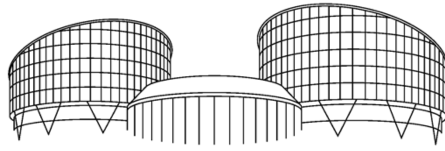

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HADDAD v. SPAIN

(Application no. 16572/17)

JUDGMENT

STRASBOURG

18 June 2019

FINAL

18/09/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Haddad v. Spain,

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

Vincent A. De Gaetano, *President,*
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Alena Poláčková,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 28 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 16572/17) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Syrian national, Mr Wael Haddad (“the applicant”), on 22 February 2017.

2. The applicant was represented by Mr L.M. Chamorro Coronado, a lawyer practising in Madrid. The Spanish Government (“the Government”) were represented by their Agent, Mr A. Brezmes Martínez de Villareal, Government legal adviser at the Legal Department of Human Rights, Ministry of Justice.

3. The present case concerns the placement of the applicant’s daughter in foster care. It raises an issue under Article 8 of the Convention.

4. On 31 August 2017 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Madrid.

A. The background to the case and the criminal proceedings against the applicant

6. In January 2012 the applicant and his wife, a Spanish national, left Syria with their three minor children because of the armed conflict and travelled to Spain.

7. One month after their arrival in Spain the applicant's wife lodged a criminal complaint against him for domestic violence. On 2 February 2012 the Coslada (Madrid) judge no. 1 hearing cases of violence against women ("the Coslada judge no. 1") issued the applicant's wife with a temporary protection order valid for the duration of the criminal proceedings. It included a criminal-law measure barring the husband from approaching her and their three children or communicating with them and requiring him to wear a tracking bracelet, and a civil-law measure temporarily withdrawing the applicant's parental responsibility and contact rights. The applicant's wife, who had been staying in an emergency shelter, twice left the shelter with her children and returned to live with her husband despite the barring order issued against him. The applicant was arrested and detained on two occasions for violating the barring order but was ultimately released. According to reports drawn up on 20 April and 21 May 2012 by the Móstoles and Alcalá de Henares emergency shelters, the children's relationship with their mother was characterised by serious emotional, educational and behavioural deprivation. On 8 June 2012 the applicant's wife filed a fresh complaint of violence.

B. The declaration of abandonment in respect of the children and the proceedings for the applicant's daughter's placement in foster care with a view to her adoption

8. On 15 June 2012 the Madrid regional government issued a legal declaration of abandonment concerning the three children, aged nine, six and one and a half, and took over their guardianship under the urgent procedure. The children were placed in residential care. The decision was taken following a request from the applicant's wife, who said that she could no longer look after her children owing to serious conflict within the family and her lack of resources. The applicant's wife informed the Madrid regional government that she intended to move to Murcia to get away from the applicant and to live with her brother. She requested that the three children be taken into care by the regional government in Murcia. She also stated her intention to begin therapy.

9. On 28 June 2012 the children were placed in residential care in Murcia. The applicant was not informed that his children had been declared abandoned and taken into care, nor was he informed of any of the decisions concerning his children taken by the Madrid or Murcia child protection services.

10. On 28 July 2012 the social affairs director of the Murcia region took over the guardianship of the three children. The applicant's two sons were placed in the Santo Angel children's home and his daughter in the Cardenal Belluga home. Their mother was given permission to visit.

11. On 14 February 2013 the president of the Spanish Muslim Association ("the association") wrote on the applicant's behalf to the Murcia child protection department ("the child protection department") stating that the applicant, having cut all ties with his wife, had no information concerning his three children. In the letter the association requested that it be informed about the children's situation and stated that the applicant, who was legally deprived of the right to communicate with his children, had asked for a member of the association to be allowed to meet them. On 7 March 2013 the child protection department replied that there were no plans to return the children to their birth family and that it was not desirable for outsiders to visit the children.

12. On 19 March 2013 the Coslada judge no. 1 sent the Murcia child protection department a summons which had arrived late at the court, making it impossible for the judge to contact the applicant in time for the latter to attend a hearing to be held in Murcia on 21 March 2013.

13. On 6 April 2013 the applicant was notified of the hearing to confirm the children's guardianship, by means of a notice (*edictos*) published in the Murcia official gazette. On 8 and 16 April 2013 he was contacted by telephone by a member of the Murcia child protection department. During the first telephone conversation the applicant was informed that notice of the guardianship hearing had been served. He did not follow up on the telephone call and did not attend the hearing. In the course of a further telephone conversation with the same member of the child protection department the applicant said that he would not attend the hearing and would, if necessary, appeal against the decision confirming the guardianship. On 24 April 2013 the Murcia regional government ("the regional government") placed the children in the care of the child protection department. A letter notifying the applicant of that decision was sent to his home on 14 May 2013. As the applicant was absent, it was left at the post office on 21 May 2013. The applicant did not go there to pick it up.

14. In an orientation report of 20 June 2013 the directorate-general of social affairs of the Murcia region took note of the fact that the children had allegedly been subjected to serious physical and emotional abuse by the applicant. It noted the order made by the Coslada judge no. 1 barring the applicant from approaching the children or communicating with them in any way. The report further took note, in particular, of the mother's very vulnerable, easily influenced and fragile personality and her failure to protect her children, her emotional instability and limited intellectual abilities, her lack of financial stability, the fact that she had no stable home or occupation and the fact that she had also spent her childhood in care. The report recommended suspending the mother's visits to her minor daughter and allowing just a single one-hour contact session with her two sons every two months, in a location to be decided by the children's home.

15. In the course of a telephone call from the social services at the Cardenal Belluga children's home, the applicant's wife said that she was renting an apartment in order to be close to her daughter, using money sent to her by the applicant.

16. In a very detailed psychosocial report dated 19 July 2013 the directorate-general of social affairs of the Murcia region proposed that the applicant's daughter should be placed temporarily in foster care with a view to adoption, and should not receive visits from her birth family. The report essentially echoed the findings of the previous report and stressed the mother's lack of parenting skills and her immaturity.

C. The placement of the applicant's daughter in a foster family and the applicant's acquittal in the criminal proceedings for domestic violence

17. On 20 September 2013 the regional child protection board decided to place the applicant's daughter in temporary foster care with a view to her adoption.

On 24 September 2013 she was placed with a foster family.

18. On 8 October 2013 the president of the regional child protection board submitted a formal proposal for the girl to be placed in temporary pre-adoption foster care with the couple who had been chosen. No provision was made for visits by her birth parents.

19. On 27 September 2013 the Alcalá de Henares criminal court judge no. 5 acquitted the applicant of all charges in the proceedings concerning him and set aside the criminal and civil-law measures ordered by the Coslada judge no. 1 on 2 February 2012. The criminal court judge no. 5 took into account in his judgment the lack of detail in the applicant's wife's allegations concerning him, the similarly imprecise indirect witness statements (given by the head teacher of the applicant's children's school and their teachers, the school's learning support assistant and the school secretary), who had no clear memory of the events or had repeated remarks made by the children or their own impressions. The judge also took into account the psychological and medical expert reports, which noted "psychological scars consistent with ill-treatment, social maladjustment and physical, sexual and psychological violence". These were likewise deemed insufficient to disprove the presumption of the applicant's innocence, given the generic nature of the claims made in the various reports, the lack of explanations concerning the techniques used to arrive at the findings, and the imprecise testimony given by the experts at the hearing. The acquittal judgment became final on 8 November 2013.

20. With the assistance of a lawyer the applicant wrote to the child protection department on 19 November 2013 and attended an interview. He informed the department of the judgment in his favour and said that he was

working, had a stable income and was living in Madrid. He requested permission to see his children.

21. In an orientation report of 28 February 2014 the child protection department took note of the fact that there had been no contact between the applicant and his children between 28 June 2012, the date on which the children had been placed in residential care, and 19 November 2013, when the applicant had first had contact with the child protection department as described above. In the report the child protection department proposed refusing the applicant permission to see his daughter and provisionally refusing him permission to see his other two children "until such time as the children [were] more stable emotionally and psychologically". It noted that the girl had "adjusted very well during the pre-adoption fostering process" and that the other two children still showed signs of "fear and a lack of trust where their father [was] concerned" and were receiving psychological and pharmacological treatment. The findings of the report were endorsed on 31 March 2014 by a decision of the directorate-general of social affairs of the Murcia region, which terminated the administrative proceedings. The decision was sent to the prosecutor with responsibility for minors, and the applicant was informed on 22 April 2014.

22. On 28 May 2014 the applicant appealed against his daughter's placement in foster care.

23. In a follow-up report of 18 December 2014 the child protection department noted the emotional bond that had been formed between the young girl and her foster family and the degree to which she had adjusted to her new social and family environment.

24. On 2 February 2015 the psychologist and the welfare assistant from child welfare centre II in Madrid issued a report concerning the applicant, noting the lack of an emotional bond between the father and his daughter and the fact that the father's request to resume contact with his children had focused on the two older children. According to the report, the applicant understood the impact which the separation had had on his children and claimed that he was capable of balancing his private and working life in order to meet the children's needs.

25. On 11 February 2015, in response to a request from the directorate-general of social affairs, the Murcia first-instance judge no. 3 authorised the placement of the applicant's daughter in foster care with a view to her adoption, under Article 173 § 1 of the Civil Code. The decision gave the following reasons:

> "The present case satisfies the statutory conditions for placement in foster care in so far as the public child protection agency and the foster family have given their consent and the parents' lack of consent can be remedied by means of a judicial decision. In the child's circumstances, her placement in a family which will take care of her, feed and educate her and include her in family life would be of great benefit in terms of her physical, intellectual and moral development [and] her upbringing in general."

26. On 13 March 2015 the applicant appealed against the decision of 11 February 2015 authorising his daughter's placement in foster care with a view to her adoption. His wife did likewise. The applicant argued, in particular, that the judgment in question did not give any reasons why the child should not be entrusted to his care given that he had been acquitted of all the charges against him. He stated that the declaration that his children had been abandoned had resulted from his wife's conduct, her particular personality traits and the war in Syria which they had escaped by leaving the country. He considered himself a victim of the inability of the girl's mother to look after her; his own ability to bring up his daughter and take care of her had never been examined by either the administrative or the judicial authorities.

27. In her written objection to the applicant's appeal against the decision of 11 February 2015 by the first-instance judge no. 3, the lawyer representing the regional government noted that the applicant had shown no interest in his children after they had been placed in residential care in Murcia on 28 June 2012. She also observed that the applicant had not appealed against the administrative decision confirming the children's placement in care.

28. On 7 April 2016 the Murcia *Audiencia Provincial* dismissed the appeals lodged by the applicant and his wife and upheld the impugned decision in the following terms:

> "... according to the decision under appeal, such a measure [the placement of the child in foster care with a view to adoption] will safeguard the child's best interests and contribute effectively to her overall development.
>
> ...
>
> Account should be taken of the assessment made by the administrative authorities regarding the appellant's lack of interest. Firstly, he did not take any action after requesting information regarding his children's situation and being provided with that information in February 2013. Secondly, he did not intervene in the proceedings, with the exception of one written submission filed on 19 November 2013, despite being informed on several occasions of the confirmation of the decision to place his children in State care in April 2013 …
>
> It was only on 28 May 2014, after several unsuccessful attempts had been made to notify the appellant, that he intervened in the proceedings to appeal against the decision to place A. [his daughter] with a foster family.
>
> … It appears from the orientation report of 28 February 2014 that the child lived in the child protection centre for a year and three months and has no contact with her father. Furthermore, the evidence examined, and in particular the follow-up report of 18 December 2014, shows that strong emotional bonds have been formed and that the child identifies as a member of the foster family and has adjusted to her new social and family environment. The report finds that this environment meets A.'s needs and that the foster care is having a beneficial impact on her personal development. It adds that the best outcome for her would be for her to be adopted by her foster parents, [and that it is necessary] to assess the possible negative consequences if her foster care were to be terminated. Specifically, the report states that this would be tantamount to

an attack on the child in all aspects of her physical, intellectual and moral development. This would pose a serious threat to her mental health and would affect the development of her personality and her ability to form personal relationships throughout her life.

...

It should be added that the document submitted by [the applicant] (Mr Haddad) in the appeal proceedings, in which the child protection department stated that A.'s two brothers (L., aged thirteen and Ad., aged ten) were being taken out of State care because they had gone back to live with their father, is completely irrelevant. Firstly, the document makes no mention of the reasons for taking the children out of care. Secondly, the current situation with regard to A., who is four years old, does not militate in favour of a change of approach in her case, in the light of her ongoing placement in foster care with a view to her adoption, [the process] of integration [into the family] and the negative and damaging consequences which would result from the termination of the foster care, as established by the expert reports …"

29. On 26 February 2016 the regional government terminated the placement of the applicant's two sons in the care of the child protection department and authorised their return to their father. They have been living with him since that date.

30. On 13 June 2016 the applicant lodged an *amparo* appeal with the Constitutional Court in which he set out, in a separate section, the reasons why he considered his action to have special constitutional significance. He relied on Article 24 (right to a fair trial) and Article 39 of the Constitution and on Article 8 of the Convention, arguing that the judicial decisions had prevented him from being reunited with his daughter owing to serious errors in the various reports by the administrative authorities that had served as the basis for the domestic courts' reasoning. In a decision served on 19 October 2016 the Constitutional Court declared the *amparo* appeal inadmissible on the grounds that the applicant had not demonstrated the constitutional significance of his appeal.

II. RELEVANT DOMESTIC LAW

31. The provisions of the Constitution of relevance to the present case read as follows:

Article 24

"1. Everyone shall have the right to effective protection by the judges and courts in the exercise of his or her rights and legitimate interests; in no circumstances may there be any denial of defence rights.

…"

Article 39

"1. The State authorities shall ensure that the family is afforded social, economic and legal protection.

2. The authorities shall also afford full protection to children, who shall be equal before the law irrespective of their parentage, and to mothers, irrespective of marital status. The law shall make it possible to investigate one's paternity.

3. Parents must lend assistance to their children in all spheres, whether the children were born within or outside marriage, until they reach full age and in the other cases provided for by law.

4. Children shall enjoy the protection provided for in the international agreements safeguarding their rights."

32. Section 17 of Institutional Law no. 1/1996 of 15 January 1996 on the legal protection of minors provides as follows:

"In any risk situation, whatever its nature, that is harmful to the minor's personal or social development and does not require a guardianship order under the law, the action taken by the public authorities shall in all cases secure the minor's rights and be aimed at reducing the risk factors and social difficulties impacting on his or her personal and social situation, while providing the necessary protection to the minor and his or her family.

Once the risk has been assessed the child protection authorities shall take the necessary steps to attenuate the risk and shall monitor the minor's progress within the family."

33. The relevant provisions of the Civil Code read as follows:

Article 172

"1. Where the regional agency responsible for the protection of minors observes that a minor has been declared abandoned, it shall automatically take over his or her guardianship and shall put in place the necessary protective and guardianship arrangements … [The parents and guardians] shall, in so far as possible, be informed in person and in a clear and comprehensible manner of the reasons for the authorities' intervention and the potential consequences of the decision adopted.

A minor shall be legally considered abandoned where he or she is in a *de facto* situation stemming either from a failure to fulfil the protective duties set out in the legislation on the guardianship of minors, or from an inability to fulfil those duties or carry them out in the proper manner, and where he or she is deprived of the requisite moral or material assistance.

The exercise of guardianship by the authorities shall entail the suspension of parental responsibility or ordinary guardianship …

2. Where, owing to serious circumstances, the parents or guardians cannot take care of the minor, they may request the competent administrative authority to take over the child's guardianship for the required period.

The transfer of guardianship shall be in writing. The document shall note that the parents or guardians have been informed of their continuing responsibilities towards the child and of the manner in which the authority will exercise guardianship.

...

3. Where guardianship is assumed at the request of the parents or guardians or to comply with a statutory obligation, it shall take the form of foster care or residential care …

4. The aim shall always be to ensure the minor's best interests. Unless these interests dictate otherwise, [the authorities shall endeavour] to return the minor to his or her family and to entrust the guardianship of any siblings to the same institution or person.

…

7. Parents whose parental responsibility has been suspended under paragraph 1 of this Article may request that the suspension be lifted and that the declaration of abandonment be revoked, within two years from the administrative notification of the declaration, if they consider that they are again in a position to exercise parental responsibility owing to a change in the circumstances that led to the declaration.

They may also, during the same period, challenge the decisions taken in relation to protection of the minor.

...

Once this period has elapsed they shall no longer have the right to request or challenge decisions or measures relating to protection of the minor. …

8. The administrative authority, of its own motion or at the request of the public prosecutor's office or any interested person or institution, may at any time revoke the declaration of abandonment and order the return of the minor to his or her own family, if he or she has not settled in another family or if it considers this the most appropriate course of action in the minor's interest. The public prosecutor's office shall be notified accordingly."

Article 173

"1. The placement of minors in foster care shall entail their full involvement in the life of the household and an obligation for the foster family to care for and provide for them, feed them, ensure their upbringing and provide them with a full education.

...

3. If the minor's parents … oppose [his or her placement in foster care], the placement shall be the subject of a judicial decision, in the interests of the minor …

However, the administrative authority may decide, in the child's interests, to place him or her temporarily in foster care pending the judicial decision.

…"

Article 173 *bis*

"Foster care may take one of the following forms, depending on its purpose

1. Simple foster care which is of a temporary nature, either because the minor's situation is such that he or she may be able to return to his or her own family, or because another more permanent protective measure is in preparation.

2. Permanent foster care in cases where, owing to the minor's age or other circumstances relating to the minor or his or her family, [this approach] appears preferable and has thus been recommended by the child protection department. …

3. Foster care with a view to adoption, which is formally arranged by the administrative authorities when they submit a proposal to the judicial authority for the minor’s adoption, [which must be] approved by the child protection department, provided that the foster parents satisfy the conditions for adoption, have been selected and have given their consent to the administrative authorities, and that the child’s legal situation makes him or her eligible for adoption.

The administrative authorities may also put pre-adoptive foster arrangements in place where they consider, before submitting the adoption proposal, that a settling-in period in the foster family is necessary. This period shall be as short as possible and shall not exceed one year.”

Article 222

“The following persons shall be placed under guardianship:

...

4. Minors who have been legally declared abandoned.”

34. Section 35 of Law 3/1995 on children, enacted by the Murcia region on 21 March 1995, reads as follows:

“1. Fostering arrangements may be put in place prior to adoption:

(a) where the minor shows signs of physical or psychological ill-treatment, sexual abuse, exploitation or other [forms of ill-treatment] of a similar nature, or where for any other reason the parents or guardians are deprived of parental responsibility and that situation is expected to be permanent;

(b) where the parents or guardians are prevented from exercising parental responsibility and that situation is expected to be permanent;

(c) where the parents or guardians make a request to that effect to the competent authority and have forfeited the rights and duties inherent in their function;

(e) where the judicial authority so decides.

2. In the cases defined in the first sub-section, and in order to facilitate integration into the foster family, visits and contact with the birth family shall be suspended if that is in the minor’s best interests.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that the child protection department had not taken any steps to help him to re-establish contact with his daughter following his acquittal and the lifting of the temporary barring order against him. He relied on Article 8 of the Convention, which provides:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

36. The Government pleaded failure to exhaust domestic remedies. They argued, firstly, that the applicant had not filed a plea of nullity with the *Audiencia Provincial* before lodging his *amparo* appeal with the Constitutional Court. Secondly, they noted that the *amparo* appeal had been declared inadmissible by the Constitutional Court because the applicant had failed to comply with the requirement to demonstrate that his appeal had special constitutional significance, as stipulated by section 49(1) of Institutional Law no. 2/1979 on the Constitutional Court ("the LOTC") as amended by Institutional Law no. 6/2007 of 24 May 2007.

37. The applicant submitted that the issue of a plea of nullity was irrelevant; the same view had been taken by the Constitutional Court, which had not dismissed his *amparo* appeal on that ground. He added that the decision declaring his *amparo* appeal inadmissible on the grounds of failure to demonstrate that his complaints were of constitutional significance had been given in error, as in the case of *R.M.S. v. Spain* (no. 28775/12, 18 June 2013), in which the Court had found a violation of Article 8 of the Convention.

38. As regards the first part of the Government's objection, the Court considers that the applicant gave the domestic courts and, at last instance, the Constitutional Court, the opportunity to remedy the alleged violation. As to the Government's argument that the applicant had failed to exhaust domestic remedies because he had not filed a plea of nullity, it observes that the Constitutional Court did not declare the applicant's *amparo* appeal inadmissible on that ground, and that it made no mention at any stage of a prior requirement to have filed such a plea. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII), including procedural issues, and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. Hence, it cannot require the applicant to exhaust a remedy which the Constitutional Court itself did not consider to be required in the present case.

39. As to the second part of the objection, the Government submitted that domestic remedies had not been properly exhausted in so far as the *amparo* appeal had been declared inadmissible by the Constitutional Court owing to the applicant's failure to comply with the statutory obligation to demonstrate that his appeal had special constitutional significance, as

required by section 49(1) of the LOTC as amended by Institutional Law no. 6/2007 of 24 May 2007.

40. In that connection, as it did previously in the case of *Arribas Antón v. Spain* (no. 16563/11, 20 January 2015), the Court emphasises that the fact that the Constitutional Court declared an *amparo* appeal inadmissible on the grounds that it did not have special constitutional significance as required or, as the case may be, that the appellant had not demonstrated the existence of such significance, does not prevent the Court from ruling on the admissibility and merits of an application (ibid., § 51, with its references to the following Court judgments delivered in the wake of Constitutional Court rulings declaring *amparo* appeals inadmissible on the basis of this criterion: *Del Río Prada v. Spain* [GC], no. 42750/09, § 22, ECHR 2013; *Varela Geis v. Spain*, no. 61005/09, 5 March 2013; *Manzanas Martín v. Spain*, no. 17966/10, § 14, 3 April 2012; and *R.M.S. v. Spain*, cited above, § 45; see also the more recent case of *Rodriguez Ravelo v. Spain*, no. 48074/10, § 24, 12 January 2016, and, most recently, *Saber and Boughassal v. Spain*, nos. 76550/13 and 45938/14, § 30, 18 December 2018). The Court notes that in the present case the applicant set out, in a separate section, the reasons why his *amparo* appeal had special constitutional significance for him. He argued that the appeal satisfied that criterion in so far as it was based on the case-law of the "bodies responsible for interpreting international treaties and agreements referred to in Article 10(2) of the EC Treaty". He referred to the judgment in *R.M.S. v. Spain*, cited above, and relied on the provisions of the Spanish Constitution which he considered relevant and on Article 8 of the Convention, arguing that the judicial decisions in question had prevented him from being reunited with his daughter owing to serious errors in the reports by the various administrative bodies that had formed the basis for the domestic courts' reasoning.

41. Accordingly, the Government's objection cannot be allowed.

42. 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. *The parties' submissions*

(a) The Government

43. The Government conceded that there had been interference by the public authorities with the applicant's right to respect for his private and family life. However, in their submission, the interference was justified by an overriding requirement pertaining to the child's best interests, and was an

appropriate use of the national authorities' margin of appreciation. In the present case the applicant's daughter had had an interest in the consolidation of her situation in foster care, after spending fifteen months in residential care. Moreover, the Court was not a court of fourth instance and must respect the margin of appreciation left to the member States in regulating parent-child relationships.

44. The Government averred that the local authority's decision to place the child in foster care with a view to her adoption had been taken in strict compliance with the child protection legislation, had been duly accompanied by reasons and had been reviewed by the Spanish judicial authorities in accordance with the law. The decision had not been taken arbitrarily, but rather had been based on the applicant's lack of interest in his daughter. Although the barring order in respect of the applicant had been valid until September 2013, he had had no contact with his children between 2012 and 2015 and had not travelled to Murcia in person, but instead had dealt with the matter in writing through an association (see paragraph 11 above). The applicant's situation therefore differed from that of the applicant in the case of *R.M.S. v. Spain* (cited above, § 76), in which the Court had found a violation of Article 8 of the Convention because a child had been declared abandoned even though the applicant "[had gone] to the Granada children's home on at least seventeen occasions, despite the fact that the home was some distance from where she lived, and … [had] not even [been] informed that her daughter had left there". Moreover, in the present case, the decision in question had been preceded by a thorough assessment based on the reports drawn up by the Murcia child protection department. The Government referred to the orientation report of 20 June 2013, the psychosocial report of 19 July 2013, the orientation report of 28 February 2014 and the report of 2 February 2015 (see paragraphs 14 et seq. above).

45. In the Government's view, the decisions taken by the authorities in the present case had not been disproportionate, as they had also secured the interests of the birth parents by affording them sufficient procedural safeguards and involving them in the decision-making process (the Government referred to the judgment in *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121). The authorities had at all times been mindful of the child's best interests, the situation of her immediate and extended family and the principles of proportionality and necessity. The Government noted the efforts made by the Murcia social services to contact the applicant (see paragraphs 12 and 13 above) and the fact that the judicial authorities had upheld the rights of the defence by allowing the child's parents the opportunity to express their point of view and, if applicable, their objections, by means of the procedures and remedies made available to them.

46. The Government observed that the interests of each child had to be assessed on a case-by-case basis. Consequently, the fact that the applicant had regained custody of his two sons did not alter the judicial bodies' decisions, since his daughter had not been in a comparable situation to that of her brothers owing to her age and her personal circumstances. Referring to the decision of the Murcia *Audiencia Provincial* of 7 April 2016, the Government argued that the child's reintegration into her birth family had no longer been possible as it had been liable to do her more harm than good. Furthermore, the child's extended family had not demonstrated to the social services that they were capable of taking care of her.

47. Lastly, the Government noted that the rights enshrined in Article 8 of the Convention applied equally to the birth family and the foster family; the latter had established emotional ties with the child that had to be taken into consideration by the Court.

(b) The applicant

48. In the applicant's submission, while foster care may have been the best solution in the past in order to consolidate his daughter's family situation, that had ceased to be the case once he had regained custody of the two older children with the permission of the child protection authorities. In his view, justifying his daughter's placement in foster care on the grounds of his alleged "lack of interest" made no sense, given that he had been deprived of parental responsibility for his children and of the corresponding rights and duties. That measure, which had formed the basis for the declaration that his children were abandoned, had ceased to have any relevance as he had been acquitted of the criminal charges of ill-treatment of his wife. Once he had managed to resume contact with his older children, he had again been barred from having the same contact arrangements with his daughter. Moreover, as a foreign national with a limited command of Spanish, it had been difficult for him to consult the notice to appear published in the Murcia region official gazette (see paragraph 13 above); that should not have been interpreted as a lack of interest on his part.

49. The applicant submitted that the Spanish child protection services and courts had discriminated against him because he was a foreign national. He had been living in Madrid and had a poor command of Spanish at the time. He rejected the Government's argument that the authorities had observed the principle of lawfulness and his procedural rights, given that they had based their decisions on unsubstantiated arguments and on reports drawn up while criminal proceedings had been pending against him and he had not been in a position to defend his suitability as a father.

50. The applicant criticised the reasons given by the Murcia *Audiencia Provincial* in dismissing as irrelevant the fact that he had only regained custody of his sons and not of his daughter "because that would be counter-productive for [her]". The fact that the two boys had been returned

to him demonstrated that he was interested in his children and capable of taking care of them. The decision of the Murcia *Audiencia Provincial*, which had been echoed by the Government in their observations, had wrongly found him to have ill-treated his children and had projected onto him the inadequate parenting of the children's mother.

2. *The Court's assessment*

(a) General principles concerning respondent States' positive obligations under Article 8 of the Convention

51. The Court reiterates that the enjoyment by parent and child of each other's company constitutes a fundamental element of family life (see *Buscemi v. Italy*, no. 29569/95, § 53, ECHR 1999-VI; *Saleck Bardi v. Spain*, no. 66167/09, §§ 49 and 50, 24 May 2011; and *R.M.S. v.* Spain, cited above, § 68) and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII, and *Barnea and Caldararu v. Italy*, no. 37931/15, § 63, 22 June 2017).

52. As the Court has held on a number of occasions, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. While a decision by the competent authority resulting in a child being taken into care constitutes interference with a parent's right to respect for his or her family life (see *W. v. the United Kingdom*, cited above, § 59), the positive obligations inherent in the right to effective respect for private or family life may involve the adoption of measures even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91, and *Mincheva v. Bulgaria*, no. 21558/03, § 81, 2 September 2010). In both cases, regard must be had to the fair balance that has to be struck between the competing interests – those of the child, of the two parents, and of public order (see *Maumousseau and Washington v. France*, no. 39388/05, § 62, 6 December 2007) – while attaching particular importance to the best interests of the child (see, to similar effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX), which, depending on their nature and seriousness, may override those of the parents (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII). Again, in both contexts, the State enjoys a certain margin of appreciation (see *Saleck Bardi*, cited above, § 50, and *K.A.B. v. Spain*, no. 59819/08, § 95, 10 April 2012).

53. The Court reaffirms the principle, well-established in its case-law, according to which the Convention is intended to guarantee rights that are practical and effective (see *K. and T. v. Finland*, cited above, § 154). It

reiterates that the Court's task is not to substitute itself for the domestic authorities, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation.

54. As the Court has held on numerous occasions, it is a measure of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII). In that connection and with reference to the State's obligation to adopt positive measures, the Court has repeatedly held that Article 8 includes both a parent's right to the taking of measures with a view to being reunited with his or her child and an obligation on the national authorities to take such action (see, for example, *Eriksson v. Sweden*, 22 June 1989, § 71, Series A no. 156, and *Olsson v. Sweden (no. 2)*, 27 November 1992, § 90, Series A no. 250). In this kind of case, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom it does not live (see *Maumousseau and Washington*, cited above, § 83, and *S.H. v. Italy*, no. 52557/14, § 42, 13 October 2015). Taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see *K. and T. v. Finland*, cited above, § 178). When a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life (see *K. and T. v. Finland*, cited above, § 155). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. Furthermore, the positive obligations are not confined to ensuring that children can rejoin their parents or have contact with them, but also extend to all the preparatory steps to be taken to that end (see, *mutatis mutandis*, *Kosmopoulou v. Greece*, no. 60457/00, § 45, 5 February 2004, and *Amanalachioai v. Romania*, no. 4023/04, § 95, 26 May 2009).

55. It is the Court's task to assess whether the Spanish authorities acted in breach of their positive obligations under Article 8 of the Convention (see

Hokkanen v. Finland, 23 September 1994, § 55, Series A no. 299-A; *Mikulić v. Croatia*, no. 53176/99, § 59, ECHR 2002-I; *P., C. and S. v. the United Kingdom*, no. 56547/00, § 122, ECHR 2002-VI; *Evans v. the United Kingdom* [GC], no. 6339/05, § 76, ECHR 2007-IV; and *K.A.B. v. Spain*, cited above, § 98).

56. Each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it 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, *mutatis mutandis*, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 141, ECHR 2010; *Barnea and Caldararu*, cited above, § 65; *K.A.B. v. Spain*, cited above, § 115; and *R.M.S. v. Spain*, cited above, § 72).

(b) Application of these principles in the present case

57. The Court notes that on 15 June 2012 the applicant's three children, including his minor daughter, aged one and a half at the time, were placed in residential care in Madrid at their mother's request and declared abandoned. When their mother moved to Murcia the children were placed in residential facilities there. The applicant was not informed (see paragraphs 8 and 9 above).

58. In a case such as the present one the courts are faced with interests that are often difficult to reconcile, namely the interests of the child and those of its birth parents. In the pursuit of a balance between these different interests, the child's best interests must be a primary consideration (see *Moretti and Benedetti*, no. 16318/07, § 67, 27 April 2010).

59. In the present case the Court observes that the administrative authorities, in finding that the applicant's daughter should be placed in foster care with a view to her adoption, based their decisions on the serious physical and emotional abuse to which the applicant had allegedly subjected his children, the emotional instability and limited intellectual capacities of their mother (see paragraphs 14 and 21 above), the lack of contact between the applicant and his children between 28 June 2012, the date of their placement in residential care, and 19 November 2013, when the applicant first had contact with the child protection services (see paragraph 21 above), and the lack of an emotional bond between the applicant and his daughter (see paragraph 24 above). The Court notes that at no point in the administrative proceedings was consideration given to the applicant's acquittal on 27 September 2013 of all the charges against him or to the lifting of the initial barring order against him which had prevented him from maintaining contact with his children in the meantime (see paragraph 20 above).

60. The Court observes that the decision of 11 February 2015 of the Murcia first-instance judge (see paragraph 25 above) approving the decision by the directorate-general of social affairs concerning the placement of the applicant's daughter in pre-adoption foster care still did not take account of the change in the applicant's position with regard to the criminal proceedings since his acquittal on 27 September 2013. It notes, moreover, that the Murcia first-instance judge did not rule on the applicant's aptitude in educational or psychosocial terms to regain custody of his minor daughter. Instead, the judge's decision simply took into consideration the arguments set out in the reports drawn up by the administrative authorities.

61. The Court observes that the question whether a parent's interests have been sufficiently protected in the decision-making process will depend on the specific circumstances of each case (see *W. v. the United Kingdom*, cited above, § 64, and *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII). To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person (see, *mutatis mutandis*, *Neulinger and Shuruk*, cited above, § 139). The Court notes in that connection that during the proceedings before the first-instance judge and the *Audiencia Provincial* the applicant had the opportunity to present submissions in support of his case, in the context of judicial proceedings in which he was represented by a lawyer, at least from 19 November 2013 onwards (see paragraph 20 above). Accordingly, the Court does not discern any failings that could be formally attributed to the domestic courts in that regard; however, the latter displayed inaction when taking into account the findings of the reports drawn up by the different administrative bodies which had intervened during the examination of the case.

62. The Court reiterates that in cases concerning family life the breaking-off of contact with a very young child may result in the progressive deterioration of the child's relationship with his or her parent (see, among other authorities, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 175, ECHR 2004-V (extracts), and *K.A.B. v. Spain*, cited above, § 103). This also holds true in the present case. The reports of 28 February and 18 December 2014 (see paragraphs 21 and 23 above) showed that the applicant's daughter had settled well in her foster family since being placed there on 24 September 2013 (see paragraph 17 above). The passage of time had the effect of making permanent a situation that was intended to be temporary, in view of the very young age of the child when she was legally declared abandoned and the guardianship order was made (see paragraph 8 above).

63. The Court reiterates that it is not its role to substitute its assessment for that of the relevant national authorities regarding the measures which should have been taken, since the authorities are in principle better placed to carry out such an assessment. Whilst acknowledging that the domestic courts endeavoured in good faith in the present case to safeguard the child's well-being, the Court notes a serious lack of diligence in the procedure implemented by the authorities responsible for the child's guardianship, placement and possible adoption (see *K.A.B. v. Spain*, cited above, § 104). This is true, in particular, as regards the manner in which they took into account the new circumstances in relation to the criminal proceedings against the applicant and his final acquittal of the offences which had been the reason for the temporary removal of access to his children.

64. In that connection, and as mentioned in paragraph 54 above, the Court reiterates that Article 8 of the Convention includes a parent's right to the taking of measures with a view to his or her being reunited with the child and an obligation on the national authorities to take such action. However, the obligation for the national authorities to take measures to that end is not absolute, since the reunion of a parent with his or her child may not be able to take place immediately and may require preparation. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always important ingredients. Whilst the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. In this type of case the adequacy of a measure is to be judged by the swiftness of its implementation (see *Maumousseau and Washington*, cited above § 83, and *Mincheva*, cited above, § 86).

65. Hence, the decisive question in the present case is whether the national authorities, before deciding to place the applicant's daughter with an adoptive family, took all the necessary and appropriate measures that could reasonably be expected of them to facilitate her return to her father as soon as possible, as he had requested, so that they could lead a normal family life together with the girl's brothers.

66. In the circumstances of the present case, the decision to take the applicant's three children into care is understandable, given that it was their own mother who had requested it. However, that decision should have been followed swiftly by appropriate measures to examine in depth the children's situation and their relationship with their parents – if necessary, with the father and mother separately – while complying with the rules in force. The children had been separated from their father, apparently against the latter's wishes, when he faced criminal prosecution for domestic violence following a complaint lodged by their mother. Although it is clear from the case file

that he was not detained in prison, it must not be overlooked that the applicant was not allowed to approach his children and that he was therefore kept away from them, without any contact, for the entire duration of the criminal proceedings. This situation was particularly serious given the age of his daughter, who had been just one and a half when she was placed under guardianship in Madrid. The Court is not persuaded by the reasons which the administrative authorities and the domestic courts considered sufficient to justify placing the child in foster care with a view to her adoption. It observes that no consideration was given at any stage of the administrative procedure to the very young age of the child when she was separated from her father and his wife, the pre-existing emotional bond between the child and her parents, the passage of time since their separation, or the ensuing consequences for all three of them and for the child's relationship with her brothers.

67. Nevertheless, it is important to bear in mind the reference made in the orientation report of 20 June 2013 to the applicant's physical ill-treatment of his children – which he disputed – and the psychological instability of the applicant's wife (see *Bertrand v. France* (dec.), no. 57376/00, 19 February 2002, and *Couillard Maugery v. France*, no. 64796/01, § 261, 1 July 2004). The supposed ill-treatment was not proven, however, and is referred to only in the above-mentioned report (see paragraph 14 above); the Government did not submit any further information in this connection. The reference appears to be based on the content of the criminal complaint of domestic violence lodged by the applicant's wife, a charge of which he was subsequently acquitted. As to the mental instability of the applicant's wife, this does not demonstrate that the applicant exercised a negative influence, but rather the opposite, especially following his acquittal. This is borne out by the fact that the applicant was awarded custody of his two sons and has continued his endeavours to regain custody of his minor daughter. The courts did not note any lack of emotional development (see, conversely, *Kutzner v. Germany*, no. 46544/99, § 68, ECHR 2002-I), an issue which they failed to examine in the case of the applicant, or any concerns about the children's health. While it is true that in some cases that were declared inadmissible by the Court, the children concerned may have been placed in care because of unsatisfactory living conditions or material deprivation, this was never the sole reason on which the decision of the domestic courts was based, since it was compounded by other factors such as the psychological state of the parents or their inability to provide their child with emotional and educational support (see *Rampogna and Murgia v. Italy* (dec.), no. 40753/98, 11 May 1999; *M.G. and M.T.A. v. Italy* (dec.), no. 17421/02, 28 June 2005; and *Wallová and Walla v. the Czech Republic*, no. 23848/04, §§ 72-74, 26 October 2006). This was not the situation in the present case, at least with regard to the applicant. His ability to provide his minor daughter with

educational and emotional support was not formally at issue, and his other two minor children are now living with him again. The placement in care of the applicant's daughter was ordered at her mother's request on account of the very specific problems the latter was encountering at the time, and without the applicant's requests being taken into account.

68. In the Court's view, the Spanish administrative authorities should have considered other less drastic measures than placing the applicant's minor daughter in foster care with a view to her adoption and should, in any event, have taken her father's requests into consideration once his position with regard to the criminal proceedings had been clarified. The Court considers that the role of the social welfare authorities is precisely to help persons in difficulty – in particular, in the present case, the children's mother, who was obliged to take the decision to place her children in care in view of her serious family situation – and to provide them with guidance and advise them. It also observes that both the Murcia first-instance judge no. 3 in his judgment of 11 February 2015, and the *Audiencia Provincial* in its judgment of 7 April 2016, refused to consider the arguments which the applicant wished to raise against his daughter's placement in foster care with a view to adoption (see paragraph 26 above), and merely upheld the decisions taken by the administrative authorities on the basis of the arguments used by the latter, which were reproduced mechanically throughout the subsequent proceedings. In the Court's view, the administrative authorities simply reproduced the successive decisions without making any new findings or assessing on the basis of tangible evidence how the circumstances might have changed. This demonstrated clearly the authorities' determination to place the child in a foster family with a view to her adoption.

69. The Court points to its case-law cited at paragraph 54 above, according to which Article 8 of the Convention implies a parent's right to the taking of measures with a view to being reunited with his or her child and an obligation on the national authorities to take such action. It observes that, despite the applicant's objection to his daughter's placement in foster care with a view to adoption (see paragraphs 22 and 26 above), that option was chosen on the sole ground that there had been no contact between the child and her father for several years, although the actual reason for the discontinuation of contact was the order made by the Coslada judge no. 1 in response to a complaint of domestic violence. The competent authorities were therefore responsible for the breakdown in contact between the applicant and his daughter, at least after the applicant's acquittal, and failed to fulfil their positive obligation to take measures in order to allow the applicant to enjoy regular contact with the child (see *Pontes v. Portugal*, no. 19554/09, § 92, 10 April 2012). The Court considers that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of

implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child (see *Johansen v. Norway*, 7 August 1996, § 78, *Reports* 1996-III).

70. In the Court's view, consideration of the vulnerability of the applicant's wife at the time of her daughter's placement in care could have made a key contribution to understanding the situation of the child and her mother. Likewise, the applicant's final acquittal and the lifting of the prohibition on contact with his children – a prohibition which was the precise reason for the lack of contact which was held against the applicant – appear not to have been considered by the judge. Instead, the judge merely took into consideration, in his judgment of 11 February 2015, the approval by the child protection authority and the foster family of the child's placement in foster care, despite the fact that the biological parents had not consented to the move. The child protection services, the domestic courts and the Government relied primarily on the reports prepared by the various administrative bodies which had intervened throughout the procedure, and hence also during the period when the applicant was unable to demonstrate his suitability as a father since he was deprived of parental responsibility and criminal proceedings were pending against him. This attitude on the part of the administrative authorities did not change when the applicant was finally acquitted.

71. The Court also notes that the orientation report issued by the child protection department on 28 February 2014 concluded that the applicant should not be allowed to visit his daughter because almost two years had elapsed since she had been placed in care and they had not seen each other at all during that time. According to this report, the child had "adjusted very well during the pre-adoption fostering process" (see paragraph 21 above). It is worth emphasising that, while the report noted that the other two children still showed signs of "fear and a lack of trust where their father [was] concerned", the applicant was quickly able to regain custody of his sons, who had not undergone a pre-adoption process.

72. In the Court's view, the procedure should have been accompanied by appropriate safeguards to protect the applicant's rights and take his interests into account. Hence, the length of time that elapsed – a consequence of the administrative authorities' inaction – coupled with the inaction of the domestic courts, which did not regard as unreasonable the reasons advanced by the authorities for depriving a father of his daughter on the sole basis of the lack of contact between them (such contact having been prohibited by court order), were decisive factors in precluding any possibility of the applicant and his daughter being reunited as a family.

73. In view of these considerations and notwithstanding the margin of appreciation enjoyed by the respondent State in the matter, the Court concludes that the Spanish authorities failed to take adequate and sufficient steps to secure the applicant's right to live with his child together with the

child's brothers, in breach of his right to respect for his private and family life under Article 8 of the Convention.

74. There has therefore been a violation of Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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."

Damage

76. The applicant sought to have his daughter returned to him.

77. The Government did not comment on the applicant's claim for just satisfaction.

78. The Court considers, in the particular circumstances of the case, that it is not its place as such to act on this request. It reiterates that, subject to monitoring by the Committee of Ministers, the respondent State remains free in principle to choose the means by which it will discharge its obligations under Article 46 § 1 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 88, ECHR 2009; *Ferré Gisbert v. Spain*, no. 39590/05, § 46, 13 October 2009; and *Bondavalli v. Italy*, no. 35532/12, § 91, 17 November 2015). The Court refers in any event to the requirements of promptness referred to in paragraph 72 above.

79. Nevertheless, in view of the specific circumstances of the present case and the urgent need to put an end to the violation of the applicant's right to respect for his family life, the Court asks the domestic authorities to re-examine, in a timely manner, the situation of the applicant and his minor daughter in the light of the present judgment, and the possibility of establishing some form of contact between them taking into consideration the child's current situation and her best interests, and to take any other measures that may be appropriate in the child's best interests (see *Soares de Melo v. Portugal*, no. 72850/14, § 130, 16 February 2016; *Bondavalli*, cited above, § 83; and *Ageyevy v. Russia*, no. 7075/10, § 244, 18 April 2013).

80. The Court considers that the most appropriate form of redress for a violation of Article 8 of the Convention in a case such as the present one, where the decision-making process by the administrative authorities and the domestic courts is liable to result in the adoption of the applicant's daughter by her foster family, would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this

provision not been disregarded (see *Atutxa Mendiola and Others v. Spain*, no. 41427/14, § 51, 13 June 2017, and *Otegi Mondragon v. Spain*, nos. 4184/15 and 4 others, §§ 74 and 75, 6 November 2018). It notes that domestic law provides for the possibility of reviewing final decisions which have been declared in breach of Convention rights by a judgment of the Court, under Articles 510 and 511 of the Code of Civil Procedure, “provided that this does not adversely affect the rights acquired in good faith by third parties”.

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* that it is desirable, in view of the specific circumstances of the present case and the urgent need to put an end to the violation of the applicant’s right to respect for his family life, for the domestic authorities to re-examine, in a timely manner, the situation of the applicant and his minor daughter in the light of the present judgment and to take the appropriate measures in the child’s best interests;

4. *Takes note* of the review procedure provided for by Articles 510 and 511 of the Code of Civil Procedure.

Done in French, and notified in writing on 18 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President