



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

THIRD SECTION

CASE OF NALTAKYAN v. RUSSIA

(Application no. 54366/08)

JUDGMENT

Art 8 • Failure to secure family life of applicant-father whose son, whom he believed dead, was given up by mother at maternity ward • Refusal by national courts to return the son to the applicant's family, without in-depth examination and balancing of all relevant factors • Refusal by national courts to grant applicant access to his son, based on profoundly deficient decision-making process

STRASBOURG

20 April 2021

FINAL

20/07/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Naltakyan v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 54366/08) 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 Zaven Volodyayevich Naltakyan (“the applicant”), on 10 October 2008;

the decision to give notice to the Russian Government (“the Government”) of the application in so far as it was lodged by the applicant on behalf of himself, and to declare inadmissible the part of the application raising the same complaints on behalf of his son V.;

the decision to grant priority to the above application under Rule 41 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 23 March 2021,

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

INTRODUCTION

1. The applicant is the father of a boy whose mother (the applicant’s wife) gave him up at a maternity hospital a day after he was born. The applicant, who believed that his son had died at birth, remained unaware that the child had survived until a year and a half later, when he received a claim for removal of his parental authority over the boy in the context of adoption proceedings instituted by third parties, who had taken the boy from a foster home several months previously. Despite the fact that the applicant had formal parental status, and thus full parental authority over the child, his numerous attempts to recover the boy, who continued to live with the third parties in question, proved futile as the latter denied the applicant any access to his son. The applicant’s application for his son’s return to his family was dismissed by the national courts, with reference, in particular, to the fact that the applicant and his wife had abandoned the child at the maternity hospital – conduct which the courts found to be “deliberate” on the part of the applicant’s wife and “negligent” on his part – and to a report on the

child's psychological and psychiatric examination which stated that the boy's transfer to a new family would cause him psychological trauma. The applicant's and his family members' separate application to be granted access to the boy was also rejected, again with reference to the parents' conduct and to the findings of the same report.

THE FACTS

2. The applicant was born in 1972 and lives in Miramas (France). He was represented by Ms I. Abramyan, a lawyer practising in Pyatigorsk.

3. The Government were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by Mr M. Galperin, his successor in that office.

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

5. The applicant is married to Ms I.Kh. It appears that the latter kept her maiden surname, Kh., after she married the applicant. They are raising their four children together – M.N., born in 1996; T.N., born in 1997; V.N., born in 2005, and Va.N., born in 2007.

6. At the relevant time the applicant and his family lived in the village of Pyatigorskiy, in the Stavropol Region of Russia.

I. BIRTH OF THE APPLICANT'S SON V.

7. On 2 September 2004 the applicant brought his wife, who he believed was approximately six months pregnant, to the Pyatigorsk maternity hospital, as she was showing symptoms of premature labour. It does not appear that prior to that moment, the applicant's wife's pregnancy had been monitored by doctors.

8. Later that day Ms I.Kh. gave birth to a baby boy, V., the third child in her and the applicant's family at that time.

9. As Ms I.Kh. later alleged, doctors of the Pyatigorsk maternity hospital had dissuaded her from having a look at the baby and stated that, having been born long before term, he was very weak and had very poor prospects of survival. Being in a state of shock and distress, the applicant's wife decided to abandon the baby in the maternity hospital.

10. On 3 September 2004 Ms I.Kh. gave her written consent to her newly born son's adoption (*заявление о согласии на усыновление*). In particular, she filled in and signed a standard form, in which it was stated in print, among other things, that the legal consequences of giving the child up for adoption had been explained to her, and that the consent was voluntary. She also filled in and signed a similar consent form on the applicant's behalf, having changed her handwriting and imitated his signature. Ms K.,

the then chief medical officer (*главный врач*) of the Pyatigorsk maternity hospital, certified those forms with her signature and an official stamp.

11. On the same day the applicant came to see his wife in the maternity hospital. According to him, the doctors informed him that Ms I.Kh. “had miscarried”. For her part, Ms I.Kh. explained to him that she had given birth prematurely to a baby boy, who had died shortly afterwards. The applicant and Ms I.Kh. then left the hospital. It does not appear that either the applicant or his wife saw the newborn child at any moment.

12. In reality, the boy survived and remained in the care of the maternity hospital.

13. On 28 September 2004 a competent authority issued a birth certificate for V., on which the applicant and Ms I.Kh. were indicated respectively as his father and mother. V.’s patronymic, “Zavenovich”, reflected the applicant’s first name, whereas V.’s surname, Kh., corresponded to the maiden surname of his mother, Ms I.Kh.

14. On 18 October 2004, by virtue of a local authority’s decision, V. was transferred to an infant foster home.

II. V.’S ADOPTION BY Mr S. AND Ms CH.

15. At some point in July 2005 Mr S. and Ms Ch. visited the foster home, seeking a child for adoption. They saw V. and decided to adopt him.

16. By a decision of the Head of the Town Administration of Zh. dated 26 July 2005, Ms Ch. was appointed V.’s legal guardian. The decision stated, *inter alia*, that V. had been abandoned by his parents, who, in separate written statements dated 3 September 2004, had each expressed their consent to his potential adoption.

17. On 27 July 2005 Mr S. and Ms Ch. took V. from the foster home to their home address in the town of Zh. in the Stavropol Region of Russia, where the boy has been living with them ever since.

18. On 4 April 2006 the Zh.–Town Court examined an application for V.’s adoption lodged by Mr S. and Ms Ch. The court noted that V. had been abandoned by his mother in the Pyatigorsk maternity hospital, that since July 2005 he had been living with Mr S. and Ms Ch., the latter being his legal guardian, that the case file contained written statements by V.’s parents expressing their consent to his adoption, and that a local childcare authority had carried out a relevant check and had given a favourable opinion to V.’s adoption by Mr S. and Ms Ch. The court thus granted them the full adoption of V. and ordered that V.’s surname and patronymic be changed to reflect Mr S.’s surname and first name respectively. It also ordered that V.’s place of birth be changed to that of Zh.

19. The judgment was not appealed against and became final on 15 April 2006.

III. THE APPLICANT'S ATTEMPTS TO OBTAIN INFORMATION ABOUT V. AND FURTHER DEVELOPMENTS

20. In the meantime, on 10 March 2006 the applicant received a copy of a request by Ms Ch. for him to be deprived of his parental authority over V. in the context of the proceedings for V.'s adoption by Mr S. and Ms Ch. A copy of the statement allegedly written and signed by him on 3 September 2004 (see paragraph 10 above) was enclosed. In the applicant's submission, he had never consented either orally or in writing to the relinquishment of his parental authority over V. or to the latter's adoption and, until that moment, he had remained unaware of the fact that his son was alive.

21. On 12 March 2006 the applicant arrived at a district court in an attempt to obtain information about V. There he was allegedly told that Ms Ch. had withdrawn her request. He then found her and Mr S. at their registered home address, and they confirmed that his son V. was alive and stated that they were his legal guardians. According to the applicant, Mr S. and Ms Ch. showed him the boy but strongly opposed all his attempts to establish any contact with V.

22. By a court decision of 4 April 2006 Mr S. and Ms Ch. were granted the full adoption of V. (see paragraph 18 above).

23. On 17 May 2006 the applicant requested the Zh. Custody and Guardianship Agency (*отдел опеки и попечительства г. Ж.*) to have Ms Ch.'s guardianship over V. revoked and to order V.'s transfer to his family. The Agency refused the request, with reference to the judgment of 4 April 2006.

24. On 18 May 2006 the applicant complained to the Zh. prosecutor's office. He stated that he had been unaware that his son was alive and had been placed in a foster home after his birth, and that he had never made any written statements relinquishing his parental authority over the boy or consenting to his adoption. The applicant then described his unsuccessful attempts to recover his son and requested the prosecutor's office to investigate the forgery of his written statement of 3 September 2004, to lodge an application on his behalf for the reopening of the proceedings for V.'s adoption and for a review of the relevant judgment on account of newly discovered circumstances, and to institute court proceedings on his behalf for restoration of the original information about V.'s parents, date and place of birth in his birth certificate.

25. In the context of an inquiry by the Zh. prosecutor's office at the applicant's request, an expert handwriting examination was ordered and carried out. In a report of 27 May 2006 the expert confirmed that the statement of 3 September 2004 had been written and signed by a person other than the applicant.

26. The relevant material was transferred to the Pyatigorsk Office of the Interior for a further inquiry. The inquiry established that it was the applicant's wife, Ms I.Kh., who had written the statement of 3 September 2004 instead of him and forged his signature.

27. On 30 June 2006 the Pyatigorsk Office of the Interior decided not to institute criminal proceedings against Ms I.Kh. for "forging an official document", as she had written the document in question immediately after childbirth, and therefore while she had been in a vulnerable state, particularly in view of the doctors' statement to the effect that the boy had been very weak and would not survive. The decision also stated that the document in question was "a personal statement" rather than an "official document issued by a State body or authority".

IV. REFUSAL OF THE APPLICATION BY MR S. AND MS CH. FOR V.'S ADOPTION AND OTHER DEVELOPMENTS

28. On 9 June 2006 the Zh. prosecutor's office applied, on the applicant's behalf, to the Zh. Town Court with a view to having the proceedings for V.'s adoption by Mr S. and Ms Ch. reopened and the relevant judgment reviewed.

29. The court proceedings were then reopened and the Zh.-Town Court examined anew the application by Mr S. and Ms Ch. for V.'s adoption.

30. In a judgment of 12 July 2006 the court rejected their application. It referred to the relevant provisions of national law stating that the biological parents' formal explicit consent to their child's adoption was indispensable (see paragraph 150 below). It further noted, with reference to the findings of the inquiry carried out by the competent law-enforcement bodies (see paragraphs 25-27 above), that it was the applicant's wife who had written the statement of 3 September 2004 instead of the applicant, and that the applicant himself had never given his consent to V.'s adoption by third parties, nor had he ever been deprived of his parental authority or declared legally incapacitated. The court concluded that, in the absence of the applicant's explicit consent to V.'s adoption by third parties, there were no grounds to grant the application by Mr S. and Ms Ch.

31. On the same date the Zh. Town Court issued a special ruling (*частное определение*) in respect of the chief medical officer of the Pyatigorsk maternity hospital, stressing that that official had certified the parents' consent to V.'s adoption (see paragraph 10 above) in breach of the requirements of Article 129 of the Russian Family Code (see paragraph 150 below). According to the Government, Ms K. was dismissed from the post of chief medical officer of the Pyatigorsk maternity hospital on 16 December 2005 – that is, prior to adoption of the special ruling in question.

32. Mr S. and Ms Ch. appealed against the judgment of 12 July 2006. They pointed out, in particular, that they had been raising V. in their family since July 2005, that the applicant had come to them in March 2006 in order to see the child as he had doubted that the boy was his son, and that they had informed the applicant at that moment that their application for V.'s adoption was pending before a court. However, before the judgment of 4 April 2006 on V.'s adoption by Mr S. and Ms Ch. had been delivered, the applicant had not made any attempts to join the proceedings, and it was not until 17 May 2006 that he had finally applied to a prosecutor's office. Mr S. and Ms Ch. further argued that Ms I.Kh. had, in fact, not participated in the proceedings while they had been pending before the first-instance court, having attended only one hearing, a fact that, in their view, was indicative of the absence of her interest in V.'s fate. They also argued that the applicant's allegation that V. had been born at a gestational age of approximately six months – that is, long before term – and had therefore been very weak stood in conflict with an extract from V.'s medical file (*выписка из истории развития*) stating that at birth he had weighed 3.150 kg and measured 50 cm, those being characteristics of a baby born at term. With reference to those discrepancies, Mr S. and Ms Ch. expressed their doubts that the applicant and his wife were V.'s biological parents and stated that the first-instance court could have resolved those discrepancies by examining relevant medical documents from the Pyatigorsk maternity hospital and by ordering a genetic expert examination, but it had failed to do so.

33. On 23 August 2006 the Stavropol Regional Court upheld the judgment of 12 July 2006 on appeal, rejecting the arguments of Mr S. and Ms Ch. The court noted, in particular, that the scope of their claim was limited to their application for V.'s adoption, and that they had never challenged before the first-instance court the authenticity of V.'s birth certificate, or the applicant's paternity. Moreover, Mr S. and Ms. Ch. had not adduced any evidence to corroborate their allegations, or sought the courts' assistance to that end. Against that background, the Stavropol Regional Court saw no reason to order a genetic expert examination or to question the authenticity of V.'s birth certificate. In its view, there were no grounds to doubt the fact that the applicant and Ms I.Kh. were V.'s biological parents. It considered it proven, with reference to the facts as established by the first-instance court, that the applicant had never relinquished his parental authority over V. The court concluded therefore that there were no legal grounds to grant the application by Mr S. and Ms. Ch. for V.'s adoption.

34. According to the applicant, after the court decisions refusing V.'s adoption by Mr S. and Ms Ch. had been given, he applied to the courts in an attempt to get his son back. Mr S. and Ms Ch. refused to return the boy, with reference to the administrative decision of 26 July 2005, by which

Ms Ch. had been appointed V.'s legal guardian and which was still in force (see paragraph 16 above).

35. The applicant then requested the Zh. Custody and Guardianship Agency to have the decision of 26 July 2005 invalidated.

36. On 21 September 2006 the head of the municipal administration of Zh., with reference to the decision of the Pyatigorsk Office of the Interior dated 30 June 2006 (see paragraph 27 above) and the judgment of 12 July 2006 (see paragraph 30 above), invalidated the decision of 26 July 2005 and revoked Ms Ch.'s guardianship in respect of V. Ms Ch. challenged that decision before the courts. On 23 March and 25 May 2007 respectively the courts at two levels of jurisdiction upheld the administrative decision of 21 September 2006.

37. On 3 October 2006 a civil registration authority issued a fresh birth certificate for V. The applicant and Ms I.Kh. were indicated respectively as his father and mother. V.'s patronymic corresponded to the applicant's first name, and V.'s surname reflected his mother's maiden surname. At some point in 2008 Ms Ch. applied to a court to have V.'s birth certificate altered by excluding the entry concerning his father, the applicant, and by replacing his patronymic with another one. On 24 April 2008 the Pyatigorsk Town Court declined to examine Ms Ch.'s application, stating that she was neither V.'s parent nor his legal guardian, and therefore had no standing to lodge such applications.

38. In the meantime, on 13 October 2006 Ms I.Kh. sent a written statement to the Zh. Custody and Guardianship Agency, in which, with reference to Article 129 of the Russian Family Code (see paragraph 150 below), she revoked the consent to V.'s adoption which she had given on 3 September 2004. The Agency received the letter on 17 October 2006, but it does not appear that any reply was given to Ms I.Kh.

39. According to the applicant, he made numerous attempts to recover his son, but Mr S. and Ms Ch. refused to return V. and denied him and his wife contact with the boy.

V. PROCEEDINGS FOR REMOVAL OF THE APPLICANT'S AND MS I.KH.'S PARENTAL AUTHORITY OVER V.

40. In December 2006 Ms Ch. brought a civil claim against the applicant and Ms I.Kh., seeking to have them deprived of their parental authority in respect of V. She argued, in particular, that the applicant and Ms I.Kh. had neglected their parental duties in respect of V., had never enquired about his life, had never participated in his upbringing and education, and had never supported him financially. She also contended that Ms I.Kh. had never intended to take care of the boy, as she had given him up in the Pyatigorsk maternity hospital immediately after his birth and, moreover, had attempted to get rid of her unborn baby. In respect of the latter assertion, Ms Ch.

referred to an extract from V.'s medical chart, which allegedly stated that Ms I.Kh. had made an attempt to abort her pregnancy in its thirtieth week.

A. Proceedings before the first-instance court

41. On 7 February 2007 the Predgorny District Court of the Stavropol Region ("the Predgorny District Court") examined Ms Ch.'s claim. The court heard Ms Ch., Ms I.Kh., the applicant and a number of witnesses.

1. Ms Ch.'s statements

42. At the hearing Ms Ch. reiterated her arguments. She also stated that she had visited a foster home upon an invitation from her neighbour, who worked there, and she had seen the then ten-months-old V., whom she had liked and immediately decided to adopt.

43. Ms Ch. further stated that in the foster home she had received an extract from V.'s medical file, which stated that at birth he had weighed 3.150 kg and had measured 50 cm, his head circumference had been 36 cm and he had been given an Apgar score of 7-8. It also stated that during pregnancy he had suffered from chronic hypoxia and fetoplacental insufficiency. The staff of the foster home had furthermore informed Ms Ch. about V.'s biological parents, indicating their full names.

44. Ms Ch. further alleged that she had not met V.'s parents prior to March 2006, when the applicant had been summoned to a court in the context of the proceedings instituted by her and Mr S. for V.'s adoption. The applicant had then visited them at their home address and had stated that on 2 September 2004 he had taken his wife to the maternity hospital and that he had been unaware that the baby had survived. Mr S. and Ms Ch. had shown the applicant the statements of 3 September 2004 in which Ms I.Kh. and the applicant himself had consented to V.'s adoption; the applicant had recognised his wife's signature but stated that his signature had been forged. He had also asked to be shown photographs of V. and had stated that the boy resembled his elder son T.N. He had then been given the photographs and left.

45. Ms Ch. went on to state that on his next visit, the applicant had come with his sister, his elder son and his father. Mr S. and Ms Ch. had invited them to come in. They had looked at V. and the applicant's sister had filmed him with her mobile telephone camera. When they left, they had offered him yogurt and a teddy bear. Ms Ch. had refused, stating that V. was allergic to yogurt and that he already had two teddy bears. In Ms Ch.'s opinion, the applicant and his family members had come to find out who the child looked like.

46. Ms Ch. insisted that during his first visit the applicant had not recognised V. as his son, and that he had been thinking for two months before taking any action.

47. Ms Ch. confirmed that the boy had continued to live with her and Mr S. According to her, on 21 September 2006, when her guardianship in respect of V. had been revoked, the applicant had come to her home address while she and V. were away in another town, and had threatened “to handcuff” Mr S. for deliberate retention of his son. In Ms Ch.’s submission, the applicant had also visited their home address with an official of a custody and guardianship agency, and they had threatened Ms Ch.’s mother-in-law.

2. Ms I.Kh. ’s statements

48. Ms I.Kh. disagreed with Ms Ch.’s claim and contested her allegations. She stated, in particular, that so far she had had no opportunity to see her son V. and to bring him up. She insisted that she had given her written consent to V.’s adoption without understanding the meaning of her actions at that moment, and that she would now like to have her son returned to her, but Ms Ch. had kept retaining him.

49. As to the events of 2-3 September 2004, the applicant’s wife explained that by the time she had become pregnant with V., she had already had two children, and that none of her pregnancies, including that with V., had ever been monitored by doctors. She had not had any problems with her pregnancy with V. and had never attempted to abort it. She had found out for the first time during the present proceedings that there was allegedly a note in V.’s medical records stating that she had made such an attempt.

50. Ms I.Kh. further submitted that, according to her estimation, she had been six months pregnant when on 2 September 2004, while working in her garden, she had felt pain in the lower abdomen and contractions and had started bleeding. Her husband had then taken her to the Pyatigorsk maternity hospital. According to Ms I.Kh., she had been admitted to the hospital at around 3-4 p.m. She had then been assisted by doctors, in particular by Dr B. (see paragraphs 57-62 below), who had been in charge of her. The doctors had administered her intravenous and intrauterine injections and drips. As was apparent, anaesthesia had been used, as she had been sleeping during the labour, and therefore could not remember at exactly what time her baby had been born, though she had been awake at the moment of delivery. When the baby had been born, Ms I.Kh. had not heard him crying. She had been told that it was a boy and that he was hardly breathing and was not crying. Ms I.Kh. had worried about the baby’s health. Dr B. had told her that the birth had been premature, that the baby had been pre-term and would not survive, and that, in fact, Ms I.Kh. had had “a miscarriage rather than childbirth”. According to the applicant’s wife, the medical staff had not told her the baby’s weight or height and had not even shown her the boy, stating that he had been placed in an incubator. In reply to her request to be allowed to see the baby, Dr B. had replied that “there [had been]

nothing to look at”, and that the baby had been premature and was weak. Instead, Ms I.Kh. had been asked to fill in papers for the baby’s adoption. According to the applicant’s wife, the birth had taken place during the night-time; she had been feeling very weak because of a loss of blood, and had felt dizzy and faint.

51. Ms I.Kh. went on to state that the next morning, at 8 a.m., Dr B. had invited her to her office and had stated that the baby was still breathing but most likely would not survive, and that there was “one chance in a thousand” that he would live. She had then invited Ms I.Kh. to sign certain documents, indicating her height, education, profession and occupation. Dr B. had stated that this was necessary for any further checks of the documents. According to Ms I.Kh., she had written something, but had not realised at that moment exactly what she had written, as she had been feeling very weak, dizzy and faint. She had informed Dr B. that she was married, and Dr B. had then invited her to write a similar statement on her husband’s behalf, changing her handwriting. Ms I.Kh. had written the statement and signed it without understanding the meaning of her actions. She had then taken a rest in her hospital ward until 9 or 10 a.m. and then called her husband on his mobile telephone. Her husband had asked her about the baby and she had replied that it had been a boy and that she had lost him because of a miscarriage. Ms I.Kh. stated that she had chosen to say this to her husband because the doctors had said that the boy would not survive, and since she had wished to spare her husband because of his heart condition. When she had left the maternity hospital, she had known that the baby was alive, but had thought that he was very weak and hardly able to breathe.

52. The applicant’s wife also stated that when in March 2006 she and the applicant had received a claim for removal of their parental authority in respect of V., they had been very surprised and had initially thought that there had been a misunderstanding, as in September 2005 she and the applicant had had another son, whose first name was also V. The applicant enquired at the court and then visited Dr B., who had said to him that it must be his and Ms I.Kh.’s son who had survived after “the miscarriage”. Thereafter, the applicant had visited Ms Ch., who had told him about V. and had given him a photograph of the child. According to Ms I.Kh., when she had seen the photograph of V., who resembled her elder son T.N. a lot, she had realised what a mistake she had made and had disclosed the truth to the applicant. The latter had “nearly fainted”. From that moment onwards the applicant had become actively involved in the proceedings concerning V.’s fate, whereas she herself could not participate as her younger son had been admitted to an intensive care unit and she had remained with him.

53. Ms I.Kh. added that in her written statement of 13 October 2006 she had revoked her consent to V.’s adoption (see paragraph 38 above) but she had never received any reply from the competent custody and guardianship

agency. Ms I.Kh. insisted that she wanted to take V. back to her and the applicant's family and bring him up.

3. The applicant's statements

54. The applicant disagreed with Ms Ch.'s claim and stated that V. was his and his wife's third child and they had wanted to have him. The whole family had known about Ms I.Kh.'s pregnancy. She had never been seen by doctors in connection with any of her pregnancies. He and his wife had estimated that she had been five and a half or six months pregnant when she had felt ill and he had accompanied her to the Pyatigorsk maternity hospital. He had then left the maternity hospital. The next day his wife had called him and had asked him to take her home, stating that she had lost the baby and that it had been a boy. At the maternity hospital the doctors told him that his wife had had a miscarriage. At home the whole family had mourned the loss of the baby.

55. The applicant further stated that in March 2006 he had found out from documents received from a court that his son was alive. His wife had then told him that she had not wished to traumatise him, and therefore had told him that the baby had died, having been persuaded that this was the case as the doctors had told her so.

56. The applicant added that he had no doubts regarding his paternity and insisted on V.'s return to his and Ms I.Kh.'s family.

4. Dr B.'s statements

57. Dr B. stated that she was the head of the observation unit of the Pyatigorsk maternity hospital. There were usually approximately 3,000 childbirths per year, and therefore she was unable to remember any of her patients. Dr B. further stated that she had not met Ms I.Kh. before, but added that it was likely that she simply did not remember her. She furthermore could not recall whether she had attended Ms I.Kh.'s childbirth. She could have recalled everything if the medical record of Ms I.Kh.'s labour and delivery (*медицинская карта родов*) had been preserved, but that file had been lost in 2005.

58. She further stated that she could not confirm any of the statements Ms I.Kh. had made before the court, as she did not remember anything. In particular, Dr B. insisted that she did not remember whether she had ever obtained Ms I.Kh.'s consent to her baby's adoption, or any other documents from her. According to Dr B., she had no right or need to decide with patients on questions concerning the relinquishment of their parental authority or the adoption of their newborn babies. Any such statements could only be given to the chief medical officer of the hospital, who was entitled to certify their authenticity.

59. Dr B. also denied giving Ms I.Kh. any information about her baby's state of health. She insisted that she never gave any such information, as it fell to a paediatrician to give information on newly born babies' health. Dr B. did not rule out that Ms I.Kh. could mistakenly have believed that her son was dead.

60. As for the information regarding Ms I.Kh.'s alleged abortion attempt, Dr B. noted that, in principle, such information could have been copied to the child's medical file from the mother's medical file, or could have been inserted there after a conversation with Ms I.Kh.

61. Dr B. also stated that after childbirth a new mother remained in a state of stress for up to forty-two days and could even have short-term amnesia. In Dr B.'s opinion, by virtue of her condition after childbirth, Ms I.Kh. might not remember something or might remember only certain details. She added that a mother's state of stress after childbirth could go unnoticed by others, and therefore it was not unlikely that Ms I.Kh.'s written statement had been accepted from her despite her condition.

62. Dr B. further stated that she had asked the chief medical officer of the hospital to give her the medical record of Ms I.Kh.'s labour and delivery, and that the official had told her that the file had been lost. She confirmed that initially she had avoided appearing in court since Mr S. and Ms Ch. had been putting pressure on her in an attempt to make her testify in their favour, and more precisely to make her state that Ms I.Kh. had deliberately abandoned her baby.

5. Examination of documentary evidence

63. The Predgorny District Court also examined documentary evidence. It observed, in particular, the documents submitted by the Pyatigorsk maternity hospital, which included V.'s personal file (*анкета ребенка*) drawn up at the hospital, a medical report attesting to the state of his health after birth, and written statements of 3 September 2004 containing V.'s parents' consent to his adoption.

64. The court observed that, according to the boy's personal file, Mr V. Vasilyevich Kh. – the boy's surname corresponded to Ms I.Kh.'s surname, whereas his patronymic was "Vasilyevich" rather than "Zavenovich", which would have reflected the applicant's first name – had been born on 2 September 2004, weighing 3.150 kg and measuring 54 cm. The medical report referred to foetal hypoxia and a slight cerebral circulation disorder. The file contained information about the baby's mother, including her address, whereas information about his father was missing. The file cited "written consent to adoption" as the ground for the baby's adoption.

65. The court further noted a number of defects in the file. It stated, in particular, that the file contained no information about the person who had filled it in; that information about the baby's father was missing; that the baby's patronymic was erroneously indicated as "Vasilyevich" whereas it

should have been “Zavenovich” (which would correspond to the applicant’s first name); that the file did not indicate which of the parents had filed a statement of “consent to adoption” and when; that the file did not indicate who had certified that statement; that the file did not indicate the date on which the statement had been filled in or its number; that the file contained no information about V.’s birth certificate, its serial number, or date of issue; and that no photograph of the baby was enclosed in the file.

66. As for the medical report, the court noted that it also erroneously indicated “Vasilyevich” rather than “Zavenovich” as V.’s patronymic, that it did not mention the official position of the member of the medical commission who had drawn it up and that the official stamp was missing.

67. The court also noted that both written statements of 3 September 2004 had been certified by the then chief medical officer of the Pyatigorsk maternity hospital, Ms K.

68. It went on to note that it had not received any other documents from the Pyatigorsk maternity hospital, as, according to a letter from the chief medical officer of the Pyatigorsk maternity hospital dated 8 December 2006, “the original of the medical record of labour and delivery for Ms I.Kh., who on 2 September 2004 gave birth to a live boy ..., was lost in 2005.”

69. The court then stated that, since the original of the medical record of Ms I.Kh.’s labour and delivery had been lost, it was impossible to establish the source of the document submitted by the claimant, Ms Ch. – the extract from V.’s medical file stating that Ms I.Kh. had made an attempt to abort her pregnancy in its thirtieth week – an allegation categorically denied by Ms I.Kh. The court therefore found that piece of evidence to be inadmissible.

6. Judgment

70. In its judgment of 7 February 2007, the Predgorny District Court noted that it was undisputed by the parties, and found it established, that the applicant and Ms I.Kh. were V.’s biological parents.

71. It further noted that the judgment of 12 July 2006, as upheld on 23 August 2006, by which the claim of Mr S. and Ms Ch. regarding V.’s adoption had been rejected (see paragraphs 30 and 33 above), had established that the applicant had never given his consent to V.’s adoption; this fact was thus *res judicata* and did not need to be proved once again.

72. The Predgorny District Court therefore found it established that the applicant had not neglected his parental duties with regard to his son V., since he had simply not known that his son had been born alive. The court went on to note that as soon as the applicant had found out that his son was alive, he had started taking steps with a view to returning the child to his family.

73. The court further noted with regard to Ms I.Kh. that “she did not dispute the fact that, being in a fragile condition and having been misled by the medical personnel of the Pyatigorsk maternity hospital as to the state of her newborn son’s health, she had written a statement in which she had expressed her consent to her son’s adoption”. At the same time, the court took into consideration the fact that after childbirth Ms I.Kh. had been in a fragile condition, that on 13 October 2006 she had retracted her statement and that, as matters now stood, she intended to take the child into her family and to bring him up. The court noted that Ms I.Kh.’s fragile condition after childbirth had “indirectly” been confirmed by Dr B.’s statement to the effect that a new mother could remain in a state of stress for a period of up to forty-two days after childbirth and that this state could remain unnoticed by others (see paragraph 61 above).

74. The court went on to note that deprivation of parental authority was a measure of last resort and that it could only be applied to parents flagrantly neglecting their parental duties. The court further considered that no such guilty conduct on the part of the applicant or Ms I.Kh. had been established. It further noted that the circumstances giving rise to V.’s transfer to a foster home and then to the family of Mr S. and Ms Ch. for adoption had changed, as his biological parents had found out that the boy was alive and they wished to bring him up themselves, which meant that they had priority over any other person.

75. In so far as the representatives of the two custody and guardianship agencies argued that depriving the applicant and Ms I.Kh. of their parental authority would be in the child’s best interests, the court noted that the law not only protected the interests of the child but those of the parents as well. The court also considered that the positive references given to Mr S. and Ms Ch., their caring attitude towards V., their contribution to the improvement of his health and his successful development, their attachment to the child, whom they loved and perceived as their own, and the child’s attachment to them, should not be set against the interests and rights of the biological parents as protected by law.

76. The court further observed that the applicant and his wife had positive references and good living conditions, could financially support their child, wished to bring him up and were insistent on his return to their family. It thus concluded that there were no grounds to grant Ms Ch.’s claim and rejected it.

7. Special ruling

77. On 7 February 2007 the Predgorny District Court issued a special ruling in respect of the Head of the Pyatigorsk Health Department. It criticised the shortcomings surrounding the way in which Ms I.Kh.’s consent to her son’s adoption had been obtained, the defects in V.’s personal

file and the fact that the medical record of Ms I.Kh.'s labour and delivery had been lost.

B. Proceedings before the appellate court

78. On 21 March 2007 the Stavropol Regional Court quashed the first-instance judgment on appeal and sent the case for a fresh examination.

79. The Stavropol Regional Court held that the first-instance court's conclusions had been based on assumptions and speculations and that the evidence to which the court had referred had been unreliable. In particular, the first-instance court's conclusion that Ms I.Kh. had been misled by the medical personnel of the Pyatigorsk maternity hospital regarding the state of her baby's health had not been supported by evidence. The Regional Court also stated that neither Ms I.Kh. nor the applicant had taken any steps to ascertain the circumstances of the birth, to apprise themselves of the state of their newborn son's health, and to offer help and support to their baby, having left him in danger several hours after his birth. In the court's view, with the necessary degree of care, the parents could and should have found out that their baby was alive, and that he had been born at term with a good weight and only slight health problems.

80. The Stavropol Regional Court went on to note that the first-instance court had failed to establish what the reasons had been for the applicant's refusal to take the baby from the maternity hospital, and how it was possible that, being the father of three children, the applicant had mistakenly believed in the unfortunate outcome of the birth to such an extent that he had taken no actions with a view to apprising himself of his newborn son's fate. The Stavropol Regional Court thus concluded that the applicant's statement to the effect that he had been unaware that his son was alive had not been corroborated by any evidence and that therefore V.'s transfer to his biological parents was not in the child's interests.

C. Supervisory review proceedings

81. On 28 May 2007 the Presidium of the Stavropol Regional Court ("the Presidium") quashed the decision of 21 March 2007 by way of supervisory review, noting that the appellate court's findings in that decision did not correspond to the circumstances of the case. In particular, the Presidium referred to the results of the inquiry carried out by the Zh. prosecutor's office (see paragraphs 25-27 above) and the court decisions of 12 July and 23 August 2006 (see paragraphs 30 and 33 above) and stressed that, contrary to the relevant findings of the appellate court, it had been clearly established that the applicant had not been aware of the fact that his son had been born alive, that he had never given his consent to his adoption, and that as soon as he had found out that V. was alive, the applicant had

started taking steps with a view to returning the boy to his family. In connection with the latter aspect, the Presidium referred to the applicant's numerous applications to courts and administrative bodies.

82. It also noted that on 13 October 2006 Ms I.Kh. had revoked her consent to V.'s adoption and had officially informed the relevant custody and guardianship agency to that effect. The court stated that under the relevant law, she had a right to retract her consent at any time before the adoption was confirmed by a court.

83. The Presidium also referred to the special ruling issued by the Predgorny District Court on 7 February 2007 (see paragraph 77 above). The Presidium observed, in particular, that that ruling had not been disputed, annulled or found to be unlawful, even though the circumstances established in the ruling stood in clear conflict with the relevant findings of the appellate court.

84. The Presidium also found that the appellate court's conclusion that V.'s transfer to the applicant's family would not be in his interests had not, in fact, corresponded to the subject matter of the claim in the case under examination, which only concerned the removal of parental authority from Ms I.Kh. and the applicant.

85. The Presidium further noted that the applicant's family had been characterised in positive terms: both he, his wife and their three children had positive references, the relations within the family were friendly, the living conditions were good and complied with all necessary requirements, and therefore V. would be safe in that family. Depriving the applicant and his wife of their parental authority over V. would entail a breach of his rights and interrupt the child's ties with his biological parents, his siblings and his grandparents.

86. The Presidium thus set aside the appellate decision of 21 March 2007 and ordered that the first-instance judgment of 7 February 2007 should be upheld.

VI. FURTHER DEVELOPMENTS

87. In the meantime, in a letter of 20 March 2007 the Zh. Custody and Guardianship Agency informed the applicant, in reply to a request from him to that effect, that on 19 March 2007 Ms Ch. had been invited for an interview so that she could provide time for contact sessions for the applicant and Ms I.Kh. with their son V. The letter further stated that Ms Ch. had refused to provide any such time. It then recommended that the applicant should obtain a court order for access to his child.

88. On 2 July 2007 the applicant and Ms I.Kh. lodged a written complaint to the police, stating that Ms Ch. had unlawfully retained their son V. and refused to return him to their family. They sought to have criminal proceedings against Ms Ch. instituted in that connection.

89. On 10 July 2007 the Zh. Office of the Interior decided not to institute criminal proceedings, with reference to the absence of the constituent elements of a crime in Ms Ch.'s actions. The decision stated, in particular, that after the administrative decision revoking Ms Ch.'s guardianship in respect of V. had been confirmed by the courts at two levels of jurisdiction, a representative of the Zh. Custody and Guardianship Agency had visited Ms Ch.'s home address on three occasions in an attempt to take V. away and return him to the applicant's family, but each time Ms Ch. and V. had been absent. Mr S. had explained that his wife and son had gone "to the seaside". At the moment, V. was still living with Mr S. and Ms Ch. The decision further referred to the civil proceedings instituted by the applicant for V.'s return to his family which were pending at that time (see paragraph 91 below), and concluded that the circumstances of the case revealed no criminal actions on Ms Ch.'s part, and that the case should be resolved by means of a civil procedure.

90. The applicant repeatedly sought the assistance of administrative bodies in returning V. In particular, he lodged requests to that effect with the Zh. Custody and Guardianship Agency on 11 September 2006, 29 May, 4 and 22 June and 27 July 2007 and 8 February 2008, and with the head of the municipal administration of Zh. on 7 November 2006 and 21 January and 4 February 2008.

VII. PROCEEDINGS CONCERNING V.'S RETURN TO THE APPLICANT'S FAMILY

91. On 24 September 2006 the applicant brought civil proceedings before the Zh. Town Court. He sought the removal of obstacles to the exercise of his parental authority over V. and to V.'s right to live and to be brought up in his own family.

A. First round of proceedings

92. By a judgment of 13 July 2007 the Zh. Town Court granted the applicant's claim and ordered V.'s recovery from Ms Ch. and his return to the applicant's family. The court noted that Ms Ch. was no longer V.'s guardian and therefore had no legal grounds to retain him. With reference to Article 54 of the Russian Family Code (see paragraph 143 below), the court further held that it could not run counter to V.'s interests to return to his father's family, where all his siblings lived.

93. On 26 September 2007 the Stavropol Regional Court quashed that judgment on appeal and returned the case to the Zh. Town Court for a fresh examination. It stated, in particular, that the first-instance court should have established what the child's best interests required in the present case, and whether his transfer to his biological parents would be in his best interests.

In particular, the first-instance court should have given its assessment of the fact that Ms I.Kh. had given her baby up in the maternity hospital and had not expressed any further interest in his fate, and the fact that she was only participating in the present proceedings as a third party and not as a claimant. The appellate court also noted that there were four children of different ages in the applicant's family, and that the first-instance court should therefore have assessed the prospects of V.'s adaptation in psychological and other terms to living in such a family, given that for three years he had been living in a family where he had been the only child. The Stavropol Regional Court considered that the first-instance court had failed to take into account the relevant considerations in that respect, and that its finding to the effect that V.'s return to his biological family would be in the boy's interests had been unjustified, unfounded and unsubstantiated by any evidence.

B. Second round of proceedings

1. Reports on the applicant's family's living conditions

94. In the context of a new round of the proceedings, the Custody and Guardianship Agency of the Predgornyy District (the childcare authority at the place of the applicant's home address) and the Zh. Custody and Guardianship Agency (the childcare authority at the place of the home address of Mr S. and Ms Ch.) examined the applicant's family's living conditions and drew up reports on the matter on 29 January and 11 March 2008 respectively.

95. In its report of 29 January 2008 following its examination of the applicant's private house, the Custody and Guardianship Agency of the Predgornyy District stated, in particular, that the applicant's family comprised himself, Ms I.Kh., their four minor children and the applicant's parents. The report further stated that the relations within the family were "friendly, based on respect", and that the parents supported the children, brought them up and took care of their education. The children, according to the report, went to school regularly and performed well in their studies. The grandparents and the children in the family were unanimous in expressing their wish to have V. returned to their family. The report then stated that the family was well-off and described their living conditions, stating, in particular, that the sanitary conditions in the house were good, and that it was clean, well maintained and had everything necessary for daily living.

96. In its report of 11 March 2008 the Zh. Custody and Guardianship Agency described the living conditions in the applicant's private house and listed the members of his family who lived there. The report mentioned that the applicant's daughter M.N. and son T.N. "were taken aback" when asked about their sleeping places and had then explained that they slept "where they wanted, in the sitting room". The report also mentioned that when T.N.

was asked what he had for lunch, he had answered that he had “chips”. The report concluded that the living conditions were good and met all sanitary requirements. It did not describe the relations within the family.

2. The parties’ requests during the proceedings before the Zh. Town Court

97. In the new round of proceedings, the applicant and Ms Ch. requested the court to order a psychological expert examination of V.

98. In a written application of 31 March 2008 the applicant withdrew his request and objected to such an examination being carried out. He stressed that his son was a minor, and therefore, being V.’s father, he represented the boy by virtue of Article 64 of the Russian Family Code (see paragraph 147 below). The applicant further stated that the results of any psychological expert examination would not be objective and that it would be unable genuinely to establish what was in V.’s best interests, given that the boy was influenced by Ms Ch., who for the previous two years had been preventing any contact between V. and the applicant and his family. It appears that the application was eventually rejected by the court.

3. Hearing

99. The Zh. Town Court heard the parties and a number of witnesses.

100. The applicant maintained his claim, reiterating that he had been trying to return V. to his family since the time he had found out that his son was alive. In particular, he had repeatedly asked Ms Ch. to return V. to him throughout the period that had elapsed after the judgment of 12 July 2006, as upheld on appeal on 23 August 2006, by which Ms Ch.’s application for V.’s adoption had been refused (see paragraphs 30 and 33 above).

101. Ms I.Kh., acting as a third party in the proceedings, supported the applicant’s claim and stated that her only wish was to take V. back to her family and that she wanted to bring him up.

102. Mr S. and Ms Ch. disagreed with the applicant’s claim and argued that the child had been living with them since 26 July 2005, that they were very attached to him and that he was attached to them to the extent that even a short separation from them would cause him to suffer a fever and his condition would only return to normal after he resumed contact with them.

103. Ms K., who at the time when V. had been born had been the chief medical officer of the Pyatigorsk maternity hospital, stated that on 2 September 2004 Ms I.Kh. had given birth to a full-term baby whom she had then given up, having written a statement to that effect. According to Ms K., Ms I.Kh. had brought a similar statement from her husband and had explained that he “felt too timid” to come to see Ms K. and had preferred to wait in the car, but Ms I.Kh. had brought his statement and his passport. Ms K. submitted that she had accepted the statement from Ms I.Kh.’s

husband, without establishing the identity of the person who had written it. The car in which the presumed father had been sitting had stood 10 metres away and the person inside the car had appeared to resemble the applicant. Ms K. added that during the period of V.'s stay in the maternity hospital neither the applicant nor Ms I.Kh. had expressed any interest in his life.

104. A number of other witnesses were examined, including a representative of the Zh. Custody and Guardianship Agency; various individuals who were relatives, friends or acquaintances of Mr S. and Ms Ch., and the applicant's elder children, M.N. and T.N. The applicant's children stated that they were happy and that the relations within their family were good and friendly. T.N. added that he was dreaming of his brother V.'s return to their family.

4. Examination of documentary evidence

105. The Zh. Town Court also examined documentary evidence.

106. It referred, in particular, to the register of patients' admission to the Pyatigorsk maternity hospital for the period between 12 August to 6 September 2004, which stated that Ms I.Kh. had been admitted on 2 September 2004 at 2 p.m. and that at 9.15 p.m. she had given birth, without any complications, to a live boy, having no signs of asphyxia, weighing 3.150 kg and measuring 54 cm. The register also stated that Ms I.Kh. had left the hospital without the baby on 3 September 2004.

107. The court further examined V.'s personal file, adduced by the Pyatigorsk Custody and Guardianship Agency. Its description of the document in question was very similar to that given by the Predgorny District Court in the judgment of 7 February 2007 (see paragraphs 64-65 above).

108. The court also noted that in reply to its request to the Pyatigorsk maternity hospital to provide the original of the medical record of Ms I.Kh.'s labour and delivery and V.'s medical file, the hospital had stated that those documents could not be found, and that in 2004 the patients' and babies' medical files had been kept in the office of the chief medical officer, Ms K.

109. The court went on to examine the two written statements of 3 September 2004 concerning the biological parents' consent to V.'s adoption (see paragraph 10 above). The court noted, in particular, that one of the statements had been signed by Ms I.Kh. and the other one had been signed by the applicant, and that both signatures were certified by the chief medical officer, Ms K., who had signed both statements and stamped them with the official stamp of the Pyatigorsk maternity hospital.

110. The court further referred to the decision of the Pyatigorsk Office of the Interior dated 30 June 2006 not to institute criminal proceedings against Ms I.Kh. (see paragraph 27 above).

111. The court then examined three medical reports, without mentioning the dates on which they had been drawn up. One of the reports was written by a paediatrician practising in the vicinity of the home of Mr S., Ms Ch. and V. It provided details of the state of V.'s health during the period between 5 August 2005, the date of V.'s first visit, and 27 February 2008, the date of his latest visit. Among other things, the report referred to an attempted abortion at the foetus's gestational age of thirty weeks but did not clearly indicate the source of that information.

112. Another report had been drawn up by a psychologist and stated that V. was a sociable and easy-going child with well-developed speech, and that his intellectual development was adequate for his age. According to the report, the boy constantly needed and claimed attention from adults, particularly from Ms Ch., who was referred to in the report as V.'s mother. The report also attested to the boy's particular attachment to Ms Ch. and indicated that he became stressed if she left him even for a short while. The report referred to V.'s increased level of agitation and indicated that he constantly needed attention, care, support and a tender and caring attitude.

113. The court went on to note that, pursuant to its orders to that effect, comprehensive psychological and psychiatric examinations by a panel of experts had been performed in respect of V., Mr S. and Ms Ch.

114. The report of 4 June 2008 stated that V.'s level of physiological and social development corresponded to his age. It also described the level of V.'s development and particular features of his personality in more detail, stressing, in particular, the boy's particular need for emotional comfort and for protection from outside factors. The report also indicated that the child was currently going through his first age crisis, where his mother's emotional support was essential. V. was attached to Mr S. and Ms Ch., called them "dad" and "mum" and had a constant need for contact with them. Therefore, according to the report, V.'s transfer to a new family of unknown adults and children would cause him psychological trauma.

115. The reports of 11 June 2008 portrayed Mr S. and Ms Ch. as emotional, caring, empathetic people, devoid of any aggressiveness.

116. The Zh. Town Court pointed out that similar expert examinations had been ordered in respect of the applicant and Ms I.Kh., but they had avoided the examination by failing to appear before an expert body.

117. The court also took note of a report by the Zh. Custody and Guardianship Agency. According to the report, it was better for the child to stay with Mr S. and Ms Ch., as he had become accustomed and deeply attached to them, considering them to be his parents. The report further stated that the living conditions at Mr S. and Ms Ch.'s home were good, met all necessary sanitary requirements and were suitable for V. to live in. The boy had an orderly and stable life in their family.

118. Lastly, the court referred to the report of 11 March 2008 on the examination by the Zh. Custody and Guardianship Agency of the applicant's family's living conditions (see paragraph 96 above).

5. Judgment

119. On 9 July 2008 the Zh. Town Court rejected the applicant's claim in full. In its judgment it referred to the aforementioned witness statements and documentary evidence.

120. The Zh. Town Court then held as follows:

"... the court has established that [the applicant's] family consists of his parents, his spouse [Ms I.Kh.], and their four children of various ages ... who are used to living and being brought up in 'a family community', whereas, from 25 July 2005 until the present time, [V.] has been living in a family where he is the only child and all the time and attention of the persons in charge of him are being devoted to him alone.

Thus, the moral and other personal characteristics of [Mr S. and Ms Ch.] are high and enable them to bring [V.] up; the relations between [Mr S. and Ms Ch.] and the child are good; [Mr S. and Ms Ch.] take measures to support and bring [V.] up, take care of his health, and take into account his interests; there is mutual understanding between [Mr S. and Ms Ch.] and the child. [Mr S. and Ms Ch.] have created all the necessary surroundings, including living conditions, for the child's upbringing and development; [they] have a sufficient income, and their working hours do not exceed the normal duration of a working day; [they] can spend enough time on [V.'s] physical and moral development.

Assessing the foregoing, the court also takes into account the fact that [the applicant's] claim concerns the child's transfer to the family consisting of the biological father – [the applicant] – the biological mother – [Ms I.Kh.] – and four children of different ages; the fact that a member of this family – the child's biological mother – has not submitted any claim for the child's return, and has been taking part in the proceedings in the present case only as a third party ...; and her behaviour during her pregnancy – an attempt to abort it, which she has not denied. The court does not find any reasons for granting [the applicant's] claim for the recovery of the child from [Mr S. and Ms Ch.] and for ordering his transfer to the family, where the child's mother does not wish for [the transfer]; to hold otherwise would be in conflict with the child's interests, which, by virtue of international law and Russian family law, are the priority for the court."

6. Proceedings before higher courts

(a) The applicant's appeal submissions

121. The applicant appealed against the judgment of the Zh. Town Court.

122. In his appeal submissions he complained, in particular, that a psychological and psychiatric expert examination of his son V. (see paragraph 114 above) had been carried out despite his objection (see paragraph 98 above). The applicant also argued that information regarding his wife's alleged attempt to abort her pregnancy was unsubstantiated. In the latter connection, he referred to the judgment of the Predgorny District

Court of 7 February 2007, which had rejected an extract from V.'s medical chart as inadmissible evidence, with reference to the fact that the original of the medical record of Ms I.Kh.'s labour and delivery had been lost (see paragraph 69 above). The applicant further complained that in its judgment the Zh. Town Court had not referred to all the documents it had examined during the hearing; in particular, the judgment made no reference to the final and binding court decisions given previously. The applicant also argued that the first-instance court had not taken into account the fact that he had been trying for more than two years to take V. from the persons who had been unlawfully retaining him.

(b) The appellate court's decision

123. On 26 August 2008 the Stavropol Regional Court upheld the judgment of 9 July 2008 on appeal.

124. It rejected the applicant's argument that the information about Ms I.Kh.'s alleged attempt to abort her pregnancy was inadmissible in evidence. The appellate court stated that the information in question had been taken from documentary evidence that met the requirements of the relevant domestic law, and that the fact that the original of the medical record of Ms I.Kh.'s labour and delivery had been lost did not rule out the admissibility of other pieces of evidence, such as an extract from V.'s medical file from the Pyatigorsk maternity hospital, his medical file from a children's hospital, where he had been transferred from the Pyatigorsk maternity hospital, and his personal file from the foster home.

125. The appellate court held that the Zh. Town Court had carefully examined the circumstances of the case, and in particular had carried out a thorough assessment of the conduct of the applicant and Ms I.Kh. at the time of V.'s birth and their subsequent conduct and had rightly concluded that V.'s transfer to his father's family was not in the child's best interests.

126. The Stavropol Regional Court reiterated the first-instance court's findings that Ms I.Kh. had given birth to a healthy baby boy and that, shortly thereafter, she had written similar statements, on behalf of herself and the applicant, in which she had expressed a wish to abandon the baby in the hospital, "those statements having been duly certified, as required by law".

127. The Stavropol Regional Court further noted that the Zh. Town Court had rightly taken into account the conduct of the applicant, who, at the time of the birth, had not taken any steps to obtain information regarding the state of his baby's health or to clarify the circumstances of the supposedly unfortunate outcome of his wife's labour and delivery; he had, furthermore, not taken any steps to provide assistance and support to the baby. The Stavropol Regional Court thus emphasised that V.'s mother had given him up "deliberately and on purpose", whereas the applicant's conduct could be explained by his supposed unawareness of the state of V.'s

health. In the latter connection, the Stavropol Regional Court noted that the applicant's supposed unawareness had been the result of his own inactivity. In the court's view, with the necessary degree of care, the applicant could and should have found out that the baby had been born at term, that he was alive, that his weight was normal and that he had only insignificant health issues. The court concluded that such conduct on the part of the parents at the time of V.'s birth, deliberate on the part of the biological mother and negligent on the part of the biological father, and the fact that they had left him in danger, had not corresponded to V.'s interests.

128. The Regional Court further noted that the subsequent conduct of V.'s biological parents had also been duly assessed by the first-instance court, which had taken into account the fact that throughout V.'s stay in the Pyatigorsk maternity hospital and the foster home and afterwards, neither the applicant nor Ms I.Kh. had ever expressed any interest in V.'s life, or had visited him, or provided any financial support. The applicant had only started taking steps with a view to securing V.'s return after Ms Ch. had filed a claim for removal of his parental authority, whereas the child's mother, Ms I.Kh., had never attempted to have her rights with respect to V. restored, and had not at any time lodged a claim for the protection of V.'s interests.

129. The appellate court also noted that Ms I.Kh. had stated that she did not intend to lodge any separate claim for V.'s return, as she considered the actions taken by her husband to that end to be sufficient; and that the Zh. Town Court had rightly taken into account the refusal of the applicant and Ms I.Kh. to undergo a psychiatric expert examination when rejecting the applicant's claim.

130. In the light of the foregoing, the Stavropol Regional Court concluded that the applicant's right to bring V. up stood in conflict with the child's best interests.

(c) Further developments

131. By a decision of 24 September 2008 the head of the municipal administration of Zh. again appointed Ms Ch. to act as V.'s guardian.

VIII. PROCEEDINGS CONCERNING CONTACT RIGHTS

132. On 10 March 2009 the applicant, his wife and his father lodged a claim against Ms Ch., seeking to have obstacles to their access to V. removed and to have their contact rights with V. determined. The applicant and Ms I.Kh. pointed out, in particular, that they had never been deprived of their parental authority with respect to V., and that they had on numerous occasions requested Ms Ch. to let them see V. and to set down specific hours for that purpose. They had also sought the assistance of a local custody and guardianship official, who had stated that the resolution of that

situation could only be possible through a court procedure, in view of the fact that Ms Ch. had categorically refused to allow any such contact between V. and his biological relatives.

133. Before the court the applicant, his wife and his father maintained their claim and requested the court to set V.'s current location at the address of Mr S. and Ms Ch. as the place for their contact sessions with him.

134. Ms Ch. and a representative of the Zh. Custody and Guardianship Authority objected to the claim, stating that any contact with V.'s biological relatives might inflict psychological trauma on him.

135. In a judgment of 16 April 2009 the Zh. Town Court dismissed the claim.

136. The court noted that Ms Ch. had been appointed V.'s guardian by the decision of the head of the municipal administration of Zh. of 24 September 2008, and that therefore by virtue of Article 148.1 of the Russian Family Code (see paragraph 151 below), she had every right to represent and protect the child's interests. It also stated that the same Article established that a guardian should not obstruct contact between a child and his or her biological parents or other relatives, unless such contact was in conflict with the child's interests.

137. The Zh. Town Court went on to rely extensively on the conclusions of report no. 785 of 4 June 2008 (see paragraph 114 above) reflecting the results of V.'s psychosocial and psychiatric expert examination carried out in the context of the proceedings concerning the applicant's claim for V.'s return to his family. In particular, the court quoted that report in so far as it stated that V.'s transfer to a new family of unknown adults and children would cause him psychological trauma.

138. The court also cited report no. 787 of 11 June 2008 (see paragraph 115 above) and "[took] into account the fact that the applicant and Ms I.Kh. had avoided the expert examination which had been ordered in respect of them, having failed to appear at the expert institution" in the context of the proceedings for V.'s return to their family (see paragraph 116 above).

139. The Zh. Town Court went on to describe the conduct of the applicant and Ms I.Kh. at the time of V.'s birth, reproducing, word for word, the decision of the Stavropol Regional Court of 26 August 2008 (see paragraph 127 above). It reiterated, in particular, that, with the necessary degree of care, the applicant could and should have found out that the baby had been born at term, that he was alive, that his weight was normal and that he had only insignificant health issues.

140. The Zh. Town Court continued as follows:

"Such conduct by the parents – deliberate on the part of the biological mother and negligent on the part of the biological father – at the time of the baby's birth, and the fact that they left him in danger, did not correspond to the child's interests, in spite of the fact that later the biological mother, [Ms I.Kh.], revoked her consent to the child's adoption, and the fact that the consent to the child's adoption given on behalf of [the applicant] was written by an unidentified person and not by him.

Moreover, the court has given its assessment of the actual conditions in which the child is being brought up, the nature of the relations between the foster parents, the child's attitude towards them, the living conditions of the foster parents, and the possibility of their positive or negative impact on the child.

These circumstances were established during the court proceedings [concerning the applicant's claim for V.'s return to his family] and were reasons for the dismissal of [the applicant's] claim.

As regards the question of the possibility of determining the manner of contact between [V.] and his biological relatives – the claimants in the present case – the court takes into account the aforementioned circumstances, which have led to the fact that [V.] is currently under [Ms Ch.] guardianship; the psychological particularities of the child's development; [V.'s] attitude towards [Ms Ch.] as his own mother; and the opinion of the claimants, who insist that the child's contact with his biological relatives will not cause him psychological trauma, as they are his kinsfolk.

Therefore, having regard to the entirety of the evidence submitted by the parties, as analysed in the light of the provisions of international and Russian family law, which are of priority to the court, the court finds no reasons to grant the claim of [the applicant, Ms I.Kh. and the applicant's father] for the elimination of obstacles to their contact with [V.] and for the determination of the manner and extent of their contact with him."

141. The applicant, Ms I.Kh. and the applicant's father disagreed with the judgment and lodged an appeal. They argued, in particular, that the Zh. Town Court's findings about the conduct of the applicant and Ms I.Kh. in respect of V. had been unfounded. They pointed out that it had never been established that any of them had ever caused any physical or psychological harm to the child. They further questioned the reasonableness of the Zh. Town Court's reliance on the report of 4 June 2008 on V.'s psychological and psychiatric examination, given that it described the potential consequences of V.'s transfer to a new family, whereas in their claim they had only sought to have their contact with V. determined, in a manner and to an extent that was not detrimental to V.'s health. The applicant and his wife stressed that they had never been deprived of their parental authority in respect of V. They also argued that by refusing to determine arrangements for their contact with V., the Zh. Town Court had breached V.'s right to know his biological parents and other relatives, and to have their care and support.

142. On 16 June 2009 the Stavropol Regional Court upheld the judgment of 16 April 2009 on appeal. It stated, in particular:

"The first-instance court resolved the dispute with due regard to the [relevant] legal provisions and the evidence, including the final court decisions, submitted by the parties in adversarial proceedings. It considered such a solution currently to be the best one for the child and justified by his interests.

Refusing to determine arrangements for the [the claimants'] contact with the child, the first-instance court reasonably took into account his age, state of health and other circumstances capable of influencing his physical and psychological health and moral

development, as well as other factors relevant for ensuring adequate conditions for his living and upbringing.

Taking into account [V.'s] age of nearly five years, the first-instance court reasonably considered that the living conditions that had been formed during those years in Ms Ch.'s family could not be changed abruptly, all the more so since at this age he should live with the person whom he considered to be his mother.

It is an essential factor that throughout those five years, for various reasons, [the claimants] had no possibility of contact with the child. As the court found, it was not in the child's interests to establish any such contact now.

The foregoing reveals that [the claimants] have the possibility of maintaining friendly relations with the child, gradually adapting to his life, and participating in taking decisions regarding his upbringing and development.

Moreover, taking into account the particular nature of relations between the claimants ... and [Ms Ch.], it will be necessary to ensure the child's adaptation to new circumstances, since, irrespective of the opinion of the aforementioned persons, it is first and foremost the child's interests that should be taken into account; and [those interests] would not be secured in the present case if the claimants were granted contact with the child.

The parental rights of [the applicant and Ms I.Kh.] are likewise not infringed because the circumstances relied on as the grounds for refusing to grant them contact with [V.] may eventually change. This may be the case when the child reaches the age when, by virtue of Article 57 of the Russian Family Code, it is obligatory to take into account his opinion."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIAN FAMILY CODE

A. Legal provision concerning protection of children's rights

143. Article 54 provides that every child, that is, a person under the age of 18 years, has a right to live and to be brought up in a family, in so far as this is possible, a right to know his or her parents, a right to their care, and a right to live together with them, except where this is contrary to his or her interests.

144. Article 55 entitles a child to maintain contact with his or her parents, grandparents, brothers, sisters and other relatives.

145. By virtue of Article 57, a child is entitled to express his or her opinion on all family matters concerning him or her, including in the course of any judicial proceedings. The opinion of a child over ten years old must be taken into account, except where it is contrary to his or her interests.

B. Legal provisions concerning parents' rights and obligations

146. Article 63 provides that the parents' right to bring up their children takes precedence over such a right of any other person.

147. Article 64 provides that the parents act on the child's behalf and defend the child's rights and interests in any relations with persons or legal entities. They act *ex officio* as the child's legal representative in court proceedings.

148. Article 68 vests in the parents a right to seek the return of their child from any person who retains the child other than on the basis of law or pursuant to a court decision. In the event of a dispute, the parents are entitled to file a court claim for protection of their rights. When examining that claim, the court, with due regard to the child's opinion, is entitled to reject the claim if it finds that the child's transfer to the parents is contrary to the child's interests.

149. Article 69 provides that a parent may be deprived of parental authority if he or she avoids parental obligations, such as the obligation to pay child maintenance; refuses to collect the child from a maternity hospital or any other medical, educational, social or similar institution; abuses his or her parental authority; 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 or her children or spouse.

C. Legal provisions governing adoption and guardianship

150. Article 129 provides that the consent of the child's parents is required for his or her adoption. Such consent must be expressed in a written statement certified by a public notary, or by the head of an entity where the child is being held after being left without parental care, or by a custody and guardianship agency at the place of adoption or at the place of the parents' home address, or it can be expressed directly in court proceedings for adoption. The parents are entitled to revoke their consent to adoption at any moment before a court decision on adoption is taken.

151. Article 148.1 provides that a legal guardian is not entitled to obstruct a child's contact with his or her parents and other relatives, except where such contact is contrary to the child's interests.

II. RULINGS OF THE SUPREME COURT OF RUSSIA

152. In its ruling no. 10 on the application by the courts of legislation when resolving disputes concerning the upbringing of children, dated 27 May 1998, as amended on 6 February 2007, the Plenary of the Supreme Court of Russia stated, in particular:

“...

6. In accordance with the law, the parents' right to bring up their children has precedence over such a right of any other person (Article 63 § 1 of the Russian Family Code), and they are entitled to seek the return of their child from any person who

retains the child other than on the basis of law or pursuant to a court decision (Article 68 § 1 (1) of the Russian Family Code). At the same time, a court is entitled, with due regard to the child's opinion, to reject a parent's claim if it finds that the child's transfer to the parents is contrary to the child's interests ...

When examining such cases, the court takes into account whether there is a realistic possibility for a parent to bring the child up properly; the nature of the relations between the parent and the child, the child's attachment to the individuals with whom he or she is living at that time, and other particular circumstances that are relevant for securing adequate conditions for the child's life and upbringing by his or her parents, or by the individuals whom the minor is actually living with and being brought up by.

...

8. ... When determining the manner of access to the child of a parent [who lives separately from the child], [the court] must take into account the child's age, the state of his or her health, the child's attachment to each of the parents and any other circumstances that may influence the child's physical or mental health and his or her moral development.

In exceptional cases, where the child's communication with a parent who lives separately from him or her may inflict damage on the child, the court, on the basis of Article 65 of the Russian Family Code, which prohibits the exercise of parental authority to the detriment of children's physical or mental health or their moral development, is entitled to reject that parent's claim for the determination of the manner of his or her access to the child, providing reasons for such a decision.

Similarly, a claim lodged by parents who have not been deprived of their parental authority, seeking the removal of obstacles to the upbringing of their children who are living with other individuals by virtue of the law or pursuant to a court decision, must be resolved ..."

153. In its ruling no. 8 on the application by the courts of legislation when examining cases on adoption, dated 20 April 2006, the Plenary of the Supreme Court of Russia stated, in so far as relevant:

"...

9. If a child has parents, their consent is a prerequisite for adoption. ...

A parent's consent to adoption should be ascertained by a custody and guardianship agency with due regard to the requirements of Article 129 § 1 (2) of the Russian Family Code, or may be expressed directly before a court in proceedings for adoption

...

...

... Given the precedence of the parents' rights to bring their child up, either parent may revoke his or her consent for adoption given previously, irrespective of the motives that prompted them to give such consent, before a court decision on adoption is taken."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

154. The applicant complained under Articles 6, 8 and 13 of the Convention about the national authorities' decisions refusing his son's return to his family and refusing him contact with his son. The Court will examine these complaints under Article 8 of the Convention (see, for this approach, *Ageyevy v. Russia*, no. 7075/10, §§ 115 and 133, 18 April 2013), which reads as follows:

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

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

A. Admissibility

155. The Government disputed the existence of a “family life”, within the meaning of Article 8 of the Convention, between the applicant and V. They extensively referred to the Court's case-law concerning relations between putative biological fathers with their children born out of wedlock, and argued that biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, was insufficient to attract the protection of Article 8. In the Government's view, there were no such elements in the present case. They alleged, in particular, that the applicant and his wife had abandoned V. at the maternity hospital and had never expressed any interest in his fate. On the assumption that they had considered that the boy had died, the Government found it surprising that the applicant and his wife had never attempted to claim the child's body from the maternity hospital. Moreover, they had never lived together with V., and the applicant had only seen him on two occasions and had never attempted to support him financially. The Government further insisted that no aspects of the applicant's “private life” under Article 8 of the Convention were engaged in the present case either.

156. The applicant stressed that he was V.'s biological and also legal father and had full parental authority over him. He also argued that immediately after he had found out that his son was alive, he had started taking steps with a view to obtaining access to him and to returning him to his and his wife's family. The applicant insisted that the fact that no natural bonding had occurred between him and his son could not be attributed to him.

157. The Court reiterates that the relationship created between the spouses by a lawful and genuine marriage has to be regarded as “family life” (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 62, Series A no. 94). Furthermore, it follows from the concept of family on which Article 8 is based that a child born of such a union is *ipso jure* part of that relationship. Cohabitation is not a *sine qua non* of “family life” between parents and minor children; from the moment of the child’s birth and by the very fact of it, there exists between him and his parents a bond amounting to “family life” (see *Berrehab v. the Netherlands*, 21 June 1988, § 21, Series A no. 138; see also *Khusnutdinov and X v. Russia*, no. 76598/12, § 84, 18 December 2018, and *Ilya Lyapin v. Russia*, no. 70879/11, § 48, 30 June 2020, where the Court accepted the existence of “family life” between the applicants, who had formal parental status, and their children, with whom they had not lived for prolonged periods of time).

158. Turning to the present case, the Court observes that V. was born within wedlock between the applicant and Ms I.Kh. The fact that the applicant is V.’s biological father has been acknowledged at the domestic level (see paragraphs 33 and 70 above) and has not contested in the proceedings before the Court. In addition, a legal link between the applicant and V. has uninterruptedly existed since V.’s birth and remains in place; the applicant’s parental status has never been revoked, and he retains full parental authority over the child. These elements are sufficient to enable the Court to conclude that the applicant’s relationship with his son attracts the protection of Article 8 of the Convention under its “family life” aspect.

159. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

160. The applicant maintained his complaints. He argued that he had never relinquished his parental authority over V. or given consent to his adoption by third parties, his written statement to that effect having been forged, which fact had been established by the national authorities. In respect of the latter point, he referred to the expert report of 27 May 2006 (see paragraph 25 above). He also contended that the respondent State had not submitted any evidence that, before accepting Ms I.Kh.’s similar statement, the doctors of the Pyatigorsk maternity hospital had actually checked her physical and psychological condition with a view to establishing whether she could clearly understand the meaning of her

actions; that she had been informed of her rights and obligations; or that she had been informed of the consequences of her actions. Moreover, the national authorities had taken no steps in respect of Ms K., the then chief medical officer of the Pyatigorsk maternity hospital, who had certified the written statements of 3 September 2004 (see paragraph 10 above); despite the fact that she had clearly acted in breach of domestic law, she had never been prosecuted and held criminally liable in that connection.

161. The applicant further pointed out that he was V.'s biological and legal father and thus had full parental authority in respect of him. However, no bonds between him and his son had formed, and they remained separated from one another, as all his attempts to establish contact and to return V. to his natural family had been consistently obstructed by third parties with whom V. had been living, whilst the national authorities had failed in their positive obligation to rebuild their family. For years, the applicant had had no realistic opportunity to exercise his parental rights. Moreover, the domestic courts had refused the applicant's claim to have his child returned to his family, and had eventually refused to grant him access to and determine arrangements for his contact with the boy, with the result that any prospect of bonding between the applicant and his son had been extinguished. The applicant thus argued that there had been a violation of his right to respect for his family life.

(b) The Government

162. According to the Government, the circumstances in which V. had been abandoned in the maternity hospital after his birth had been established by the national courts in various sets of civil proceedings. They also referred to information they had received from unnamed medical staff of the Pyatigorsk maternity hospital who, according to the Government, had been employed there during the relevant period and had witnessed the events in question. Copies of those statements were not provided.

163. The Government pointed out that the written statements of 3 September 2004 (see paragraph 10 above) had been received by Dr B., the then head of the observation unit of the Pyatigorsk maternity hospital, and Ms K., the then chief medical officer of that hospital. The latter had certified the statements with her signature and official seal. According to the Government, Ms K. and Dr B. had provided an explanation below the statement; however, the Government did not specify in what context that explanation had been obtained, nor did they submit a copy of it.

164. In their submission, Ms K. had stated that, before accepting Ms I.Kh.'s consent to the adoption of her newly born son, she had had a detailed conversation with her in which she had explained the consequences of such actions and informed Ms I.Kh. that the parents could revoke their consent at any moment. Ms I.Kh. had written with her own hand in the statement of 3 September 2004 that the legal consequences of her actions

had been explained to her and that she had written the statement of her own free will. In this connection, the Government argued that it had never been established that Ms K. had committed any criminal offence, as, in the absence of any request from the applicant or his wife, no criminal proceedings had ever been brought against her.

165. With reference to the explanation given by Dr B., the Government further argued that Ms I.Kh. had had a normal physiological labour without complications, and that at all times she had been conscious and fully able to account for her actions. Her condition had allowed her to assess the situation clearly and to understand the meaning of her actions.

166. The Government also pointed out that, under the relevant domestic law, if the child's parents were married, written consent for adoption should be given by each of them. Where the mother's spouse had not provided his written consent, the relevant documents should be sent to a local childcare agency, which should take steps to establish the identity of the spouse and to obtain his written consent for adoption.

167. The Government went on to contend that the judgment of 9 July 2008 on the applicant's claim for the return of V., as upheld on appeal on 26 August 2008 (see paragraphs 119-120 and 123-130 above), had been well-founded and in V.'s best interests. In that connection, the Government relied on their margin of appreciation in the field and stressed that there existed *de facto* family life between V. and Mr S. and Ms Ch. Indeed, the boy had been living with Ms Ch. and Mr S. since 26 July 2005 and was deeply attached to them. V. had never met or lived with the applicant and his family, and, as had been established, a transfer at his age to a new family and unknown adults would traumatise him. Moreover, V. was the only child in the family of Ms Ch. and Mr S. and had their full attention, whereas the applicant's family comprised the parents and four children of different ages.

168. At the same time, the applicant's wife, Ms I.Kh., and the applicant had shown flagrant indifference to their newly born child by refusing to take him from the maternity hospital after his birth. In the Government's view, it was irrelevant what motives the parents had had, and what had prevented them from taking the child from the maternity hospital. They also argued that Ms I.Kh. had been fully capable of understanding the meaning of her actions, when she had made a written declaration relinquishing her parental authority and consenting to V.'s adoption; that, even if that not had been the case as alleged by her, she could have changed her mind later and taken V. home; and that she had never attempted to restore her rights and had only participated as a third party in the civil proceedings regarding V.'s return to his natural family.

169. As for the applicant, if he had assumed that his son had died at birth, he had not attempted to recover his body and had not taken any steps, or enquired of any steps to be taken, with a view to burying him. Also, the applicant had not attempted to return the child to his family as soon as he

had found out that his son was alive and living with third parties. Whilst being fully aware of the adoption proceedings, he had not attempted to intervene; he had only begun to take steps with a view to returning V. to his family after Ms Ch. had lodged a claim for removal of his parental authority.

170. The Government furthermore emphasised that the judgment of 16 April 2009 on the claim for contact rights, as upheld on appeal on 16 June 2009 (see paragraphs 135-140 and 142 above), had also been justified and in V.'s best interests. In that connection, they advanced arguments similar to those summarised in paragraphs 167-169 above. They referred, in particular, to the mutual affection between V. and his foster parents; the expert reports of 4 and 11 June 2008 (see paragraphs 114 and 115 above); the length of V.'s stay in that family; the "irresponsible" conduct of the applicant and his wife, who had abandoned the child in the maternity hospital; and the fact that an abrupt change in V.'s living conditions would be detrimental to his psychological health. The Government also stressed that under the national law, it was open to the applicant to lodge another claim for the determination of his contact rights with V.

171. Lastly, the Government contended that the decision-making process in both of the above-mentioned sets of proceedings had been fair and had secured the applicant's relevant rights. In particular, he had been represented by legal counsel and had been fully able to present his arguments. In addition, each of the applicant's claims had been examined within a reasonable time.

2. The Court's assessment

172. The Court has declared admissible the applicant's complaint concerning the domestic courts' and authorities' decisions refusing his son's return to his family and refusing him contact with his son. It will now proceed to examine those complaints, whilst putting them in context, which inevitably means, to some extent, having regard to earlier events (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 148, 10 September 2019; *Zelikha Magomadova v. Russia*, no. 58724/14, § 82, 8 October 2019; and *Uzbyakov v. Russia*, no. 71160/13, § 98, 5 May 2020).

(a) General principles

173. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see *Strand Lobben and Others*, cited above, § 202). There is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see *Neulinger*

and *Shuruk* [GC], no. 41615/07, § 135, 6 July 2010, and *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013). Generally, a child's interests dictate that the child's ties with his or her family must be maintained, except in cases where the family has proved to be particularly unfit and this may harm the child's health and development (see, for instance, *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). Severing such ties means cutting a child off from his roots, which may only be done in exceptional circumstances (see *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004); everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 75, 10 January 2017).

174. Beyond protection against arbitrary interference, Article 8 imposes on the State positive obligations inherent in effective respect for family life. Where a family tie has been established, the State must in principle act in such a way as to allow the relationship to develop (see, for instance, *S.H. v. Italy*, no. 52557/14, § 38, 13 October 2015). Article 8 of the Convention thus imposes on every State the obligation to aim to reunite a natural parent with his or her child (see *K. and T. v. Finland* [GC], no. 25702/94, § 178, ECHR 2001-VII, and *Görgülü*, cited above, § 45). It includes a parent's right to take measures with a view to being reunited with the child, and an obligation on the national authorities to take such action (see *R.M.S. v. Spain*, no. 28775/12, § 71, 18 June 2013, and *Omorefe v. Spain*, no. 69339/16, § 38, 23 June 2020).

175. At the same time, it is clearly also in the child's interests to ensure his or her development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Strand Lobben and Others*, cited above, § 207). The child's best interests may, depending on their nature and seriousness, override those of the parents (see, for instance, *V.D. and Others v. Russia*, no. 72931/10, § 114, 9 April 2019). In particular, where contact with the parent might appear to threaten the best interests of the child or interfere with his or her relevant rights, it is for the national authorities to strike a fair balance between them (see *Khusnutdinov and X*, cited above, § 80).

176. It must be borne in mind that generally the national authorities have the benefit of direct contact with all the persons concerned. It is accordingly not the Court's task to substitute itself for the domestic authorities but to review, in the light of the Convention, the decisions taken and assessments made by those authorities in the exercise of their power of appreciation (see, among other authorities, *X v. Latvia*, § 101, and *Strand Lobben and Others*, § 210, both cited above).

177. The margin of appreciation to be granted to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Whilst the Court recognises that the

authorities enjoy a wide margin of appreciation when deciding on custody matters, stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between parents and a child may be effectively curtailed (see *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I; *Haase v. Germany*, no. 11057/02, § 92, ECHR 2004-III (extracts); and *Strand Lobben and Others*, cited above, § 211). Indeed, the likelihood of family reunification will be progressively diminished and eventually destroyed if the parent and the child are not allowed to see each other at all, or only so rarely that no natural bonding between them is likely to occur (as a recent authority, see *Milovanović v. Serbia*, no. 56065/10, § 119, 8 October 2019).

178. In the context of both negative and positive obligations, the Court has to consider whether, in the light of the case as a whole, the reasons given by the competent domestic authorities to justify their decisions were “relevant and sufficient” for the purposes of Article 8 § 2 of the Convention (see *Uzbyakov*, cited above, § 105). To that end, the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, particularly factors of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk*, cited above, § 139).

179. It is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its obligations under Article 8 of the Convention, and it is for the Court to ascertain whether the domestic authorities, in applying and interpreting the applicable legal provisions, secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child’s best interests (see, for instance, *Haddad v. Spain*, no. 16572/17, § 56, 18 June 2019). The decisive issue in this area is whether a fair balance between the competing interests at stake has been struck, within the margin of appreciation afforded to States in such matters (see, for instance, *Róžański v. Poland*, no. 55339/00, § 61, 18 May 2006).

180. The Court will also have to determine whether the decision-making process, seen as a whole, was fair and provided the applicant with the requisite protection of his interests as safeguarded by Article 8 (see *Schneider v. Germany*, no. 17080/07, § 93, 15 September 2011).

(b) Application of these principles to the present case

181. The Court has found in paragraph 158 above that the relationship between the applicant and V. amounted to “family life” within the meaning of Article 8 of the Convention. That being so, it needs to determine whether

the decisions taken by the domestic courts in the present case were compatible with the applicant's right to respect for his family life (compare *Khusnutdinov and X*, cited above, § 84).

(i) *Refusal of the claim for V.'s return to the applicant's family*

182. In the relevant set of proceedings, the domestic courts at two levels of jurisdiction found that it would be contrary to V.'s interests to order his transfer to his natural family. They reached that conclusion with reference to Ms I.Kh.'s attempt to abort her pregnancy with V., and to her and the applicant's conduct – "deliberate" on the part of Ms I.Kh. and "negligent" on the applicant's part – after his birth, when they had abandoned him, and during his stay in a foster home, where they had never come to see him or supported him financially, thus demonstrating their indifference towards him (see paragraphs 120 and 125-128 above). The first-instance court also relied on the fact that the applicant's family comprised the parents, paternal grandparents and four children, whereas V. was the only child in his foster family, with the result that "all the time and attention of the persons in charge of him [were] being devoted to him alone"; and on the fact that his foster parents had created good conditions for his life and development (see paragraph 120 above). The Court will assess those findings in the more general context of the case, taking into account the earlier events, proceedings and decisions (see paragraph 172 above).

183. On the facts, the applicant's wife gave birth to V. on 2 September 2004. The next day, she wrote and signed a statement consenting to his adoption. She also wrote a similar statement in the applicant's stead, having changed her handwriting and forged his signature (see paragraphs 10 and 25-27 above). The reasons underlying the applicant's wife's decision are unclear. As the applicant and Ms I.Kh. later stated before the domestic courts, they were convinced that the birth had taken place long before term, and the doctors of the maternity hospital who had assisted Ms I.Kh. during the labour and delivery had allegedly confirmed this, having stated that the boy was very weak and would not survive. They allegedly persuaded her to abandon the baby. Subsequently, the applicant's wife stated that, being vulnerable after childbirth and distressed by the doctors' prognosis, she signed the relevant statement for her son's adoption, without understanding the meaning of her actions. She also signed a similar statement on the applicant's behalf, without him being aware of this (see paragraphs 9 and 48-51 above). The applicant, for his part, was sure that his wife had "miscarried" and his son had died at birth, as that was what he had been told by the doctors and his wife (see paragraphs 11 and 54-55 above).

184. In this connection, it is unclear, as no conclusive evidence has been submitted to the Court, whether before Ms I.Kh.'s consent to V.'s adoption was obtained, any interviews with her were carried out to ensure that her condition allowed her to understand the meaning and consequences of her

actions, and that she was given full relevant information (compare and contrast *Kearns v. France*, no. 35991/04, §§ 85-91, 10 January 2008). The Court finds unconvincing the Government's reference to Dr B.'s statement allegedly confirming that Ms I.Kh. had had a normal physiological labour and had been fully able to account for her actions (see paragraph 165 above). Firstly, it is unclear when and in what context that statement was made, and secondly, more importantly, that statement stands in conflict with Dr B.'s statements made before the national courts, where she denied remembering any events involving Ms I.Kh. (see paragraphs 57-58 above). Likewise, the Government's reference to Ms K.'s statement that she had a detailed interview with Ms I.Kh. before accepting her written statement of 3 September 2004 (see paragraph 164 above) appears unconvincing, as these facts have never been established at the domestic level.

185. Be that as it may, it is clear that, as pointed out by the national courts and by the Government in their submissions to the Court, under Article 129 § 1 of the Russian Family Code (see paragraphs 150 and 166 above) a child cannot be put up for adoption unless explicit consent from each of the child's parents having parental authority over him or her is obtained. Such consent should be expressed in a written statement that should be duly certified by a competent representative of the State authorities. In the present case, Ms K., the then chief medical officer of the maternity hospital, where the applicant's wife gave birth to V., acted as a representative of the State when she certified the statements of consent to V.'s adoption. As she acknowledged before the national courts, she accepted and certified the statement on the applicant's behalf in his absence (see paragraph 103 above). She clearly did not ascertain whether the applicant was aware of the situation at hand. These facts, as they stand, reveal negligence, to say the least, on the part of a representative of the State which triggered a chain of events leading to the rupture of the applicant's ties with his son. It is noteworthy that the irregularities surrounding the manner in which V.'s parents' refusal of their parental authority and their consent to his adoption had been obtained were acknowledged at the domestic level (see paragraphs 31 and 77 above).

186. The Court further observes that the circumstances surrounding V.'s birth and abandonment, including the conduct of the applicant and his wife, were examined and assessed in the proceedings concerning the application for V.'s adoption (see paragraphs 30-33 above), and in those concerning the claim for removal of the applicant's and Ms I.Kh.'s parental authority over V. (see paragraphs 70-86 above). The national courts stressed, in particular, that Ms I.Kh. had written her statement of 3 September 2004 while in a fragile condition (see paragraph 73 above); that on 13 October 2006 Ms I.Kh. had withdrawn her consent to V.'s adoption, a procedural step which she was entitled to take under national law (see paragraphs 38, 73 and 82 above); and that she had consistently expressed her wish to have the boy

returned to her and the applicant's family and to bring him up (see paragraphs 48, 53 and 101 above).

187. As regards the applicant, the courts established as a fact that did not need to be proved again that the applicant had never written the statement of 3 September 2004, and thus had not relinquished his parental authority over V. or given consent to his adoption and that he had not neglected his parental duties in respect of the boy as he had been unaware that V. had been born alive (see paragraphs 30, 33, 71 and 81 above). It was also acknowledged that as soon as he had found out that his son was alive, the applicant had started taking steps with a view to having him returned to his family (see paragraphs 72 and 81 above).

188. It is significant that in the proceedings for removal of the applicant's and his wife's parental authority over V., the domestic courts found that there had been no guilty conduct on the part of the applicant and Ms I.Kh. in respect of V. (see paragraph 74 above). The courts also stressed that, being V.'s parents, the applicant and his wife had priority over any other persons in exercising their relevant rights; that their family had been characterised in positive terms, the relations within the family were friendly, the living conditions were good and complied with all the necessary requirements; and that therefore V. would be safe in their family. Moreover, it was stressed that depriving the applicant and Ms I.Kh. of their parental authority would entail a breach of V.'s rights and interrupt his ties and limit his communication with his biological parents, siblings and grandparents (see paragraphs 74, 76 and 85 above). Similarly, in the first round of the proceedings for V.'s return to the applicant's family, the first-instance court considered that it would be in the child's interests to return to his biological family, where all his siblings lived (see paragraph 92 above).

189. Against this background, the Court finds it surprising that during the second round of the proceedings under examination, on the basis of the same evidence and in the absence of any new factual elements regarding the circumstances of V.'s birth and abandonment, the national courts made findings that stood in flagrant contrast with those made in earlier court proceedings. In particular, the courts found, on the basis of information from V.'s personal file (see paragraph 107 above), that Ms I.Kh. had attempted to interrupt her pregnancy; in the courts' view, that attempt confirmed that she did not wish to take care of V. (see paragraphs 120 and 124 above). The Court observes in this connection that in the proceedings for removal of the applicant's and his wife's parental authority the domestic courts had already examined the same set of documents and rejected them as inadmissible in evidence given that the original document from which the information about the alleged abortion attempt had been transferred to those documents had been lost (see paragraph 69 above).

190. Furthermore, in the proceedings under examination the courts considered that Ms I.Kh. had abandoned her child after his birth

“deliberately and on purpose” (see paragraph 127 above). It is unclear what the factual basis was for that conclusion, as it does not appear that the courts attempted to establish whether Ms I.Kh. had been provided with full information about the consequences of her actions, and whether her physical and mental condition at that time enabled her to fully understand the meaning of her actions (see paragraph 184 above). It is noteworthy that in the proceedings for removal of the applicant’s and Ms I.Kh.’s parental authority, it was found that the latter had given consent to her son’s adoption while in a fragile condition after the birth (see paragraph 73 above). In those proceedings the national courts also took into consideration the fact that on 13 October 2006 Ms I.Kh. had revoked her consent to V.’s adoption, and they emphasised that she was entitled to do this under the relevant domestic law at any time before the adoption was ordered by a court (see paragraphs 73 and 82 above). It was also acknowledged in that set of proceedings that Ms I.Kh. had expressed her wish to secure V.’s return and to bring him up (see paragraphs 74 and 76 above). In the light of the foregoing, and given Ms I.Kh.’s statements made in the proceedings for V.’s return to his parents’ family (see paragraph 101 above), the Court is perplexed at the courts’ finding in the context of those proceedings that V.’s mother did not wish him to be transferred to her family (see paragraph 120 above).

191. The Court further observes that in the proceedings under examination the domestic courts considered that the applicant had abandoned his child owing to negligence, as his unawareness of the boy’s condition had been the result of his own inaction (see paragraph 127 above). The Government argued that, if he had assumed that his son had been stillborn, the applicant had made no steps to recover the body and to bury his child (see paragraph 169 above). In this connection, the Court observes that the Government did not submit any records or other documentation to the Court showing what information the hospital had provided to the applicant regarding his child. Assuming that he received information from the doctors and/or his wife that she had “miscarried” or that the boy had died at birth (see paragraph 54 above), the Court is mindful that the birth of a stillborn child must have been extremely emotionally disturbing for the applicant (compare *Marić v. Croatia*, no. 50132/12, § 63, 12 June 2014). In any event, the applicant’s alleged inaction at the hospital can hardly be said to be, in itself, a sufficient reason for denial of family reunification in the absence of any other reasons, particularly given that, as noted above, in earlier proceedings the courts had found that there had been no guilty conduct on the part of the applicant and his wife (see paragraph 74 above). It was clearly established in the previous sets of proceedings that the applicant was unaware that his son had survived; that he had never relinquished his parental authority over him or consented to his adoption; that he had remained ignorant that his son was alive until he had received

information to that effect in the context of the proceedings for the boy's adoption; and that as soon as he had found out that his son was alive, he had started taking steps with a view to having him returned to his family (see paragraph 187 above). He thus cannot be said to have waited an unreasonably long time prior to taking measures with a view to securing his family life with his child.

192. The Court further observes that the domestic courts relied on the fact that there were four other children in the applicant's family, whereas V. was the only child in his foster family, as one of the grounds for their refusal to order his transfer to his parents' care (see paragraph 120 above). It finds such reasoning particularly striking. In essence, the domestic courts held the number of children in the applicant's family against him and considered that it was in V.'s interests to remain split from his siblings on that account. The Court observes that in the proceedings under examination it was never alleged or established by the domestic courts that the family of the applicant and Ms I.Kh. had ever attracted the attention of social or childcare authorities, or that their children had ever shown a lack of adequate developmental and educational progress, been neglected, or had their health or life put at risk. On the contrary, in the proceedings for removal of the applicant's and his wife's parental authority over V. the courts stressed that the family had been characterised in positive terms, the relations within the family were friendly, and the living conditions were good and complied with all necessary requirements; the courts thus found that V. would be safe there (see paragraphs 76 and 85 above).

193. The Court is mindful that a sudden separation from his foster family might have had negative effects on the child, given the medical and other evidence adduced before the courts (see paragraphs 112-114 and 117 above). At the same time, it is not convinced that the national authorities explored all possible solutions, bearing in mind that the applicant and his wife were V.'s biological and legal parents, that they had consistently expressed their wish to care for him and were able to do so, and that V.'s four siblings lived in their family. In particular, in the relevant proceedings, the question of whether it would be viable to reunite V. and his family under circumstances that would minimise any potential negative effects on the child (for instance, by gradually re-establishing contact between V. and his natural family) was never considered.

194. Whilst it is not for the Court to speculate whether ordering V.'s transfer to the applicant's family was in the child's best interests, it is not convinced that in the present case the national courts carried out an in-depth examination of all the relevant factors, fairly balanced the rights of all individuals involved with due regard to the particular circumstances of the present case and ensured that the views and interests of the applicant were duly taken into account. The Court finds that the court decisions at hand were not based on "relevant and sufficient" reasons. It thus concludes that

the domestic authorities failed to secure the applicant's right to respect for his family life.

195. There has accordingly been a violation of Article 8 of the Convention on that account.

(ii) Refusal of the claim for contact with V.

196. The Court observes that after the applicant's claim for V.'s transfer to his family had been rejected, the applicant, his wife and his father brought another claim seeking access to V. In particular, they requested a court to determine the manner and scope of their contact rights with V. and to set V.'s place of residence at the home of Mr S. and Ms Ch. as the location of the contact sessions (see paragraphs 132 and 133 above).

197. It further notes that in the relevant proceedings the first-instance court limited itself to reproducing, word for word, the reasoning of the appellate court's decision of 26 August 2008 in the proceedings concerning the applicant's claim for V.'s return. The first-instance court referred, in particular, to the applicant's and his wife's conduct – "deliberate" on the mother's part and "negligent" on the father's part – at the time when their son had been born (see paragraphs 139-140 above), and the fact that they had refused to undergo an expert examination which had been ordered in the context of the proceedings for V.'s return to the applicant's family (see paragraph 138 above). It also relied on the report of 4 June 2008 on V.'s psychiatric and psychological examination, which stated that the boy's transfer to a new family would cause him psychological trauma (see paragraphs 114 and 137 above). The first-instance court then considered that the aforementioned circumstances and the body of evidence submitted did not allow the claim to be granted (see paragraph 140 above).

198. In this connection, the Court notes that the first-instance court failed to explain the relevance of any of the above reasons for the adjudication of the claim of the applicant, his wife and his father to have their access to V. secured. It also finds particularly striking the first-instance court's reasoning in finding the applicant's and his wife's conduct at the time of V.'s birth to be a valid ground for denying them any access to V. "in spite of the fact that later the biological mother, [Ms I.Kh.], [had] revoked her consent to the child's adoption, and the fact that the consent to the child's adoption written on behalf of [the applicant] was written by an unidentified person and not by him" (see paragraph 140 above).

199. In the Court's view, the conduct of the applicant and his wife at the time when their son was born, the fact that they had refused to undergo an expert examination in the context of the proceedings for V.'s return to their family, and the findings of the expert report of 4 June 2008, which only assessed the potential consequences of the boy's transfer to a new family rather than those of his contact with his biological relatives, were clearly not "relevant", let alone "sufficient", in the context of the proceedings in which

the applicant and his family members sought access to V. in conditions that would minimise any emotional and mental strain on the child. In those proceedings no expert examinations were ordered, and nor was any evidence obtained to indicate that contact sessions between V. and his biological relatives would be so detrimental to his physical or mental condition as to rule out any possibility of such contact.

200. The Court further observes that the appellate court, in turn, confirmed the first-instance court's conclusion that any contact with the applicant and his other family members was not in the child's best interests. To that end, it noted, in particular, that until that moment the applicant and other family members had had no realistic opportunity to see the boy, as Mr S. and Ms Ch. had obstructed any contact between them; it also noted the "specific" nature of relations between the applicant and his family, on the one hand, and Mr S. and Ms Ch., on the other. The appellate court then made a paradoxical finding that "the foregoing reveal[ed]" that the applicant and his family had "the possibility of maintaining friendly relations with the child, gradually adapting to his life, and participating in taking decisions regarding his upbringing and development". It also considered that the rights of the applicant and his wife were not infringed as the grounds for refusing to grant them access to their son might "eventually change"; in the latter connection the appellate court noted that the applicant's son, who at that time was five years old, would be able to give his opinion on the matter when he reached the age of ten, and that his opinion should then be taken into account by virtue of the relevant provision of national law (see paragraph 142 above).

201. In the Court's view, the unreasonableness of the above-mentioned findings is so striking and palpable on the face of it that they can only be regarded as arbitrary. The decision-making process in the proceedings under examination was profoundly deficient, as the essence of the claim brought by the applicant and his family members was not, in fact, adjudicated in any way. Moreover, the relevant court decisions made any form of family reunion and the establishment of any kind of further family life impossible.

202. In the light of the foregoing, the Court considers that the procedure in question was not accompanied by safeguards that were commensurate with the seriousness of the interests at stake and did not provide the applicant with the requisite protection of his rights. Bearing in mind that a narrower margin of appreciation is afforded to the State as regards restrictions on parental rights of access (see paragraph 177 above), the Court finds that the national authorities failed to secure the applicant's right to respect for his family life.

203. There has accordingly been a violation of Article 8 of the Convention on that account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

204. 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.”

205. The applicant did not submit a claim for just satisfaction.

206. Accordingly, the Court considers that there is no call to award him any sum on that account (see, for instance, *Tolstov v. Russia*, no. 40078/03, § 21, 26 June 2008).

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 on account of the refusal to return V. to the applicant’s family;
3. *Holds* that there has been a violation of Article 8 of the Convention on account of the refusal of contact rights.

Done in English, and notified in writing on 20 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President