determine the content or an aspect of the right at play, meaning that there must be a determination of the dispute.<sup>46</sup>

### **(3Aii) Notion of 'civil' rights and obligations in the case-law of the ECtHR**

The notion of 'civil' rights is an autonomous concept. Therefore the classification in the domestic law is relevant, but not decisive. The essential element to determine is whether, after a thorough analysis of the right at issue, a 'civil' character can be applied to that right.<sup>47</sup> To determine such character, reference must be made to the substantive content and effects of the right under the

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<sup>43</sup> *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65, *Lithgow and Others v. the United Kingdom*, Application no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, 8 July 1986, para. 194.

<sup>44</sup> *Gorraiz Lizarraga and others v. Spain*, Application no. 62543/00, 27 April 2004, para. 43, *Masson and Van Zon v. the Netherlands*, Application no. 327-A, 28 September 1995, para. 44, *Athanassoglou and Others v. Switzerland*, Application no. 27644/95, 6 April 2000, para. 43, *Fayed v. United Kingdom*, Application no. 17101/90, 21 September 1990, para. 65.

<sup>45</sup> *Gorraiz Lizarraga and others v. Spain*, Application no. 62543/00, 27 April 2004, para. 43, see also *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 56, *Masson and Van Zon v. the Netherlands*, Application no. 327-A, 28 September 1995, para. 44, *Athanassoglou and Others v. Switzerland*, Application no. 27644/95, 6 April 2000, para. 43, *Le Compte, Van Leuven and De Meyere v. Belgium*, Application no. 6878/75 and 7238/75, 23 June 1981, para. 47.

<sup>46</sup> *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 56.

<sup>47</sup> *H. v. Belgium*, Application no. 8950/80, 30 November 1987, para. 44-45.

domestic law of the State concerned.”<sup>48</sup>

In *Rasmussen v. Denmark*, the Court specified that proceedings affecting the public interest can nonetheless fall within the 'civil' matters understood by Article 6(1) in litigation that are 'civil' in character in their very nature.<sup>49</sup>

### **(3Aiii) Notion of 'rights and obligations' in the case-law of the ECtHR**

It has been established that Article 6(1) embodies the right to institute proceedings before a court in regards to civil 'rights or obligations'. However, Article 6(1) in itself does not elaborate on the specific content that those 'rights and obligations' must hold in the domestic law of the contracting states in order for the guarantees of the ECvHR to apply.<sup>50</sup>

Therefore, to determine whether the dispute has to do with 'rights and obligations' that have a legal basis in domestic law, one must refer not only to the substantive content of the (civil) right as defined under national law, but also to “the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court.”<sup>51</sup> The court as reaffirmed many times that this third requirement in order for Article 6(1) to apply in civil matters is arguable, relating to his certain degree of autonomy.<sup>52</sup>

It would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 para. 1 (art. 6-1) - namely that civil claims must be capable of being submitted to a judge for adjudication - if, for example, a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons.<sup>53</sup>

Following that principle, the Court has in many occasions ruled that some rights and obligations that didn't have any legal basis in the domestic law of a contracting state fell within the scope of Article 6(1). By doing so, the ECtHR has recalled that as part of its role under the Convention, it has the responsibility to apply and maintain a fair balance between the interest of the community as a whole and requirements for the protection of the individual's fundamental rights. “The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 (P1-1).”<sup>54</sup>

### **(3B) Application of the guarantees of Article 6(1) in *Galaeva v. Russia***

In the present case of *Galaeva v. Russia*, there is in fact a dispute relating on one end to the

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48 *Konig v. Germany*, Application no. 6232/73, 28 June 1978, para. 89.

49 *Rasmussen v. Denmark*, Application no. 8777/79, 28 November 1984, para. 32.

50 *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65, *James and Others v. the United Kingdom*, Application no. 8793/79, 21 February 1986, para. 81.

51 *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65.

52 *Konig v. Germany*, Application no. 6232/73, 28 June 1978, para. 89.

53 *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65, see also the Commission's admissibility decision of 9 October 1984 on application no. 10475/83, *Dyer v. the United Kingdom*, Decisions and Reports 39, pp. 246-66 at pp. 251-52.

54 *Sporrong and Lunnroth v. Sweden*, Application no. 7151/75 and 7152/75, 23 September 1982, para. 69.



right of the applicants to a reconsideration of the judgment on the adoption of Igor Galaev, and on the other to the Sverdlovsk Oblast Court's refusal, in its decision of 22 October 2009, and the Supreme Court's refusal, in its judgment of 27 April 2010, to consider the application to reopen the case on adoption, in what the applicants claim is a violation of their right. Given the fact that the purpose of the proceedings is to legally determine the substance and the extent of the applicants' right to the reconsideration of the judgment; and taking into account that the outcome of the proceedings is decisive in the determination of the applicant's right to a reconsideration of the adoption judgment, one cannot doubt that there is in fact the existence of a serious and genuine dispute in the case of *Galaeva v. Russia*, a dispute that indeed meets the requirements of Article 6(1).

Secondly, the right to the reconsideration of the judgment on the adoption of the child certainly falls under the scope of 'civil' matters as understood by the case-law of the ECtHR in regards to Article 6(1). Indeed, the revision of a judgment, in other words the reopening of a case based on newly discovered facts, is regulated by Chapter 42 of the Civil Procedural Code of the Russian Federation. It can therefore be said that Russian domestic law itself has classified the matter as 'civil' by choosing to include the relevant provisions in its Civil Procedural Code.

Apart from its national classification, the substantive content and effects of the right at issue are definitively 'civil' in character, as the judgment to reconsider is the judgment on the adoption of Igor Galaev, the adoption of children being the object of regulations by Chapter 6 of the Family Code of the Russian Federation and thus a matter of family law following the domestic legal classification. In the context of family law, 'civil' rights clearly arise.<sup>55</sup>

As said by the Court in *Rasmussen v. Denmark*, when dealing with “a matter of family law; on that account alone, it is "civil" in character.”<sup>56</sup> Furthermore, the Court considered more than once that proceedings against public authorities where rights concerning family law are at issue, such as a decision on adoption in *Keegan v. Ireland*, do fall under the scope of Article 6(1).<sup>57</sup>

Finally, to address at last the 'rights and obligations' in issue, it must be pointed out that in this case the 'right' at play does have a legal basis in domestic law as it is enshrined in the Civil Procedural Code of the Russian Federation, Chapter 42: *Revision of the Valid Judgments, Rulings, and Decisions Rendered by Presidium of the Court with Supervisory Authority on the Basis of Newly Discovered Facts*.

**Article 392. The Grounds for Revision of Valid Judgments, Rulings and Decisions Made by the Court with Supervisory Authority**

1. The valid judgments, rulings and decisions, made by presidium of the court with supervisory authority, may be revised considering newly discovered facts.

2. The following shall be the grounds for revision of the valid judgments, rulings and decisions, made by Presidium of the court with supervisory authority:

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<sup>55</sup> Leach, Philip. *Taking a Case to the European Court of Human Rights*, Blackstone's Human Right Series, London, 2001, pp.134.

<sup>56</sup> *Rasmussen v. Denmark*, Application no. 8777/79, 28 November 1984, para. 32.

<sup>57</sup> See judgment *Eriksson v. Sweden* of 22 June 1989, *Olson v. Sweden (2)* of 27 November 1992, *Keegan v. Ireland*, 26 May 1994.

*2) knowingly false witness evidence, knowingly false expert's opinion, knowingly false translation (interpreting), falsification of evidence, established by valid court sentence, which caused illegal or unsubstantiated court judgment or ruling or unsubstantiated decision by presidium of the court with supervisory authority;*

Nonetheless, the Court has said that to determine whether the dispute has to do with 'rights' that have a legal basis in domestic law, it is not enough to refer only to the substantive content of the right as defined under national law, but also to “the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court.”<sup>58</sup> Indeed, the 'right' to a reconsideration of a judgment is limited by Article 394 of the Civil Procedural Code of the Russian Federation.

***Article 394. Filing of an Application, a Report on Revision of Court Judgments, Rulings, or Decisions Made by Presidium of the Court with Supervisory Authority Considering Newly Discovered Facts***

*The application or report for revision of court judgment, ruling or decision made by Presidium of the court with supervisory authority, shall be filed by the parties, prosecutor, by other persons participating in the case, to the court, which rendered the judgment, ruling or decision. The application or report may be filed within three months since the day the grounds have been established for revision.*

It is on the basis of Article 394 that the Supreme Court and the Sverdlovsk oblast court relied on to refuse to reconsider the judgment on adoption, claiming that since the applicants were neither parties or participants in the case to start with, they had no right in the matter, even though the falsification of evidence that caused an illegal court judgment is stated to be a ground for the reconsideration of a case according to Article 392 of the Civil Procedural Code of the Russian Federation. The fact that the fraud documents were the reasons why they were not aware of the adoption process and therefore didn't take part in the proceedings was not taken into consideration.

Despite the restrictions imposed by Article 394, the provisions of the Civil Procedural Code are enough in substance to prove a domestic legal basis for the right to the reconsideration of a judgment, a requirement that has been said many times by the Court to be arguable. Conclusively, the requirements in order for Article 6(1) to apply in civil matters are fulfilled.

Then, as regards to the violation of the applicants' right to a court, it is quite obvious that the ruling by the Sverdlovsk oblast court and by the Supreme Court has denied the applicants the access to a court to have the judgment on adoption reconsidered, since it refused to reopen the case based on Article 394. What will be argued here, is that the 'right of access' of the applicants was violated by the very limitations provided in Article 394 in a manner that is not in compliance with the principles laid out in the Court's case-law and stated above.

One must recall that the existence of a 'right' under Article 6(1) is an autonomous concept at a certain degree and that the Court has said that it is not consistent with the rule of law in a democratic society or with the essential principle underlying Article 6(1) that a provision, such as Article 394, can remove from the jurisdiction of the courts a whole range of civil claims or

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<sup>58</sup> *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65.

confer immunities from civil liability on large groups or categories of persons.

The Court also underlined that the right of access to the courts calls for regulation by the State and that “the regulation may vary in time and in place according to the needs and resources of the community and of the individuals”<sup>59</sup> In the case of Article 394, the core issue is precisely that it does not address the special needs of the community and the individuals as it is meant to be applied for everybody in every situation. Therefore, in the matter at play in *Galaeva v. Russia*, it confers immunity to the unscrupulous agencies and other individuals involved in the lucrative business of creating artificial pools of “orphans” to give away to adoption, too often without the knowledge of either their natural parents, grandparents or siblings, other family relatives or their community, as stressed by Mr Thomas Hammarberg<sup>60</sup>.

Moreover, the restrictions provided by Article 394 reduces to zero the access to the courts left to the family, relatives and the communities, in their attempt to challenge the illegal trade of their children that take place without their knowledge or their consent in violation of their rights under the Convention and in violation of international standards. In this regards, the very substance of their right to access to the courts is impaired as they are left with no other option against such abuse, a situation that cannot be considered consistent with the rule of law in a democratic society.

Therefore, the effects of Article 394 are disproportioned in comparison to the acknowledged need of a regulation by the State, and the Sverdlovsk oblast court and the Supreme Court's refusals to reconsider the judgment on adoption of Igor Galaev on the grounds of Article 394 is a breach to Article 6(1) of the Convention.

**(4) The Supreme Court's failure to address the applicants only legal argument that the guarantees of the Convention should prevail over national laws, as ordered by Article 15(4) of the Constitution of the Russian Federation, is a violation of their right to a fair trial, in breach of Article 6(1) and in breach of the obligation set out for the State by Article 1 of the ECvHR.**

**(4A) The requirement to give reasons and consider the arguments of the parties under Article 6 of the ECvHR**

In the *Dulaurans v. France* judgment, the Court reminded that the right to a fair trial guaranteed under Article 6(1) of the Convention includes the parties' right to raise observations they judge relevant and that this right is not solely theoretical:

The European Convention was not meant to simply declare theoretical or illusory rights, but rather to provide a concrete and effective protection of the rights enshrined in the Convention. The rights at stake cannot really be fully addressed unless they are fully taken into account and duly examined in context by the tribunal.<sup>61</sup>

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59 *Fayed v. the United Kingdom*, Application no. 17101/90, 21 September 1994, para. 65, *Lithgow and Others v. the United Kingdom*, Application no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, 8 July 1986, para. 194.

60 Council of Europe Commissioner's Human Rights Comment, Council of Europe Commissioner for Human Rights, Thomas Hammarberg, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?blogId=1&postId=37&highlight=adoption](http://commissioner.cws.coe.int/tiki-view_blog_post.php?blogId=1&postId=37&highlight=adoption)

61 "La Convention ne visant pas a garantir des droits th oriques ou illusoire mais des droits concrets et effectifs. Ce

Indeed, the Court has recognized on numerous occasions that the lack of examination of the argument of a party is a violation of the right to a fair trial guaranteed by Article 6(1) of the Convention. The ECtHR has previously ruled that “Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments”<sup>62</sup> Moreover, the guarantees of Article 6 also include a duty for national courts to “conduct a proper examination of the submission, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision.”<sup>63</sup>

Hence, although the tribunals have a general discretion when considering arguments and deciding what may be put before the domestic courts, they must give justification to their actions by giving reasons for their ruling, including reasons for deciding that certain material is irrelevant and need not to be considered.<sup>64</sup> “The national courts must indicate with sufficient clarity the grounds on which they based their decisions”.<sup>65</sup> Indeed, in two cases involving Spain, the ECtHR commented that the tribunals' silence could give rise to doubt as to the scope of the examination conducted by the domestic court.

#### **(4B) Was there a violation of Article 6(1) and Article 1 of the ECvHR in Galaeva v. Russia?**

On 22 October 2009, the Sverdlovsk oblast court issued its decision on refusal to reconsider the judgment according to Article 394 of the Russian Civil Procedural Code. The Sverdlovsk oblast court ruled based on this domestic law provision that since the applicants were not parties of or didn't participate in the case (judgment on adoption) to start with, they could not legally ask for a reconsideration of the judgment.

Before the Supreme Court of the Russian Federation, the applicants then raised a unique, but well-developed and well-supported argument based on Article 15(4) of the Russian Constitution. Article 15(4) stipulates that the guarantees of the Convention are fully part of the Russian legal system and, furthermore, that they shall prevail over any other provisions of domestic law.

*Article 15(4). The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.*

Hence, the applicants argued that despite the provision of Article 394, the guarantees of the Convention had to prevail according to Article 15(4) of the Constitution. The violations under

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droit ne peut passer pour effectif que si ces observations sont vraiment «entendues», c'est-à-dire dûment examinées par le tribunal saisi." *Dulaurans v. France*, Application no. 34553/97, judgment of 21 March 2000, no 34553/97, para 33.

<sup>62</sup> *Hiro Balani v. Spain*, Application no. 18064/91, judgment of 09 December 1994, Series A no. 303-B, para 27.

<sup>63</sup> *Kraska v Switzerland*, Application no. 13942/88, 19 April 1993, para 30. The same reasoning has been reaffirmed in *Van de Hurk v. the Netherlands*, Application no. 16034/90, judgment of 19 April 1994, Series A no. 288, para 59.

<sup>64</sup> *Suominen v Finland*, Application no 37801/97, 1 July 2003, para 36.

<sup>65</sup> *Hadjianastassiou v. Greece*, Application no. 12945/87, judgment of 16 December 1992, Series A no. 252, para 33.

Article 6(1), 8(1) and 13 were then presented to the Court. Indeed, as previously argued and according to the guarantees of Article 6(1) of the ECvHR, the applicants have a right to access to a court, a right that was violated by the decision of the Sverdlovsk oblast court and the Supreme Court which applied the provisions of Article 394.

Nevertheless, in the 27 April 2010 judgment issued by the Supreme Court, the tribunal declared the argument irrelevant, without providing any reasons to as why it was judged irrelevant. Not only does it raises doubts on the scope of the examination of the applicant's argument by the tribunal, but the failure to indicate the grounds on which the decision was based is, therefore, in the light of the case-law of the ECtHR, a violation of the applicants' right to a fair trial under Article 6(1), in breach of the requirement to give reason and consider the arguments of the parties.

The obligation of the Supreme Court to state reasons must be examined in the light of two highly important facts. First, that the applicants presented before the Supreme Court a single argument, and second, that the Supreme Court ignored constitutional and conventional provisions without due justification. Indeed, as stated by the ECtHR, the obligation to state reasons will vary, in particular, taking into account the diversity of the submissions raised before the court, as well as the different weight that the Contracting States place on different types of submissions<sup>66</sup>.

However, in the case of *Galaeva v. Russia*, the omission of the tribunal to give reasons for its decision can't be overlooked or considered a minor infringement to the fairness of the proceedings as a whole, given that the proceedings relied upon one single argument by the applicants. It can't be regarded as an unreasonable burden put upon the tribunal to require that it provides justification for the dismissal of the applicants' single argument, since there was in fact no other argument to consider.

Moreover, the Russian Federation, by the inclusion of Article 15(4) into its own Constitution, that therefore incorporates the Convention in the Russian judicial system, has placed a heavy weight on submissions based on constitutional and conventional provisions such as the one that was put before the Supreme Court by the applicants. Conclusively, there is a full obligation to state reasons and consider the argument in *Galaeva v. Russia* and the Supreme Court's failure to do so can only result in a violation of the applicants' rights under Article 6(1) and Article 1.

Furthermore, that omission raises many questions. Recalling, that in the cases referred to above concerning Spain, the ECtHR ruled that the fact that the Supreme Court had not addressed the petitioner's arguments was a violation of Article 6(1) of the Convention and added: "that the silence of the Supreme Court in this matter could give rise to doubts as to the scope of the examination conducted by that court."<sup>67</sup> One must keep in mind that the requirement of a justification exists to protect against the arbitrary and to force the judge to explain what motivated his decision. The legal process finds much of its legitimacy in the justification of its judgments.<sup>68</sup>

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<sup>66</sup> *Hiro Balani v Spain*, Application no 18064/91, 9 December 1994, paras 27 and 28 and *Ruiz Torija v Spain*, Application no 18390/91, 9 December 1994, paras 29 and 30.

<sup>67</sup> *Hiro Balani*, cited, para 25.

<sup>68</sup> MILANO, Laure, *Le droit a un tribunal au sens de la Convention europeenne des droits de l'homme*, Paris : Dalloz, 2006, p. 552.

It is the firm position of the European Court of Human Rights that “Effective implementation of the European Convention on Human Rights at national level is crucial for the operation of the Convention system. In line with its subsidiary character the Convention is intended to be applied first and foremost by the national courts and authorities”.<sup>69</sup> In *Galaeva v. Russia*, the Supreme Court failed to do so, despite the provision of Article 1 of the Convention and Article 15(4) of the Constitution of the Russian Federation. The Committee of Ministers of the Council of Europe is of the position that “the rights and freedoms guaranteed by the Convention [the ECvHR] be protected in the first place at the national level and applied by national authorities...”.<sup>70</sup>

Conclusively, the courts must address and consider applicants' arguments that raise issues under the guarantees of the Convention, without prejudice to their assessment of whether they are relevant to their decision and give reasons for their judgment. By failing to do so at the Supreme Court, the applicants' right to a fair trial under Article 6(1) of the Convention was violated.

**(5) the limitations on the access to a court set by Article 394 of the Civil Procedural Code of the Russian Federation combined with the refusal of the courts to make the guarantees of the Convention prevail over domestic laws is a failure by the State to provide an effective national remedy in breach of Article 13 (right to an effective remedy).**

Having regard to the case-law of the Court, it has been established that Article 13 guarantees an “effective remedy before a national authority” to any individual who claims a violation of his rights and freedoms under the Convention.<sup>71</sup>

However, Article 394 of the Russian Civil Procedural Code, as demonstrated, prevents the applicants to ask for a reconsideration of the judgment they claim violated their right to family life protected by Article 8(1) of the ECvHR. In this case and in theory, the only national remedy available to the applicants to have the substance of their Convention complaint addressed and to be granted appropriate relief is provided by Article 15(4) of the Constitution of the Russian Federation. Article 15(4) stipulates that the guarantees of the Convention are part of the Russian legal system and, furthermore, that they shall prevail over provisions of domestic law. Hence, despite the provision of Article 394, the rights of the applicants have to be considered under the provisions of the Convention according to the highest authority in the hierarchy of national legislative acts in the Russian Federation, the Constitution. This was argued by the applicants at the hearing before the Supreme Court.

“Nevertheless, the remedy required by Article 13 (art. 13) must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.”<sup>72</sup>

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69 Erik Fribergh, “Foreword by the Registrar on the occasion of the 100th issue of the Case-Law of the European Court of Human Rights,” *Information Note of the European Court of Human Rights*, no. 100 (September 2007), p.1.

70 Recommendations of the Committee of Ministers of the Council of Europe Rec(2004)4, Preamble, Rec(2004)5, Preamble.

71 *Klass and others v Germany*, Application no. 5029/71, 6 September 1978, para. 64.

72 *Aksoy v Turkey*, Application no 21987/93, 18 December 1996, para. 95.

Therefore, the omission of the domestic courts to respect and apply Article 15(4) of the Russian Constitution and consider the applicants claim under the guarantees of the ECvHR and the case-law of the ECtHR is a violation to their right to an effective remedy before a national authority. Indeed, no other national remedy is available in the matter, either in law or in practice, recalling that the decision of the Supreme Court cannot be appealed. Recalling also that no reasons or justifications were given by the Supreme Court in its judgment as to why it declared the argument based on Article 15(4) of the Constitution irrelevant, thus depriving the applicants of an effective national remedy, in violation of their right under Article 13 of the ECvHR.

**(6) According to Rule 41 of the Rules of the Court entered into force on 1<sup>st</sup> June 2010, the applicants request that, taking into account the urgency of the adoption matter at stake, priority be given to the present application.**

Stressing that when dealing with adoption issues, time is crucial, as any procedural delays may result in a *de facto* determination of the matter at stake, as previously emphasized under Article 8(1) (see p.14, quotation 39). Moreover, as underlined by the Court in *W. v. the United Kingdom*, “an effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time.”<sup>73</sup> Therefore, given that considerable and unjustified delays have already been suffered by the applicants in their domestic claim for the reconsideration of the judgment on the adoption of Igor Galaev, they request that, in accordance with Rule 41 of the ECtHR, the present application be dealt with in priority.

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73 [W. v. the United Kingdom, Application no. 9749/82, 8 July 1987, para. 65.](#)

**EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION**

**STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION**

**ЗАЯВЛЕНИЕ В СООТВЕТСТВИИ СО СТАТЬЕЙ 35§ 1 КОНВЕНЦИИ**

Décision interne définitive (date et nature de la décision, organe – judiciaire ou autre – l'ayant rendue)

*Final decision (date, court or authority and nature of decision)*

*Окончательное внутреннее решение (дата и характер решения, орган - судебный или иной - его вынесший)*

The final decision on the case was delivered on 27 April 2010 by the Supreme Court of the Russian Federation which left unchanged the judgment of 22 October 2009 of the Sverdlovsk oblast court. No initial application was submitted before the ECtHR in *Galaeva v Russia*.

Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe – judiciaire ou autre – l'ayant rendue)

*Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)*

*Другие решения (список в хронологическом порядке, даты этих решений, орган - судебный или иной - его принявший)*

The judgment of 22 October 2009 of the Sverdlovsk oblast court on the claim for a reconsideration of the judgment on the adoption of Igor Galaev.

Disposez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?

*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.*

*Располагаете ли Вы каким-либо средством защиты, к которому Вы не прибегли? Если да, то объясните, почему оно не было Вами использовано?*

All national remedies available in this case were exhausted.



**EXPOSÉ DE L'OBJET DE LA REQUÊTE ET PRÉTENTIONS PROVISOIRES POUR UNE SATISFACTION ÉQUITABLE**

***STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION***

***ИЗЛОЖЕНИЕ ПРЕДМЕТА ЖАЛОБЫ И ПРЕДВАРИТЕЛЬНЫЕ ТРЕБОВАНИЯ ПО СПРАВЕДЛИВОМУ ВОЗМЕЩЕНИЮ***

The applicants, Marina Ivanovna Galaeva, Arkadiy Alexandrovich Zudov and Sergei Alexandrovich Galaev, request that the violations of their rights under Article 1, Article 8(1), Article 6(1) and Article 13 be recognized by the Court and by the Russian Federation.

According to Rule 60 of the Rules of the Court, the applicants also request in accordance to their claim under Article 1, Article 8(1), Article 6(1) and Article 13, that they be granted monetary compensation from the Russian Federation for non-pecuniary damages.

**AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L'AFFAIRE**

***STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS***

***ДРУГИЕ МЕЖДУНАРОДНЫЕ ИНСТАНЦИИ, ГДЕ РАССМАТРИВАЛОСЬ ИЛИ РАССМАТРИВАЕТСЯ ДЕЛО***

Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.

*Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.*

*Подávalи ли Вы жалобу, содержащую вышеизложенные претензии, на рассмотрение в другие международные инстанции? Если да, то предоставьте полную информацию по этому поводу.*

No

**PIÈCES ANNEXÉES (PAS D'ORIGINAUX, UNIQUEMENT DES COPIES)**  
**LIST OF DOCUMENTS (NO ORIGINAL DOCUMENTS, ONLY PHOTOCOPIES)**  
**СПИСОК ПРИЛОЖЕННЫХ ДОКУМЕНТОВ (НЕ ПРИЛАГАЙТЕ ОРИГИНАЛЫ**  
**ДОКУМЕНТОВ, А ИСКЛЮЧИТЕЛЬНО ФОТОКОПИИ)**

1. Power of attorney (Marina Ivanovna Galaeva).
2. Power of attorney (Sergei Alexandrovich Galaev).
3. Power of attorney (Arkadiy Alexandrovich Zudov).
4. Birth certificate of Igor Arkadevich Galaev.
5. The judgment of 15 December 2004 on the adoption of Igor Galaev.
6. Decision of the head of the administration of the Leninskiy district court of Ekaterinurg of 4 September 2006 No 632-p on the legal adoption of Sergei Alexandrovich Galaev by Marina Ivanovna Galaeva.
7. Decision of 10 September 2007 on refusal to initiate criminal case.
8. The judgment of 22 October 2009 of the Sverdlovsk oblast court on the claim for a reconsideration of the judgment on the adoption of Igor Galaev.
9. Addition to the appeal (дополнение к частной жалобе) of the decision of the Sverdlovsk oblast court of 22 October 2009.
10. The decision of 27 April 2010 by the Supreme Court of the Russian Federation which left unchanged the judgment of 22 October 2009 of the Sverdlovsk oblast court.

**DÉCLARATION ET SIGNATURE**  
**DECLARATION AND SIGNATURE**  
**ЗАЯВЛЕНИЕ И ПОДПИСЬ**

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

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

*Настоящим, исходя из моих знаний и убеждений, заявляю, что все сведения, которые я указал(а) в формуляре, являются верными.*

Lieu / Place / Место.....

Date / Date / Дата.....

(Signature du / de la requérant(e) ou du / de la représentant(e))  
*(Signature of the applicant or of the representative)*  
*(Подпись заявителя или его представителя)*