

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

THIRD SECTION

CASE OF UZBYAKOV v. RUSSIA

(Application no. 71160/13)

JUDGMENT

Art 8 • Family life • Positive obligations • Dismissal of biological father's application for revocation of his infant daughter's adoption after her mother's death while he was in detention • Deficient process at adoption-stage, notwithstanding applicant's prior negligence in establishing paternity, given court's failure to hear any relatives despite being informed of existence of siblings and biological father • Absence under relevant domestic law of formal grounds for revoking adoption order not sufficient in itself to justify courts' refusal to revoke order • Lack of adequate and in-depth examination of arguments and all relevant factors and interests at stake

STRASBOURG

5 May 2020

FINAL

12/10/2020

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

In the case of Uzbyakov v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application 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 Sergey Stanislavovich Uzbyakov ("the applicant"), on 9 October 2013;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning a violation of the applicant's right to respect for his private and family life on account of the adoption of his daughter D. and subsequent refusal by the domestic courts to recognise in law his paternity in her respect and to annul her adoption, and to declare inadmissible the remainder of the application;

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 16 April 2020,

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

INTRODUCTION

The present case concerns the adoption by third parties of the applicant's youngest daughter after the death of his partner. The applicant cohabited with his partner for approximately seventeen years, and his youngest daughter was one of five children born as a result of that relationship. Prior to his partner's death the applicant had no formally recognised parental status in respect of the children. Whilst his paternity was eventually recognised in respect of the four other children and he received formal parental status and thus full parental authority in respect of them, the domestic authorities refused to recognise his paternity in respect of his youngest daughter, with reference to the fact that by that moment she had been adopted. They also refused to revoke the adoption order, with reference to the absence of the formal grounds under the relevant national law to do so.

THE FACTS

1. The applicant was born in 1976 and lives in Kurganovka. He was granted legal aid and was represented by Mr E.V. Markov, a lawyer practising in Budapest.

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

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

I. BACKGROUND TO THE CASE

4. The applicant arrived from Uzbekistan and settled in Russia in the 1990s. For some time he remained in Russia illegally. In February 2010 he obtained a residence permit which was valid until 15 February 2013. On 15 August 2013 he obtained Russian nationality.

5. In 1994 the applicant started cohabiting with Ms O.M. They had five children: S., born in 1997; R., born in 2002; Ser., born in 2003; V., born in 2007; and D., born on 29 November 2009. The applicant, Ms O.M. and their five children lived together.

6. The applicant states that he was not registered as the children's father as at the material time he was residing in Russia illegally and had no Russian identification documents. At birth, the children were issued with birth certificates on which Ms O.M. was indicated as being their mother, whereas there was a dash in the section concerning the father; the children's patronymic reflected the applicant's first name, and they were given Ms O.M.'s surname.

7. On 21 January 2011 the applicant was arrested on suspicion of having committed theft, and he was placed in pre-trial detention.

8. On 20 April 2011 the criminal proceedings against the applicant were discontinued and he was released.

II. EVENTS AFTER MS O.M.'S DEATH

A. Children's placement in public and eventually foster care

9. While the applicant was in custody, on 4 February 2011 Ms O.M. died. At some point – presumably in March 2011 – the children were taken into public care. The four elder children were placed in a boarding school for orphans, but the youngest child, D., who was fourteen months old at that time, could not be placed in the same institution in view of her young age, and she was transferred to a children's home.

10. In March 2011, while still in detention, the applicant found out about Ms O.M.'s death. He then started taking steps with a view to having his paternity of the five children recognised (see paragraphs 20-24 below).

11. D. was placed at the children's home on 9 March 2011. On the same date, a local custody and guardianship authority had informed Ms N.S., a third person unrelated to D., who was on the list of prospective adoptive parents, about the girl and gave her a referral (*направление*) to visit D. at the children's home (see paragraph 33 below).

12. On 18 March 2011 the Administration of the Sosnovskiy District of the Tambov Region ("the childcare authority") appointed Ms N.S. as D.'s legal guardian.

13. On the same day Ms N.S. took D. from the children's home and took the girl to her and her husband's place of residence in the town of Morshansk in the Tambov Region of Russia. The girl has been living there with them ever since.

14. On 16 May 2011 a local custody and guardianship authority appointed Ms O.M.'s sister, Ms O.E., as the legal guardian of the four elder children, S., R., Ser. and V. They were all transferred into her care and started living with her.

B. D.'s adoption

15. On an unspecified date Ms N.S. and her husband, Mr S.S., applied to adopt D.

16. On 8 September 2011 the Morshanskiy District Court of the Tambov Region ("the Morshanskiy District Court") examined that application.

17. In the proceedings before the court, the childcare authority expressed an opinion in favour of D.'s adoption by Ms N.S. and Mr S.S. Its representative stated, in particular, that the girl had the social status of a child left without parental care, as she had no father and her mother had died. The representative also stated that "during the whole period of D.'s stay in the children's home, her relatives had not visited her and had not lodged any application to establish legal guardianship in respect of her". The representative also mentioned that D. had four siblings who were being brought up in another foster family at that time and were living in the Penza Region.

18. The Morshanskiy District Court examined D.'s birth certificate and noted that it only contained information about the girl's mother, who had died, and consequently the child had been left without parental care and had been placed in a children's home, where she had remained from 9 to 18 March 2011. It further observed that on 18 March 2011 D. had been transferred to Ms N.S., who had been appointed her legal guardian on the same date, and that she had been living with Ms N.S.'s family since then. The court also noted that Ms N.S. and Mr S.S. had been taking good care of

D. and she was surrounded by love and attention, and that they had good living conditions suitable for the child and sufficient financial resources to support her. The court concluded that Ms N.S. and Mr S.S. satisfied all the statutory conditions to be adoptive parents, and that there were no circumstances under the relevant provisions of the Russian Family Code which would rule out the possibility of them becoming adoptive parents. The court thus granted them a full adoption order in respect of D., and ordered that the girl's first name be changed, as requested by the adoptive parents, and that her surname be changed to reflect their surname. It also ordered that the child's place of birth be changed to Morshansk, in the Tambov Region.

19. The judgment was not appealed against and entered into force ten days after its delivery.

III. THE APPLICANT'S ATTEMPTS TO HAVE HIS CHILDREN RETURNED

20. In March 2011, whilst still in detention, the applicant applied to the justice of the peace of the 4th Court Circuit of the Morshanskiy District of the Tambov Region, seeking to have his paternity established in respect of his five children and the children returned to his care.

21. On 9 March 2011 the justice of the peace returned the applicant's claim, stating that she had no jurisdiction to examine such cases, and inviting the applicant to lodge his claim with the Morshanskiy District Court.

22. The applicant applied to the Morshanskiy District Court. In his claim, he listed his five children's names, patronymics and surnames, and their dates of birth, and asked the court to establish his paternity in respect of them.

23. On 11 April 2011 the Morshanskiy District Court returned the applicant's claim, as it had no territorial jurisdiction to examine it. It noted that, in his claim, the applicant had pointed out that after their mother's death all five children had been placed in relevant institutions in the Sosnovskiy District in Tambov. The court stated that under the relevant procedural law, the claim should be lodged in the area of the children's actual place of residence, that is, in the district where those institutions were located. The court also noted that the claim did not comply with some of the formal requirements set out in domestic law. It pointed out that it was open to the applicant to remedy those shortcomings and resubmit his claim. That decision was not appealed against and became final on 22 April 2011.

24. On 15 December 2011 the applicant resubmitted his claim to establish his paternity in respect of his five children to a court that had territorial jurisdiction – the Kamenka Town Court of the Penza Region ("the

Kamenka Town Court"). It appears that the court severed the claim in respect of D. from the claim in respect of the other four children.

A. Return of the four elder children

25. On 16 April 2012 the Kamenka Town Court established the applicant's paternity in respect of S., R., Ser. and V., with the result that the applicant obtained formal parental status and thus full parental authority in respect of them.

26. On 9 June 2012 S., R., Ser. and V. were removed from Ms O.E.'s care and returned to the applicant.

B. Prosecutor's action

27. On an unspecified date the prosecutor of Morshansk, acting in the interests of D., brought civil proceedings with a view to having D.'s adoption order revoked. In the context of those proceedings, on 22 March 2012 the applicant, who was involved as a third party, found out about the judgment of 8 September 2011 (see paragraphs 16-19 above).

28. On 17 April 2012, at the prosecutor's request, the Morshanskiy District Court suspended the proceedings pending the outcome of the proceedings brought by the applicant for recognition of his paternity in respect of D. (see paragraphs 31-48 below). The court stated that it was impossible to decide the case before the question of the applicant's paternity in respect of D. had been resolved.

29. On 20 December 2012, at the prosecutor's request, the Morshanskiy District Court discontinued the proceedings, with reference to the judgment of 1 October 2012, as upheld on appeal on 13 November 2012 (see paragraphs 36-47 below).

30. On 22 April 2013 the Tambov Regional Court upheld the decision of 20 December 2012 on appeal.

C. Proceedings for recognition of paternity in respect of D. and for revocation of the adoption order

1. Proceedings before the first-instance court

31. In the proceedings for recognition of his paternity in respect of D., the applicant found out that she had been adopted (see paragraph 27 above). He therefore supplemented his claim, requesting that the court revoke the adoption order.

32. At a hearing before the Kamenka Town Court, the applicant submitted that he had found out about the adoption after he had been involved as a third party in civil proceedings brought by a relevant prosecutor with a view to having the adoption order revoked. He argued that

the adoption had been granted in violation of the law and was contrary to D.'s interests; in particular, under the relevant law, the separation of siblings was not permitted, and parents' consent to adoption was required. He further argued that the relevant childcare authority had been aware that D. had siblings, and that those authorities, as well as the administrations of the institutions where his children had been placed after their mother's death, had certainly been aware that the children had a father and aware of his whereabouts. He insisted: that D. was his daughter; that he and his elder son had collected Ms O.M. and D. from the maternity hospital when D. had been born; that he had taken the necessary steps to have D.'s birth registered and her birth certificate issued; and that ultimately he had raised her.

33. Ms N.S. stated before the first-instance court that as she had been on the list of prospective adoptive parents, on 9 March 2011 the relevant childcare authority had given her a referral (*направление*) to visit D. at the children's home; on 18 March 2011 she had been appointed D.'s legal guardian, and on 8 September 2011 a full adoption order in respect of D. had been made in favour of her and her husband.

34. A number of witnesses, including S., the applicant's elder son, confirmed: that the applicant and Ms O.M. had cohabited and had had five children; that the applicant was the biological father of those children, including D.; and that he had taken care of them and supported them financially. S. also confirmed that he and the applicant had collected Ms O.M. and D. from the maternity hospital after D.'s birth.

35. A representative from the Kamenskiy District custody and guardianship authority and a representative from the Representative for Human Rights in the Russian Federation supported the applicant's claim, stating that the adoption had been granted in breach of family law and had been contrary to the interests of the minors in question. The representative from the Representative for Human Rights in the Russian Federation also argued that the judgment of 8 September 2011 granting the adoption had been deficient, as a number of issues had not been addressed and assessed. In particular: D. had been separated from her siblings; she had not been transferred into Ms O.E.'s guardianship, as the four other children had been; and the court had not obtained D.'s maternal grandfather's consent to the adoption.

2. Judgment of 1 October 2012

36. On 1 October 2012 the Kamenka Town Court delivered its judgment.

37. The court found it established that since March 2011 the applicant had been applying to courts with a view to having his paternity of his five children recognised in law. It also observed that the applicant's paternity of his four elder children had been recognised, and that they were living with

him at that point. The court also noted that he was not officially employed and had four dependent children.

38. The court further referred to witness statements, including those of S., the applicant's elder son, and held that the evidence in its possession allowed it to conclude that D. had been born as a result of the relationship between Ms O.M. and the applicant. However, the court considered that formal recognition of the applicant's paternity in respect of D. would not make sense, as it would not lead to the restoration of his rights, in the absence of any grounds under the relevant domestic law for the revocation of D.'s adoption order.

39. The court held, in particular, that revocation of an adoption order was a measure used to protect the rights and interests of a child, and was allowed by Article 141 of the Russian Family Code (see paragraph 58 below) only when an adoption no longer corresponded to the interests of the child. The court quoted the provisions of the above-mentioned Article, and noted that it concerned guilty conduct on the part of adoptive parents and a failure on their part to comply with their relevant obligations, whereas no guilty conduct on the part of Ms N.S. or Mr S.S. in respect of D. had ever been established, nor was alleged by the applicant.

40. The court further referred to section 19 of ruling no. 8 of the Supreme Court of Russia dated 20 April 2006 (see paragraph 59 below), which stated that an adoption order could also be revoked in the absence of guilty conduct by the adoptive parents if, owing to circumstances within or beyond the adoptive parents' control, there were no suitable conditions in the adoptive family for the child's adequate rearing and upbringing. However, there were no grounds for revoking the adoption order in respect of D. on that basis either. The court pointed out that the adoptive parents were financially secure, had permanent jobs and proper living conditions, and were capable of ensuring the child's harmonious development.

41. By that time the child had been living with the family of Ms N.S. and Mr S.S. for a year and a half. Beneficial conditions had been created for her development, and close relations had been built between her and her adoptive parents. Taking those factors into consideration, and with reference to the best interests of the child, the court considered that the applicant's claim for revocation of the adoption order should not be granted.

42. The court further rejected the arguments of the applicant, the Kamenskiy District custody and guardianship authority and the Representative for Human Rights in the Russian Federation that D.'s adoption had been granted in breach of the relevant law (see paragraphs 32 and 35 above). It stated that the alleged breaches concerned the procedure for granting the adoption order rather than revoking it, and therefore they could not be regarded as being legally relevant to the issue of revocation of the adoption order.

43. The court therefore refused to recognise in law the applicant's paternity in respect of D. and revoke the adoption order in respect of her.

3. Appellate proceedings

44. The applicant appealed against the first-instance judgment. He argued, in particular, that formal recognition of his paternity was essential, as it would enable him to have his right to appeal against the judgment of 8 September 2011 restored. He insisted that after it had found that he was D.'s natural father, the first-instance court should have revoked the adoption order even in the absence of guilty conduct by the adoptive parents, as his daughter should grow up with and be raised with her biological siblings in his family.

45. The Representative for Human Rights in the Russian Federation also appealed against the first-instance judgment on the applicant's behalf. He supported the applicant's argument that the adoption had breached national law. He also argued that by refusing to revoke the adoption order, the first-instance court had distorted the principle of ensuring the best interests of the child as set out in various international instruments on the rights of the child, and breaching that principle amounted to a flagrant interference with the applicant's family's rights. D. had already suffered irreparable harm on account of her mother's death, which had been exacerbated by the rupture of her ties with her natural family. He also pointed out that the European Court of Human Rights had repeatedly stated that a child's ties with his or her family must be maintained; the fact that the girl had been adopted by third parties and had been living with them for some time should not be regarded as an insurmountable obstacle to the reunification of the applicant's family. Thus, in the present case, revocation of the adoption order was necessary, in the best interests of D. and the applicant's other children, in order to reunite the children with each other and with the applicant.

46. On 13 November 2012 the Penza Regional Court upheld the first-instance judgment on appeal. It endorsed the first-instance court's findings: that D. had been living with her adoptive family for over a year and a half; that there was a close emotional bond between the adoptive parents and the girl; that the adoptive parents had created conditions beneficial for D.'s development; and that therefore the adoption was in the child's interests and there were no grounds under Article 141 of the Russian Family Code to revoke the order. In that connection, the appellate court also noted that "the law in force ... [did] not provide for a court's establishment of the fact that a child was descended from a particular person constituting grounds for revoking an adoption order".

47. The appellate court rejected the applicant's arguments and those of the Representative for Human Rights in the Russian Federation, stating that the fact that the applicant was D.'s father, that he was willing and able to

raise D., and that D. had siblings who suffered as a result of being separated from her, could not be taken into account, as those matters had no bearing on the first-instance court's conclusion that revocation of the adoption order would not be in D.'s interests.

4. Cassation proceedings

48. On 7 April and 25 June 2013 respectively the Penza Regional Court and the Supreme Court of Russia dismissed cassation appeals by the applicant against the decisions of 1 October and 13 November 2012.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE FAMILY CODE

A. Legal provisions concerning the protection of children's rights

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

50. A child has the right to maintain contact with his or her parents, grandparents, brothers, sisters and other relatives (Article 55).

51. Protection of the rights and interests of children in the event of, *inter alia*, the death of their parents, the long absence of their parents, or their parents' failure to bring up their children or protect their rights and interests, is entrusted to the custody and guardianship authorities. Those authorities shall identify children left without parental care and, proceeding on the basis of the specific circumstances of the loss of parental care, select suitable accommodation for them and also exercise control over their living conditions, upbringing and education (Article 121 § 1).

B. Legal provisions concerning the establishment of paternity

52. The paternity of a person who is not married to a child's mother shall be established on the basis of a joint declaration filed by the father and mother of the child. In the event of, *inter alia*, the mother's death, the paternity of such a person shall be established on the basis of a declaration by the child's father, with the consent of the custody and guardianship authorities; in the absence of such consent, it shall be established by a court decision (Article 48 § 3).

53. If a child is born to parents who are not married to each other and there is no joint declaration or declaration by the child's father, paternity of the child shall be established in court proceedings upon the application of

either parent. In such proceedings, the court shall have regard to any evidence that establishes the child's paternity with certainty (Article 49).

C. Legal provisions concerning parents' rights and obligations

54. The right of parents to bring up their children has precedence over any other person's right to do so (Article 63 § 1).

55. Parents have the right to seek the return of their child from any person who retains the child not in accordance with the law or a court decision. In the event of a dispute, the parents are entitled to lodge a court claim for the 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 would be contrary to the child's interests (Article 68 § 1).

D. Legal provisions governing foster care and adoption

56. Siblings shall not be transferred into the guardianship (foster care) of different persons, except in situations where such placement corresponds to the children's interests (Article 145 § 5).

57. Adoption is the preferred option for the placement of children left without parental care. Adoption is allowed in respect of minors only if it is in the best interests of the child, taking into account the possibilities to secure the child's full physical, mental, spiritual and moral development (Article 124 §§ 1 and 2). The adoption of siblings by different persons is not allowed, except in situations where such adoption corresponds to the children's interests (Article 124 § 3).

58. An adoption order in respect of a child may be revoked if the adopters fail to respect the parental duties imposed upon them, abuse their parental rights, treat the adopted child cruelly, or suffer from chronic alcoholism or drug addiction. An adoption order in respect of a child may also be revoked by a court on other grounds, proceeding on the basis of the child's interests and taking into account his or her opinion (Article 141).

E. Ruling of the Supreme Court of Russia

59. On 20 April 2006 the Plenary Supreme Court of Russia adopted ruling no. 8 on its application of legislation during the examination of cases concerning the adoption of children. It stated, in so far as relevant:

> "19. Since adoptive parents acquire their parental rights and obligations as a result of adoption, and not because of the birth of their children, it should be borne in mind that in cases of evasion of parental duties by the adoptive parents, the abuse of parental rights or cruel treatment of the adopted children, as well as if the adoptive parents are chronically sick alcoholics or drug addicts, a court can decide to revoke the adoption (Article 140, Article 141 § 1 of the Family Code of Russia), or not to

deprive or limit the parental rights (Articles 69, 70 and 73 of the Family Code). In such cases, the child's consent to the revocation of the adoption is not necessary (Article 57 of the Family Code).

On the basis of Article 141 § 2 of the Family Code, a court is also entitled to revoke an adoption order in the absence of guilty conduct on the part of adoptive parents if, owing to circumstances within or beyond the adoptive parents' control, no relations necessary for the child's adequate rearing and upbringing have been established [within the adoptive family]. Such circumstances may include, in particular: a lack of mutual understanding, owing to the personal qualities of the adoptive parent and (or) the adopted child, with the result that the adoptive parent has no authority in the eyes of the adopted child or the adopted child does not feel that [he or she] is a member of the adoptive parent's family; or the discovery after the adoption that the adopted child has an intellectual deficiency or hereditary health deficiencies which significantly complicate [his or her] upbringing or render [that upbringing] impossible, and of which the adoptive parent was not informed at the moment of adoption. In such cases, a court may revoke the adoption order, bearing in mind the interests of the child, and with due regard to the opinion of the child if he or she has reached the age of ten (Article 57 and Article 141 § 2 of the Family Code).

When an adoption order is revoked for reasons other than guilty conduct by the adoptive parents, that fact should be reflected in the court's decision."

II. THE CODE OF CIVIL PROCEDURE

60. On 9 December 2010 the relevant parts of the Code of Civil Procedure concerning the review of judgments delivered by courts of first instance were amended by Federal Law no. 353-FZ, with effect from 1 January 2012.

61. In Part III of the Code ("Procedure for review at second instance"), a new Chapter 39 was inserted, introducing a new appeal procedure in respect of judgments by courts of first instance that had not become binding ("had not acquired binding force" – *не вступившие в законную силу*). The newly enacted appeal procedure (*процедура апелляционного обжалования*) in respect of such judgments replaced the former cassation appeal procedure (*процедура кассационного обжалования*) which was governed by Chapter 40 of the Code until 1 January 2012. While modifying various features of the review at second instance, including its scope and consequences, the new appeal procedure maintained the principle whereby decisions taken by second-instance courts on appeal acquired binding force immediately (new Article 329 § 5), as the decisions taken by the same courts on cassation appeals had done previously (former Article 367).

62. Part IV of the Code governs the procedure for the review of judgments that have become binding. The former Chapter 41 ("Supervisory review procedure") has been split into two new chapters: Chapter 41 ("Cassation review procedure") and Chapter 41.1 ("Supervisory review procedure").

63. Judgments delivered by courts of general jurisdiction may be challenged in cassation appeal proceedings within six months of the date on

which they become legally binding. Cassation review proceedings may be initiated by the parties to a case and other persons whose rights or legal interests have been adversely affected by those decisions, but only if other available avenues of appeal have been exhausted before the decisions become legally binding (Article 376).

64. The presidia of the regional courts conduct a review in cassation of judgments and decisions delivered by the lower courts and the regional courts themselves where they have acted as appellate courts (Article 377 § 2 (1)). In addition, the Civil Chamber of the Supreme Court of the Russian Federation conducts cassation reviews of judgments and decisions, including those taken by the presidia of the regional courts (Article 377 § 2 (3)).

65. Cassation appeals to the regional courts are considered by the president or deputy president of the relevant court, or by a judge delegated for this purpose (Article 380.1 § 1). Cassation appeals to the Supreme Court of the Russian Federation are considered by a judge of that court (Article 380.1 § 2). A decision by a judge of the Supreme Court of the Russian Federation dismissing a cassation appeal may be overruled by a president or deputy president of that court (Article 381 § 3).

66. The grounds for quashing or varying binding judgments by the presidia of the regional courts and the Civil Chamber of the Supreme Court, where they have acted as cassation courts, are "significant violations of substantive or procedural law which influenced the outcome of the proceedings and must be corrected in order to restore and protect rights, freedoms and lawful interests and safeguard public interests protected by law" (Article 387).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The applicant complained that the adoption of his daughter D. without his knowledge, and the subsequent refusal by the domestic courts to recognise his paternity in respect of D. and revoke the adoption order in respect of her, had violated his right to respect for his private and family life under Article 8 of the Convention, 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

1. Compliance with the six-month rule

68. The Court reiterates at the outset that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). It is not open to it to set aside the application of the six-month rule solely because an objection based on that rule has not been made, since the said criterion, reflecting as it does the wish of the Contracting Parties to prevent past events being called into question after an indefinite lapse of time, serves the interests not only of respondent Governments, but also of legal certainty as a value in itself. It marks out the temporal limits of the supervision carried out by the organs of the Convention, and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

69. In the present case, the applicant's claim for recognition of his paternity and revocation of the adoption order in respect of D. was examined and dismissed on 1 October 2012 at the first level of jurisdiction (see paragraphs 36-43 above), and the first-instance decision was upheld on 13 November 2012 at the second level of jurisdiction (see paragraphs 46-47 above), and then upheld again on 7 April and 25 June 2013 respectively at the third and fourth levels of jurisdiction (see paragraph 48 above). The application was lodged on 9 October 2013.

70. In the context of Russia, the Court has held that before the reform of the Russian civil procedure system which took effect from 1 January 2012 (see paragraph 60 above), the ultimate judicial remedy to be exhausted prior to lodging an application with the Court was an appeal to an appellate court – a court at the second level of jurisdiction – and that applicants were thus not required to submit their cases for examination by higher courts, a review which at that time constituted an extraordinary remedy. The Court therefore considered the decisions given by courts at the second level of jurisdiction to be final decisions in the process of exhaustion for the purpose of calculating the six-month period as established in Article 35 § 1 of the Convention (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; and *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009).

71. Eventually, in the case of *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 76-96, 12 May 2015) the Court held that, following the legislative amendments which had taken effect on 1 January 2012, Russian civil procedure was no longer fraught with the previously existing uncertainty, and any individual who intended to lodge an application in respect of a violation of his or her Convention rights should firstly use the remedies offered by the new two-tier cassation procedure,

including an appeal to a regional court (the third level of jurisdiction) and the Supreme Court of Russia (the fourth level of jurisdiction).

72. At the same time, the Court has consistently dismissed objections by the Government regarding non-exhaustion of domestic remedies by applicants who had not availed themselves of the new cassation procedure, where they had lodged their applications before the Court had pronounced its decision in the case of *Abramyan and Others* ((dec.), cited above; see, for example, *Novruk and Others v. Russia*, nos. 31039/11 and 4 others, §§ 70-76, 15 March 2016; *Kocherov and Sergeyeva v. Russia*, no. 16899/13, §§ 64-69, 29 March 2016; *McIlwrath v. Russia*, no. 60393/13, §§ 85-95, 18 July 2017; *Elita Magomadova v. Russia*, no. 77546/14, §§ 40-44, 10 April 2018; *Khusnutdinov and X v. Russia*, no. 76598/12, §§ 65-66, 18 December 2018; and *Zelikha Magomadova v. Russia*, no. 58724/14, §§ 79-80, 8 October 2019). It held, in particular, that in cases where the effectiveness of a given remedy was recognised in the Court's case-law after the lodging of an application, it would be disproportionate to require applicants to turn to that remedy for redress a long time after they had lodged their applications with the Court, especially after the time-limit for using that remedy had expired (see, for instance, *Kocherov and Sergeyeva*, cited above, § 67).

73. In the present case, however, the applicant availed himself of the above-mentioned new remedy and lodged the present application on 9 October 2013, that is more than six months after the decision taken in the proceedings for recognition of paternity and revocation of the adoption order by a court at the second level of jurisdiction, but within six months of the date of the last decision taken by a higher court (see paragraph 69 above). The Court must therefore determine whether the applicant complied with the six-month rule by having recourse to a newly introduced remedy before the Court recognised its effectiveness.

74. In that connection, the Government observed that a new two-tier cassation appeal procedure had been in place for appealing against court decisions taken at the first two levels of jurisdiction, of which the applicant had availed himself. They submitted that it was thus the decision of the Supreme Court of Russia dated 25 June 2013 (see paragraph 48 above) that should be regarded as the final decision in the process of exhaustion of domestic remedies in the present case. The parties agreed that the applicant had complied with the six-month time-limit established in Article 35 § 1 of the Convention.

75. The Court observes that in the case of *Abramyan and Others* ((dec.), cited above) it examined the legislative amendments reforming Russian civil procedure with effect from 1 January 2012, and found that the newly introduced cassation procedure no longer constituted an extraordinary means of reopening judicial proceedings in a case, but was instead an ordinary appeal on points of law similar to that existing in the jurisdictions

of other States parties to the Convention (ibid., § 93). In such circumstances, given the significant changes in Russian civil procedure during the relevant period, it was not unreasonable for the applicant to assume that the remedy in question was effective and use it in order to give the domestic courts an opportunity to put matters right through the national legal system, thereby respecting the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Although the applicant was not required to use that remedy before the Court recognised its effectiveness (see paragraph 72 above), he cannot be reproached for his attempt to bring his grievances to the attention of the domestic authorities through the remedy which he considered effective (for a similar approach, see *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 106-107, 7 November 2017).

76. In the light of the foregoing, the Court accepts the parties' argument that the final decision in the process of exhaustion given in the proceedings concerning the applicant's claim for recognition of his paternity and revocation of the adoption order was the decision of 25 June 2013. Accordingly, it finds that the applicant complied with the six-month rule in the present case.

2. Applicability of Article 8 of the Convention

77. The Government acknowledged that the applicant was D.'s biological father. However, with reference to a report from a childcare authority (a copy of which was not submitted to the Court), they argued that from the moment of D.'s birth the applicant had often been absent from home for prolonged periods, and that owing to that fact and D.'s very young age, no child-parent ties had formed between him and D.

78. The applicant disputed the Government's argument about the lack of personal ties between him and his daughter. He also submitted that the allegations regarding his prolonged absences were purely speculative and untrue. He pointed out that he had lived with D. for the whole first year of her life before she had been taken into care, and insisted that he had never abandoned her or consented to her being placed with a foster family. The applicant argued that the authorities' actions in respect of D. had violated his right to respect for his private and family life.

79. The Court reiterates that the notion of "family life" under Article 8 of the Convention is not confined to marriage-based relationships, and may encompass other *de facto* "family" ties where the parties are living together out of wedlock. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment, and by the very fact, of its birth. Thus, there exists between the child and the parents a relationship amounting to family life (see *Keegan v. Ireland*, 26 May 1994, § 44, Series A no. 290;

Elsholz v. Germany [GC], no. 25735/94, § 43, ECHR 2000-VIII; and *L. v. the Netherlands*, no. 45582/99, § 35, ECHR 2004-IV).

80. In the present case, the applicant cohabited with Ms O.M. for an uninterrupted period from 1994 until her death on 4 February 2011, that is for approximately seventeen years. Five children, including D., were born as a result of that relationship. It is not in dispute that the applicant is the biological father of all the children, including D. It is also clear that the applicant, his partner and their children lived together, and that the applicant took care of and supported the children (see paragraph 34 above). In particular, he collected Ms O.M. and D. from the maternity hospital and was involved in D's upbringing for the first year of her life. The Court finds the Government's argument regarding the applicant's prolonged absences from the family unconvincing, as it was not corroborated by any documentary evidence; nor did the courts make any findings in that regard in the domestic proceedings.

81. The foregoing considerations are sufficient to enable the Court to conclude that from the moment of D.'s birth there was a bond between the applicant and his daughter which amounted to "family life" within the meaning of Article 8 of the Convention. There is no distinct question as regards the applicant's "private life"; indeed, the applicant's arguments under both heads are inseparable (see *Yousef v. the Netherlands*, no. 33711/96, § 51, ECHR 2002-VIII).

82. It follows that Article 8 of the Convention is applicable.

3. Conclusion

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

B. Merits

1. Submissions by the parties

(a) The applicant

84. The applicant argued that the interference with his rights secured by Article 8 of the Convention – the authorities' actions in separating D. from her siblings when taking her into care and then transferring her to a foster family and subsequently granting that family a full adoption order in respect of her, and the domestic courts' refusal to establish his paternity in respect of D. and revoke the adoption order – had not been "in accordance with the law", and even assuming that it had pursued a legitimate aim of protecting the rights and interests of others, as alleged by the Government, it had not been "necessary in a democratic society".

85. He submitted in particular that when taking the children into care after their mother's death and then transferring D. to a foster family, the relevant childcare authorities had separated D. from her siblings in breach of the relevant legal provisions, in particular Article 145 of the Russian Family Code (see paragraph 56 above), and the applicable procedure. For the same reason, D.'s adoption had also been in breach of the domestic law, more specifically, Article 124 § 3 of the Russian Family Code (see paragraph 57 above).

86. The applicant also pointed out that D.'s adoption had been granted without his knowledge and without his participation in the relevant proceedings. He insisted that the relevant childcare authorities and the courts had had at their disposal the information that D. had siblings and a natural father, as his elder son had informed them of this. They had also been aware that D.'s siblings were living together with another foster family unrelated to D.'s foster family, yet they had taken no action to verify that information or assess the necessity of D.'s adoption in the light of such information. The applicant stressed that neither he nor Ms O.E., the children's aunt, who had been his four elder children's guardian at that time, had been made aware of the adoption proceedings by the authorities. At no point in time had the authorities made any attempt to reunite all the children or verify whether D.'s adoption was in her and the other children's best interests. After D. had been taken into care the applicant had been unaware of what was happening in her life, including her adoption, until spring 2012, as the relevant childcare authorities had refused to disclose her whereabouts or provide him with any relevant information about her.

87. The applicant further contended that there had been no legal basis for the courts' refusal to formally recognise his paternity in respect of D. He pointed out that the domestic courts had linked that claim to his other application to have D.'s adoption order revoked, yet such an approach had been contrary to the applicable law and grossly arbitrary. In particular, the right to have one's paternity recognised was a right which was independent of the right to seek the revocation of an adoption order (see paragraphs 52-53 above); the courts had thus been under an obligation to examine it, irrespective of the outcome of the applicant's other claim. In the applicant's view, if his paternity had been recognised, that would have given him certain rights in respect of his daughter, such as a right to have contact under Article 55 of the Russian Family Code (see paragraph 50 above), inheritance rights and other similar rights, even if the adoption order had remained in place. The applicant pointed out that the evidence that he was D.'s biological father had never been disputed, therefore the domestic courts had been under an obligation to grant his relevant claim and recognise his paternity in law. Moreover, they should have examined his other claim – the claim for the revocation of D.'s adoption order – in the light of the finding that he was her biological father, with due regard to parents having priority

as regards bringing up their children, as established in Article 63 of the Russian Family Code (see paragraph 54 above).

88. As regards the courts' refusal to revoke the adoption order, the applicant argued that the courts' interpretation of Article 141 of the Russian Family Code had been too formalistic; they had confined their examination to reliance on the absence of formal grounds – as listed in that Article – for revoking the adoption order, whilst not assessing in any way the actual situation of D., her siblings and the applicant. By refusing to revoke the adoption order, the domestic courts had disregarded a number of basic principles of family law, such as a child's right to know his or her parents, enjoy their care and live with them (Article 54 of the Russian Family Code), and the right of parents to have priority as regards bringing up their children (Article 63 of the Russian Family Code), and other similar principles. Moreover, the courts had disregarded the fact that the adoption had been granted in breach of the relevant domestic law (see paragraph 85 above) and that the relevant proceedings had been tainted with procedural unfairness, since neither he nor any of D.'s relatives had been involved in those proceedings. The domestic courts' interpretation of the notion of "the best interests of the child" had thus not been foreseeable and had been arbitrary; moreover, they had failed to assess the interests of the applicant and his other children in having D. in their family, and had failed to fairly balance the interests of all the parties involved in the proceedings for revocation of the adoption order.

89. The applicant argued that D. had only been three years old when the judgment of 1 October 2012 rejecting his claim for revocation of the adoption order had been issued. Whilst her separation from her adoptive parents might have had certain undesirable effects for her psychological condition, her adaptation to her biological family and the development of ties between her and other members of her family could have been quick, in view of her young age. He argued that it had been in D.'s best interests to have the adoption order revoked and to be transferred to her biological family as soon as possible, as with the passage of time her ties with the adoptive family would have become stronger and the prospects of reunification with her natural family would have become weaker.

90. The applicant argued that in any event, during the examination of his claim for revocation of the adoption order, no psychological examination of D. had been ordered by the courts and carried out with a view to establishing the degree of her attachment to her adoptive family, or whether she would suffer psychological harm if separated from them and, if so, to what extent. The applicant argued that the courts' conclusions in the relevant proceedings had been highly subjective. They had merely given preference to the family with better material and financial conditions (the adoptive family), to the detriment of his right, as a natural parent, to take care of his child, and his and his children's right to live together as a family.

91. The applicant pointed out that he had not seen his daughter since she had been taken into care and had had no contact with her, as all his attempts to contact her had been obstructed by the authorities and her adoptive parents. He concluded by stating that as a result of the actions of the domestic authorities, the ties between D. and her biological family, himself included, had been severed, and neither the domestic courts nor the Government had demonstrated the existence of any "exceptional circumstances" to justify that.

(b) The Government

92. The Government conceded that there had been an interference with the applicant's right to respect for his family life on account of the judgment of 1 October 2012, as upheld by higher courts, by which the applicant's claim for establishment of his paternity in respect of D. and for revocation of the adoption order had been dismissed. In their view, the interference had been justified under Article 8 § 2 of the Convention. In particular, it had been based on Articles 49 and 141 of the Russian Family Code (see paragraphs 53 and 58 above). In that connection, the Government argued that although it had been proved that the applicant was D.'s natural father, and he himself had acknowledged that fact, the courts had rightly refused to formally recognise his paternity under Article 49 of the Russian Family Code, as there had been no grounds under Article 141 of that Code to revoke the adoption order.

93. The Government further argued that the interference had pursued the aim of protecting the rights and interests of others, in particular, D. It had furthermore been "necessary in a democratic society".

94. They submitted that after their mother's death the children had been placed in different childcare institutions, as there had been no suitable institution in that region which could have accommodated all of them, given their age range. According to the Government, while D. had been staying in the children's home, none of her relatives had visited her. They also argued that in the judgment of 8 September 2011 the first-instance court had granted Ms N.S. and Mr S.S a full adoption order in respect of D., as the child's biological parents could not take care of her, given that her mother had died and her father was in prison.

95. The Government further stated that in its judgment of 1 October 2012 the first-instance court had paid particular attention to reports from the relevant childcare authority, including one on D.'s life with the family of Ms N.S. and Mr S.S. during the six months prior to her adoption, in the period when Ms N.S. had been her guardian, and another one on their living conditions. The Government then extensively cited the findings of those reports, in so far as they confirmed that Ms N.S. and Mr S.S. had created a beneficial environment for D.'s development, that they had taken good care of her, that there were close emotional ties between them and the girl

considered them to be her parents, and that they had adequate living conditions in which to raise a child.

96. Thus, according to the Government, in the proceedings in question, the domestic courts had thoroughly compared the situations of D.'s natural and adoptive families, the progress and prospects of her development in each of the two families, and their living conditions. On the basis of the adduced evidence, the courts had concluded that a beneficial environment had been created for D. in the adoptive family, that there were close relations between the girl and her adoptive parents, and that they protected her interests. The Government pointed out that D. considered Ms N.S. and Mr S.S. to be her parents, and that, because of her very young age, she could not have formed emotional ties with her siblings or the applicant. According to the Government, the courts had assessed the family ties between D. and her adoptive parents and had taken into account that a sudden rupture of those ties could harm her emotional and mental state.

97. The Government concluded by stating that the courts, on the basis of domestic and international law, had taken the decision to leave D. in her adoptive family, having established: that there was no realistic opportunity of the applicant taking good care of D.; that there were no relations between D. and the applicant's family; and that the girl was emotionally attached to her adoptive parents. In making that decision, they had also taken her interests into account. Accordingly, in the Government's view, the applicant's rights secured by Article 8 of the Convention had not been breached.

2. The Court's assessment

98. The Court has declared admissible the applicant's complaint concerning the domestic courts' refusal to recognise his paternity in respect of D. and revoke the adoption order. It will now proceed to examine this complaint, whilst putting it in context, which inevitably means, to some extent, having regard to earlier events (see *Jovanovic v. Sweden*, no. 10592/12, § 73, 22 October 2015; *Mohamed Hasan v. Norway*, no. 27496/15, § 151, 26 April 2018; and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 148, 10 September 2019).

(a) General principles

99. 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 v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010, and

X v. Latvia [GC], no. 27853/09, § 96, ECHR 2013). 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 or her roots, which may only be done in very 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).

100. Measures which involve breaking a child's bonds with his or her family should only be applied in exceptional circumstances, and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests (see *R. and H. v. the United Kingdom*, no. 35348/06, § 81, 31 May 2011; *S.H. v. Italy*, no. 52557/14, § 40, 13 October 2015; and *Strand Lobben and Others*, cited above, § 209). Moreover, in a case where a child has been taken away from his or her parents and freed for adoption, the relevant decisions may well prove to be irreversible. Accordingly, this is a domain in which there is an even greater call than usual for protection against arbitrary interferences (see *X v. Croatia*, no. 11223/04, § 47, 17 July 2008).

101. 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*, cited above, § 38). 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).

102. Furthermore, the positive obligation will begin to weigh on the competent authorities with progressively increasing force as from the period of separation of a child from a parent, and the adequacy of a measure is thus to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between a child and the parent who does not live with him or her (see *Strand Lobben and Others*, cited above, § 208).

103. It is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its positive 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 (as a recent authority, see *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, *Różański v. Poland*, no. 55339/00, § 61, 18 May 2006).

104. 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 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 are 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).

105. 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 relevant decisions were "relevant and sufficient" for the purposes of Article 8 § 2 of the Convention. 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).

106. 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 safeguarded by Article 8 (see *Schneider v. Germany*, no. 17080/07, § 93, 15 September 2011). More specifically, the relevant considerations to be weighed up by a local authority in reaching decisions on children in its care must inevitably include the views and interests of the natural parents. The decision-making process must therefore be such as to ensure that their views and interests are made known to and duly taken into account by the local authority, and that they are able to exercise in due time any remedies available to them. What therefore has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their

interests (see *Strand Lobben and Others*, cited above, § 212, and *X. v. Croatia*, cited above, § 48).

(b) Application of these principles to the present case

107. The Court considers that the decisive question in the instant case is whether the domestic authorities took all necessary and adequate steps that could be reasonably expected of them to enable D. to lead a normal family life with her natural father and siblings (see *S.H. v. Italy*, cited above, § 43; *K.A.B. v. Spain*, no. 59819/08, § 106, 10 April 2012; and *Haddad*, cited above, § 65).

108. On the facts, it notes the absence, at the relevant time, of a legal link between the applicant and his children, including D. Whilst the applicant, Ms O.M. and their five children lived together as a family until Ms O.M.'s death, the applicant had no formal parental status in respect of any of his children, as prior to his partner's death he never sought to have his paternity in respect of his children recognised in law and duly documented (see paragraph 6 above). Moreover, at the time when Ms O.M. died the applicant was in pre-trial detention and thus away from home, with the result that his children were considered abandoned ("left without parental care") and were taken into care. They were placed in public care and then in foster families (see paragraphs 9 and 11-14 above). Eventually, D.'s foster parents were granted a full adoption order in respect of her, without the applicant's knowledge or consent (see paragraphs 16-19 above).

109. As regards the initial taking into care of the children, the Court does not doubt that, in the circumstances, intervention by the competent authorities was necessary in order to protect the children's interests. It notes that there were no entries about the children's father on their birth certificates, which meant that it was not unreasonable for the authorities to consider the children abandoned and take urgent action by placing them in care following their mother's death. In the Court's view, the applicant's own inaction contributed to that course of events. Indeed, even assuming that at the time when his children were born the applicant was not legally resident in Russia and thus could not regularise his parental status in respect of them, the Court notes that he obtained a residence permit in February 2010 (see paragraph 4 above), a year before Ms O.M.'s death, therefore he could have had his paternity formally recognised and documented.

110. It further observes that D. was placed in the children's home on 9 March 2011, and that on the same date the childcare authorities invited Ms N.S., a prospective adoptive parent, to visit the girl (see paragraphs 11 and 33 above). Moreover, D. remained at the children's home for ten days – from 9 to 18 March 2011 – and already on 18 March 2011 she was transferred to a foster family under the guardianship of Ms N.S. (see paragraphs 11-12 above). Whilst the Court is prepared to accept that it is in a child's interest to live in a family, even if a foster one, rather than staying

in a children's home, it doubts that, in the present case, the authorities took sufficient time to satisfy themselves that no other viable alternative could be found for the girl, and, in particular, that she had no relatives to live with.

111. The Court further observes that D.'s four siblings remained in care until 16 May 2011 when they were transferred into the guardianship of their maternal aunt, Ms O.E. (see paragraph 14 above). At that stage the authorities took no steps to ensure D.'s reunification with her siblings within their extended natural family. In this connection, it notes the applicant's argument that the domestic law prohibited the separation of siblings when they were placed in foster families (see paragraphs 56 and 85 above).

112. Furthermore, on 8 September 2011, at D.'s foster parents' request, a domestic court granted them a full adoption order in respect of D. In its judgment, on the basis of the fact that D.'s birth certificate only contained information about her mother, who had died, the court considered that the girl had been abandoned. Furthermore, it found no obstacles to D.'s adoption by her foster parents within the meaning of the relevant domestic law (see paragraph 18 above).

113. In the Court's view it is important to establish whether, at the time of D.'s adoption, the authorities could or should have known of the existence of D.'s biological family, including her father, with whom she had had a bond amounting to "family life" prior to her placement in care (see paragraph 81 above). Furthermore, it has to be decided whether, before ordering D.'s adoption, the authorities took all the necessary and adequate steps that could reasonably have been expected of them to preserve the ties between D. and her natural family (see paragraphs 99, 100 and 107 above). The Court reiterates that taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit (see *Strand Lobben and Others*, cited above, § 208). Such a measure should be viewed in the context of a State's positive obligation to make serious and sustained efforts to facilitate the reunification of children with their natural parents and until then enable regular contact between them, including, where possible, by keeping the siblings together (see *Saviny v. Ukraine*, no. 39948/06, § 52, 18 December 2008).

114. In that connection, the Court observes that in the adoption proceedings the childcare authority brought to the court's attention the fact that D. had siblings who were being brought up in another foster family (see paragraph 17 above). It is thus clear that the domestic court was made aware of important factual elements of the situation that should have been taken into account. In particular, it could have obtained the relevant information regarding the applicant and his ties with D. from Ms O.E., the sister of the applicant's late partner, who was the guardian of the applicant's four elder

children (see paragraph 14 above) at the time of the adoption proceedings; it could also have obtained such information from the children themselves.

115. Moreover, as early as March 2011, when he was still in pre-trial detention, the applicant started taking steps to have his paternity in respect of all his five children established in law and to take them all into his care (see paragraph 20 above). In particular, in March 2011 he lodged a claim in which he listed his five children's names, patronymics, surnames and dates of births with the same court which eventually granted an adoption order in respect of D. in favour of the third parties (see paragraph 22 above). Although that claim was not compliant with certain formal requirements and was thus returned to the applicant (see paragraph 23 above), it showed the applicant's demonstrable interest in and commitment to his children, including D. (see *Różański*, cited above, § 64, and *K.A.B. v. Spain*, cited above, § 93).

116. In the light of the foregoing, the Court considers that the domestic authorities had a realistic opportunity to establish that D. had a biological father and siblings; it could and should have considered the circumstances of D.'s life with her natural family, and could and should have examined the third parties' application to adopt D. in the light of those circumstances (see paragraph 105 above). However, the first-instance court took a very formalistic approach by limiting itself to mere reference to the child's birth certificate, where the information about her father was missing, and noting that the prospective adopters satisfied the requirements of the relevant law. Whilst the Court is prepared to accept that such reasoning by the domestic court was "relevant", it clearly cannot consider it "sufficient", let alone convincingly demonstrating any exceptional circumstances for D.'s adoption by the third parties (see paragraph 100 above).

117. The Court further observes that the first-instance court in the initial adoption proceedings took no steps to inform the applicant of the proceedings in question, let alone make sure that he was heard in those proceedings, despite the serious nature of that measure (compare *X. v. Croatia*, cited above, §§ 51 and 53, and *K.A.B. v. Spain*, cited above, § 102).

118. Against this background, the Court considers that the domestic authorities showed a serious lack of diligence in relation to the adoption procedure. As a result of their inaction, the applicant was excluded from the relevant proceedings completely, and thus deprived of the requisite protection of his rights and interests. Furthermore, from a more substantive point of view, the authorities granted a full adoption without inquiring about the concrete circumstances of D.'s life with her natural family and basing their decision on an overly formalistic reasoning.

119. It is also relevant that D. was less than two years old when her adoption was ordered. The Court reiterates that in cases concerning family life, breaking off contact with a very young child may result in the

progressive deterioration of the child's relationship with his or her parent (see *Haddad*, cited above, § 62, and the authorities cited therein). Moreover, by ordering D.'s adoption by third parties, the domestic authorities separated D. from not only the applicant, her only surviving parent, but also her siblings (see *Kutzner*, cited above, § 77; *Pontes v. Portugal*, no. 19554/09, § 98, 10 April 2012; and *S.H. v. Italy*, cited above, § 56). In such circumstances, the Court has strong doubts that D.'s adoption by third parties corresponded to her best interests.

120. The Court further observes that, in the context of proceedings for the recognition of his paternity in respect of D., the applicant found out that the child had been adopted by third parties; he therefore supplemented his relevant claim, seeking to have the adoption order revoked (see paragraphs 27 and 31 above). In the relevant decisions, the first-instance court acknowledged that the adduced evidence proved that the applicant was the biological father of D. (see paragraph 37 above). However, the domestic courts refused to recognise his paternity in law, stating, in essence, that such recognition would be devoid of any legal meaning, as it would not entail revocation of D.'s adoption, given that recognition of paternity was not listed in the formal grounds in Article 141 of the Russian Family Code for revoking an adoption order in respect of a child (see paragraphs 38 and 46 above). Furthermore, the courts found that there were no grounds in the above-mentioned legal provision to revoke D.'s adoption order, as there had been no guilty conduct on the part of her adoptive parents in respect of her; nor were there any other formal grounds to do so under that Article (see paragraphs 39-40 above). They also observed that whilst the applicant was not officially employed (see paragraph 37 above), Ms N.S. and Mr S.S. were financially secure, had permanent jobs and proper living conditions, and were capable of ensuring the child's development (see paragraph 40 above). In addition, the courts referred to the fact that by the time the first-instance judgment had been adopted, the child had been living with the family of her adoptive parents for eighteen months, and she had developed close emotional ties with them (see paragraph 41 above).

121. In respect of the decision-making process, the Court notes that the applicant attended hearings before the first-instance and appellate courts and made oral submissions (see paragraph 32 above). A number of witnesses on his behalf, including his elder son, were heard (see paragraphs 34 above). At the same time, in assessing the quality of the decision-making process, the Court must also see whether the conclusions of the domestic authorities were based on adequate evidence (see *N.P. v. the Republic of Moldova*, cited above, § 69; compare also *Strand Lobben and Others*, cited above, §§ 220 and 225).

122. In that connection, the Court observes that, on the basis of the evidence in their possession, the national courts did not doubt the fact that the applicant and D. were biologically related. Furthermore, they never

questioned the applicant's ability to raise and educate his children. It was never alleged or established by the domestic courts that the family had ever attracted the attention of social or childcare authorities prior to Ms O.M.'s death, or that while living with their natural family the children had ever showed a lack of adequate developmental and educational progress, been neglected, or had their health or life put at risk. In fact, in a separate set of proceedings, the national authorities found no obstacles to the recognition of the applicant's paternity in respect of his other four children and their return to his care (see paragraphs 25-26 above). The only reason for their refusal to formally recognise the applicant's paternity in respect of D. was, in essence, the fact that she had already been adopted by third parties by the time they considered that question, and there were no formal grounds under the relevant legal provision to revoke the adoption order. In particular, "a court's establishment of the fact that a child was descended from a particular person" did not constitute grounds under that provision for revoking the adoption order, and no other grounds such as guilty conduct by the foster parents in respect of D. could be found (see paragraph 46 above).

123. The Court reiterates that, in view of the great variety of family situations which are possible, the best interests of the child cannot be determined by a general legal assumption, and that a fair balancing of the rights of all individuals involved necessitates an examination of the particular circumstances of each case (see *Schneider*, cited above, § 100). In respect of Russia, the Court has previously held that an interference with applicants' family life which was the result of the automatic application of inflexible legal provisions in that field amounted to a failure to respect their family life (see *Nazarenko v. Russia*, no. 39438/13, §§ 64-68, ECHR 2015 (extracts), and *V.D. and Others v. Russia*, no. 72931/10, §§ 127-131, 9 April 2019).

124. The Court has found in paragraph 118 above that the adoption proceedings were deficient and revealed a serious lack of diligence on the part of the authorities. The authorities were therefore responsible for the situation whereby the applicant's biological daughter was adopted by third parties, a situation which the applicant sought to resolve in the proceedings in question (compare *K.A.B. v. Spain*, § 108, and *Haddad*, § 69, both cited above).

125. For his part, the applicant consistently pointed out that the adoption judgment stood in conflict with the requirements of the domestic law, which prohibited the separation of siblings when ordering adoption (see paragraphs 32 above). This argument was supported by representatives from various public authorities (see paragraphs 35 and 45 above). However, at no point in time was that argument examined by the courts. In particular, as the Court has noted above, the applicant did not participate in the adoption proceedings before the first-instance court, and thus was objectively precluded from raising this point in those proceedings (see paragraph 117

above). Furthermore, in the proceedings under examination, that argument was rejected as irrelevant, without being scrutinised (see paragraph 42 above).

126. In such circumstances, even assuming that the applicant's two claims – for recognition of paternity and for revocation of the adoption order – were intertwined, the Court cannot accept that in the present case the absence under the relevant domestic law of formal grounds for revoking the adoption order was a "sufficient" consideration to justify the courts' refusal to recognise his paternity in respect of D. and revoke the adoption order.

127. Furthermore, in so far as the courts referred to the period of time – eighteen months – during which D. had been in the care of her foster parents, the Court considers that although that was undoubtedly a considerable period of time, particularly for a child of her age, this factor alone could not have ruled out the possibility of reuniting her with her biological family. Indeed, effective respect for family life requires that future relations between parent and child be determined in the light of all the relevant considerations, and not by the mere passage of time (as a recent authority, see *V.D. and Others v. Russia*, cited above, § 116). Moreover, where the authorities are responsible for a situation of family breakdown, they may not refer to the absence of bonds between the parents and the child when taking decisions regarding the child's adoption (compare *Pontes*, §§ 92 and 99, and *Strand Lobben and Others*, § 208, all cited above).

128. It is relevant in the above connection that, as the Court has noted in paragraph 115 above, the applicant started taking steps to have his paternity in respect of all his five children established in law and to take them all into his care as soon as he found out about his partner's death; he also sought revocation of the adoption order as soon as he found out that D. had been adopted. He thus cannot be said to have waited unreasonably long prior to taking measure with a view to securing his family life with his children, including D.

129. The Court further considers that, whilst a sudden separation from her adoptive family might have had negative effects on the child, it is not convinced that the national authorities explored all possible solutions, bearing in mind that the applicant was D.'s biological father, that he was willing and able to care for her, and that his four other children, D.'s siblings, were in his care. In particular, in the relevant proceedings, the question of whether it would be viable to reunite D. and her natural family under circumstances that would minimise any potential negative effects on the child (for instance, by gradually re-establishing contact between D. and her natural family) was never considered.

130. In so far as the courts referred to the fact the applicant was not officially employed, whereas Ms N.S. and Mr S.S. were financially secure, had permanent jobs and proper living conditions, the Court reiterates that it is not enough to show that a child could be placed in a more beneficial

environment for his or her upbringing (see *N.P. v. the Republic of Moldova*, cited above, § 66). The domestic courts did not elaborate on their argument regarding the applicant's lack of official employment, therefore it is unclear whether they suggested that he was unable to support his family financially. The Court will not speculate as to whether the applicant's income was sufficient to ensure an adequate standard of living for his children, as in any event his alleged financial difficulties cannot in themselves be regarded as sufficient grounds for refusing his relevant claims (see *Kocherov and Sergeyeva*, cited above, § 119).

131. In the light of the foregoing, the Court concludes that the domestic authorities breached their positive obligation under Article 8 of the Convention, in so far as they failed to carry out an in-depth examination of all the relevant factors and fairly balance the rights of all individuals involved with due regard to the particular circumstances of the present case, which amounted to a failure to respect the applicant's family life.

132. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. Article 41 of the Convention provides:

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

A. Damage

134. The applicant argued that he had endured psychological suffering, distress, frustration and a feeling of injustice on account of the violations of his right to respect for his family life. In that connection, he claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

135. The Government contested that claim as excessive. In their view, no award should be made in the present case, as the applicant's rights had not been violated.

136. The Court notes that it has found a violation of the applicant's right to respect for his family life. It considers that the applicant has suffered non-pecuniary damage in that regard which cannot be compensated for by the mere finding of a violation. Accordingly, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

137. The applicant also claimed a total amount of EUR 3,200 for the costs and expenses incurred before the domestic courts and the Court. He submitted a detailed invoice of costs and expenses that included: an aggregate amount of EUR 2,700 for twenty-two hours which his lawyer had spent on preparing and presenting his case before the Court; and EUR 500 for administrative costs (postal expenses, photocopying, and international telephone calls), in relation to which the applicant submitted invoices for a total amount of EUR 72.

138. The Government contested that claim, arguing that the costs could not be said to have been actually incurred, as the agreement between the applicant and his representative stipulated that the above-mentioned amount would only be payable if the Court adopted a judgment finding a violation of his rights. They also pointed out that the applicant had not submitted documents to corroborate his claim for EUR 500.

139. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, ECHR 2016, and, more recently, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, ECHR 2017). A representative's fees are considered to have been actually incurred if an applicant has paid them or is liable to pay them (see *Ždanoka v. Latvia*, no. 58278/00, § 122, 17 June 2004, and *Merabishvili*, cited above, § 372). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 72 for the administrative costs and EUR 2,700, least EUR 850 already paid to the applicant in legal aid for the proceedings before the Court, plus any tax that may be chargeable to the applicant on those amounts; the latter amount to be transferred directly to his representative's bank account.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 72 (seventy-two euros), plus any tax that may be chargeable to the applicant, in respect of the administrative costs and expenses, and EUR 1,850 (one thousand eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, for the proceedings before the Court, the latter amount to be transferred directly to the applicant's representative's bank account;

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

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

Done in English, and notified in writing on 5 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President