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

FIRST SECTION

CASE OF BARNEA AND CALDARARU v. ITALY
(Application no. 37931/15)

JUDGMENT

STRASBOURG

June 22, 2017

FINAL

09/22/2017

This judgment became final under Article 44 § 2 of the Convention. It may undergo shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Barnea and Caldararu v. Italy, The European Court of Human Rights (first section), sitting in a room composed of:

Linos-Alexandre Sicilianos, president,
Kristina Pardalos,
Guido Raimondi,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke, judges,

and Abel Campos, section clerk,

After having deliberated in private on May 30, 2017,

Renders the following judgment, adopted on this date:

PROCEDURE

1. The case originated in an application (no. 37931/15) directed against the Italian Republic and including six Romanian nationals, Mrs. Versavia Catinca Barnea, MM. Viorel Barnea, Elvis Mauroius Caldararu and Sergiu Andrei Caldararu, Ms. M. S. Caldararu and C. (“the applicants"), applied to the Court on July 25, 2015 under Article 34 of the Convention for the Protection of Human Rights and Freedoms fundamental rights (“the Convention”). The first two applicants indicate also act on behalf of C. (“the sixth applicant”).

2. The applicants were represented by Me G. Perin, lawyer in Rome. THE Italian Government (“the Government”) was represented by its Agent, Mrs. E. Spatafora.

3. On May 24, 2016, the request was communicated to the Government. THE Romanian government did not use its right to intervene in the procedure (Article 36 § 1 of the Convention).

ACTUALLY

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born respectively in 1977, in 1975, in 1993, in 1995, in 2004 and in 2007, and resides in Caselle Torinese.

5. The first five applicants arrived in Italy in 2007. They settled in a Roma camp.

6. According to a first report from the services of the science department of the University of Turin, the first two applicants took care of their children and made sure that they lacked nothing. C. was born on February 6 2007.

7. Between 2007 and 2009, the first applicant asked the services social services to help him obtain financial assistance. This was refused to him.

8. While she was pregnant with C., the first applicant had knowledge of E.M., president of a cooperative active in the camp, who had offered him help. Subsequently, the first applicant let her children, especially C., spend time with E.M. in her apartment.

A. The placement of the child and the opening of the procedure of adoptability

9. On June 10, 2009, E.M. was arrested for the offense of fraud while C. was with her. In addition, the police had received an anonymous complaint claiming that E.M. was with a child who was not his. The child was immediately placed in an institution. The authorities suspected the applicants of having sold C. to E.M. in return for an apartment. However, no criminal investigation was opened in this regard.

10. On June 19, 2009, at the request of the prosecutor, the juvenile court of Turin ("the court") opened the procedure aimed at declaring C. in state of adoptability and judged that the return of the child to his family was not possible, but that the first two applicants could meet the child twice a month. He also ordered the opening of an investigation on the parental capacities of the first two applicants. The first one meeting between the parents and their child did not take place until two months later.

11. According to the reports of the meetings, the child showed a very strong attachment to the first two applicants and cried many when they leave.

12. Social services suspended meetings. The first two applicants opposed the decision and, two months later, meetings were restored.

13. On an unspecified date, an expert who had been appointed by the court filed its report. In this report, he invited the court to put put in place a process of reintegration of the child into his family and to entrust follow-up to social

services. He believed that reintegration into the family of origin had to be done quickly and that it was necessary also to support the family to prevent the situation of poverty of this hindered the exercise by the first two applicants of their parental authority.

14. The court commissioned another expert to draw up a report. July 9 2010, this expert submitted his report. It indicated that the parents were devoid of empathy towards their child and that she did not have developed her relationship with them.

15. A special curator was appointed by the court. In his report of January 25, 2010, he emphasized that the child had experienced a situation of abandonment and that, therefore, the best solution was the declaration of his adoptability.

16. By a judgment of December 3, 2010, the court declared the child adoptable. According to the court, the state of abandonment, condition of the declaration of adoptability, was based on the circumstance that the first two applicants allegedly “gave” the child to E.M. by delegating their parental role and that they would not have been able to understand the deep needs of the child during meetings. Furthermore, according to the court, the first two applicants were not capable of assuming their parental role nor to follow the development of the personality of C. The child was placed in foster care with a view to her adoption.

17. On 14 July 2011, the first two applicants appealed of this judgment. At the hearing on December 1, 2012, the court of appeal noted errors in the first expert opinion and appointed a new expert.

18. The new expert considered that the first two applicants were fully capable of fulfilling their role as parents and that the episode of the arrest of E.M. leading to the placement of the child had to be read at in light of the applicants’ situation of extreme poverty. He specified that he there was no indication of abuse.

19. By a judgment of October 26, 2012, the Court of Appeal reversed the judgment of the court. She considered that having entrusted their child to E.M. did not mean that the first two applicants had abdicated their role as parents. She noted that it did not appear from the file that the first two applicants would have been incapable of caring for the child nor that the child would have

suffered violence. She indicated that, on the contrary, the child was very attached to everyone the applicants and that they had not ceased to seek to maintain contact with her. She noted that, in the proceedings before the court, the two first applicants were not given the opportunity to prove their parental abilities, which social services did not give them granted aid which would have enabled them to overcome their difficulties and that no chance of reconnecting with the child had been given to them given. She further indicated that the court had not taken into consideration the parental capacities of the first two applicants and the existing link between them and the child, that the first expert opinion on the applicants and the child would have highlighted. She considered that there was a strong bond between the child and her parents and that it was preferable, in the interests of the child, for her to return in his family of origin.

20. Consequently, the Court of Appeal took the following measures: – she provisionally confirmed the placement of the child in a family reception; – she ordered the establishment of meetings between the parents and the child in a protected environment, two hours every two weeks, with extension of meetings with brothers and sisters; – it ordered that a reconciliation procedure between the applicants and the child was put in place, that the child could gradually meet her single parents and that she returned to her family of origin during the six months following the decision.

B. The procedure for executing the judgment of the Court of Appeal of October 26, 2012

21. Social services did not follow court orders call. The child met his parents only one hour a month and did not could not go to his family of origin.

22. According to social services, the child was well integrated into her family reception, but, his residence being far from Turin, where the applicants, the meetings could not take place like the court of appeal ordered it.

23. On February 7, 2013, the applicants filed a complaint before the Prosecutor at the juvenile court for non-execution of a court decision and invoked Article 8 of the Convention.

24. Several meetings took place between the social services, the curator of the child, the prosecutor and the applicants' lawyer.

25. During the first meeting on February 18, 2013, the services social services indicated that the child could not return to his family of origin on the grounds that she had been evicted from her accommodation.

26. On June 24, 2013, the prosecutor asked the children's court that the decision of the court of appeal was not executed and the placement in the host family was extended for two years. He added that the child was not happy to see the applicants and that she had reacted badly during the meetings, and that the applicants no longer had accommodation.

27. The Children's Court ordered an expert to assess what the best solution for the child.

28. This expert first highlighted the cold and detached attitude of the social services with regard to the first two applicants. In particular, he noted that, during the meetings, C. was very happy to see her parents, but that the social workers present prevented them from talking to her about her brothers and sisters and that they showed a lack of empathy towards of the first two applicants. On the other hand, according to the expert, both first applicants showed a deep attachment to their child, notwithstanding all the obstacles encountered since the placement of this one, five years previously, and that they had patiently accepted the limits imposed by social services. The expert concludes that, taking into account of the passage of time and the new bonds that the child would have forged with the host family, where she would have been well received, a return from C. in his family of origin was no longer possible. He added that new balances could however be built and he invited the court to allow free meetings between the applicants and the child.

29. On November 26, 2014, the court, after noting that the child was well integrated into the host family and that the first two applicants had recognized the important role of the host family in C.'s life, indicated that the return of the child among his family came up against several obstacles, that the parents were still living in a precarious situation and that they did not have a life plan allowing them to protect themselves and to protect their child. Furthermore, he considered that, given the risk that the applicants could take advantage of this to bring the child into Romania, the meetings were to take place in a protected environment at a rate of four per year. He finally ordered the opening of a new procedure in order to dismiss the parents of their parental authority.

30. The first two applicants appealed the decision.

31. By a decision of January 21, 2015, the Court of Appeal found that it had to take note of a situation created by the passage of time. In firstly, she recognized that parents were able to fulfill their role, but that it was necessary to take into account the passage of time, on the grounds that, after six years of separation from the child, confirmation of the placement of the child in the foster family was inevitable given the bond she would have developed with the latter. While stigmatizing the decision of court to reduce the number of meetings, it ruled that, due to the time elapsed, the child was now well integrated into the foster family and that returning to his family of origin was no longer possible. Therefore, she ordered meetings between the child and the first two applicants every fortnight for the first two months and she granted them a right of visitation and accommodation.

C. The special adoption application filed by the foster family

32. In the meantime, on September 30, 2014, the host family had filed a request for special adoption to which the first two applicants had not given their consent.

33. Between 2015 and 2016, numerous meetings between the child and the applicants took place. At first, the meetings lasted one day, then C. was allowed to sleep at the applicants' house for a few days. There The situation seemed to be evolving positively.

34. However, in July 2016, the psychologists responsible for monitoring the child observed that she was showing signs of distress due to messages she received from the host family while she was found with the applicants. They considered that these communications were detrimental to the child’s psycho-emotional health.

35. On 18 July 2016, the first two applicants declared to the children’s court that the foster family had told C. that they had sold it in exchange for an apartment.

36. In June 2015, the child was heard by the judge-rapporteur of the court for children.

37. On September 4, 2015, the psychologist who followed the child in the village where the foster parents lived indicated in its report that the The child's symptomatological framework had seriously deteriorated. According to her, the child had, since the meeting with the court judge, regressive and compulsive behaviors manifested by aggression verbal and by aggressive behavior towards objects.

38. On June 30, 2016, the prosecutor delivered his opinion on the procedure special adoption initiated by the host couple. According to him, relationships between the two families had improved and it could be appropriate to ask the biological parents again if they consent to the adoption special from C.

39. On July 8, 2016, the children's court rejected the application special adoption of the host couple due to lack of consent of both first applicants.

D. The return of the child to his family of origin

40. The first two applicants requested the return of their child in his family of origin in view of the behavior of the host family and the problems that the child may have presented.

41. On August 16, 2016, after hearing the applicants and the family reception, the court ordered the return of C. to her family. The court observed that, in accordance with the decision of the court of appeal of 2014, placement in the foster family had been extended by two years, and that the first two applicants had been on several occasions deemed capable of assuming their parental role. He indicated that the placement was provisional and that it could not be extended, and that C. had the right to live with her biological parents. Therefore, he charged the services social authorities for monitoring the applicants' situation and ordered that the child could meet the host family regularly, over two eekends
per month.

42. On August 17, 2016, the prosecutor seized the court of appeal to challenge the court decision. He explained that the first applicant had lost her work, that the child was in pain and that she was opposed to the idea of leave the foster family. He asked the court of appeal to extend the placement of the child in the foster family.

43. On September 9, 2016, before the start of the school year, C. returned to live among the applicants.

44. The return proved particularly difficult for C. It appears from psychological expertise as well as reports from social services 2016 that the child had serious difficulties, and that, in particular, she refused to go to school and behaved aggressively.

45. By a decree of November 8, 2016, the court of appeal confirmed the court decision and ordered that C. remain with the applicants. She noted in particular that the child, aged 9, had experienced a difficult situation in due, among other things, to excessively harsh judicial decisions and that the placement in the foster family, a temporary measure, could not be extended. She considered that, even if the child was indeed suffering due to upon her return to the applicants, she did not present, according to the experts, any psychotic risk. It considered that the first two applicants had been deemed capable of fulfilling their role as parents, that the return of the child should have taken place in 2012 and could not be postponed further. She further indicated that, if the previous decisions of the courts had been executed, much of this suffering could have been avoided. She finally confirmed the maintenance of contacts between the child and the host family.

46. On December 19, 2016, a psychologist filed a report on the situation of the child. According to the psychologist, the child was depressed, crying a lot and was very aggressive, but she had started dating again school, and it was necessary to extend the follow-up of the child and applicants in order to help them.

II. RELEVANT DOMESTIC LAW

47. The relevant domestic law is described in the Zhou v. Italy (no. 33773/11, §§ 24-25, January 21, 2014).

PLACE

I. ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE AGREEMENT

48. The applicants allege a violation of their right to respect for their family life, due to distance and care, in 2009, by the Italian authorities of C., the minor daughter of the first two applicants. They also criticize the authorities for not

having implemented quickly take measures to reunite the family. They indicate to this consideration that the social services had not executed the court judgment of appeal of 2012, and that the court had confirmed the placement of the child in foster care and had reduced the number of meetings between the child and his. They invoke Article 8 of the Convention, which in its relevant parts in this case, reads as follows:

“1. Everyone has the right to respect for their private and family life, (...)

2. There can be no interference by a public authority in the exercise of this right that insofar as this interference is provided for by law and constitutes an measure which, in a democratic society, is necessary for national security, public safety, the economic well-being of the country, the defense of order and the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of others. »

49. The Government contests this theory.

A. On admissibility

50. In its observations on just satisfaction, the Government appears to raise an objection of inadmissibility, arguing that the applicants no longer have victim status on the grounds that the child is now back in his family of origin. The applicants, in their observations on the fundamentally, maintain that, notwithstanding the return of the child, they retain the victim status on the grounds that there was no recognition of a violation of the Convention nor compensation for the seven years of separation.

51. The Court does not consider it necessary to examine whether the Government is estopped from raising this exception, because it considers that nothing prevents it from examining proprio motu this question, which concerns its jurisdiction (see for example R.P. and Others v. United Kingdom, no. 38245/08, § 47, October 9, 2012 and Buzadji v. Republic of Moldova [GC], no 23755/07, § 70, ECHR 2016 (extracts)).

52. The Court recalls that a decision or measure favorable to a applicant is in principle sufficient to remove the status of “victim” from him unless the national authorities have recognized, explicitly or in substance, then repaired violation of the Convention (Eckle v. Germany, July 15, 1982, §§ 69 and following, series A no. 51, Amuur v. France, June 25, 1996, § 36, Collection of

judgments and decisions 1996-III, Dalban v. Romania [GC], no. 28114/95, § 44, ECHR 1999-VI, and Jensen v. Denmark (dec.), no. 48470/99, ECHR 2001-X). This rule applies even if the interested party obtains satisfaction while the procedure is already initiated before the Court; so it is subsidiary nature of the system of guarantees of the Convention (see, in particular, Mikheyeva v. Latvia (dec.), no. 50029/99, September 12, 2002). The question of whether a person can still claim to be a victim of an alleged violation of the Convention essentially implies for the Court to undertake an ex post facto examination of the person's situation concerned (Scordino v. Italy (no. 1) [GC], no. 36813/97, § 181, ECHR 2006- V).

53. On this point, turning to the facts of the case, the Court considers that the decision of the Court of Appeal of November 8, 2016 (paragraph 45 above), which ruled that the child suffered seriously from the non-execution previous decisions and that she had to return to live among her family, did not constituted nor an implicit recognition of the existence of a violation of the Convention nor compensation for the period of seven years during which the applicants were unable to live with C.

54. In light of the above, the Court considers that the applicants can still claim to be victims of a violation of Article 8 of the Agreement. It therefore rejects the exception raised by the Government to this regard.

55. Noting also that the request is not manifestly wrong founded within the meaning of Article 35 § 3 of the Convention and that it does not come up against no other reason for inadmissibility, the Court declares it admissible.

B. On the merits

1. Theses of the parties

56. The applicants allege that, like the Turin Court of Appeal would have underlined this in 2012 and in 2015, from the moment when the child had been placed, no opportunity had been offered to the first two applicants to prove that they were capable of fulfilling their parental role.

57. They maintain that, since the decision of the Court of Appeal in 2014, the Italian authorities did not do everything in their power to reconstitute the family. In particular, they indicate that social services did not offer them assistance and did not carry out the court decision of appeal providing for two

meetings per week in order to allow gradually the return of the child among his family. They specify that, by Subsequently, the court based itself on their material difficulties and on the links that the child would have established with the host family to extend the placement of the child and reduce meetings with them, and to ask for again a decision to forfeit parental authority.

58. The applicants indicate that the fact that a child can be welcomed In a framework more conducive to her education cannot in itself justify that we removes him from the care of his biological parents. According to them, the situation contentious is the result of the inaction and passivity of the authorities Italian (they refer to the Monory v. Romania and Hungary judgments, no. 71099/01, § 83, April 5, 2005, and, mutatis mutandis, Sylvester v. Austria, nos. 36812/97 and 40104/98, § 59, April 24, 2003) and it could have been avoided if the competent authorities had made every effort to maintain the relations between the child and them (Amanalachioai v. Romania, no. 4023/04, § 89, August 26, 2009).

59. The applicants conclude that, even if the child is now returning to her family, she suffered psychological after-effects – that the experts would have highlighted – the vicissitudes of his existence during the years gone by.

60. The Government is of the opinion that the situation of the child has been properly examined on several occasions by the competent authorities. He believes that these have never severed the relationships between the child and the applicants and that they have on the contrary taken all the necessary measures to maintain their connections. In this regard, the Government explains that simple adoption does not exist in the Italian system, and the courts have therefore put in place a sort of shared custody between the family reception and applicants.

61. The Government further indicates that the behavior of the authorities did not exceed the margin of appreciation of the State and that the reasons in favor of the child's placement were relevant and sufficient (it refers to the Y.C. stops vs. United Kingdom, no. 4547/10, March 13, 2012, and McMichael vs. United Kingdom, February 24, 1995, Series A no. 307-B).

62. The Government finally maintains that all measures have been taken in the best interests of the child. He concludes that it is now return to his biological parents and that the courts follow closely close to the situation.

2. Assessment of the Court

a) General principles

63. The Court recalls that, for a parent and their child, being together represents a fundamental element of family life (Kutzner vs. Germany, no. 46544/99, § 58, ECHR 2002) and that internal measures which prevent them from doing so constitutes an interference with the right protected by Article 8 of the Convention (K. and T. v. Finland [GC], no. 25702/94, § 151, ECHR 2001-VII). Such interference disregards Article 8 unless, "planned by law", it pursues one or more legitimate aims with regard to the second paragraph of this provision and is "necessary, in a society democratic" to achieve them (Gnahoré v. France no. 40031/98, § 50, ECHR 2000 IX, and Pontes v. Portugal, no. 19554/09, § 74, April 10, 2012). There notion of "necessity" implies interference based on a social need compelling and, in particular, proportionate to the legitimate aim sought (Couillard Maugery v. France, no. 64796/01, § 237, July 1, 2004). For assess the "necessity" of the disputed measure "in a democratic society", it is therefore appropriate to analyze, in the light of all of the case, if the reasons given in support of it were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention.

64. The Court also recalls that, if the boundary between the obligations positive and negative obligations of the State under Article 8 of the Convention does not lend itself to a precise definition, the principles applicable are nevertheless comparable. In particular, in both cases, it is necessary to have consideration of the fair balance to be struck between competing interests – those of the child, those of both parents and those of public order (Maumousseau and Washington v. France, no. 39388/05, § 62, ECHR 2007-XIII) –, in attaching, however, decisive importance to the superior interests of the child (see, in this sense, Gnahoré, cited above, § 59), who, according to his nature and its gravity, can outweigh that of the parents (Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII). Furthermore, the breakdown of a family constitutes a very serious interference; a measure leading to such a situation must therefore be based on considerations inspired by the interests of the child and having sufficient weight and solidity (Scozzari and Giunta v. Italy [GC], no. 39221/98 and 41963/98, § 148, ECHR 2000-VIII). The distance from the child from his family setting is an extreme measure to which we cannot, should be resorted to only as a very last resort, for the purposes of protecting a child when faced with immediate danger (Neulinger and Shuruk vs. Switzerland [GC], no. 41615/07, § 136, ECHR 2010).

65. It is up to each Contracting State to equip itself with an arsenal adequate and sufficient legal framework to ensure compliance with these positive obligations it incumbent upon under Article 8 of the Convention and the Court to inquire whether, in the application and interpretation of the provisions applicable legal requirements, the internal authorities respected the guarantees of Article 8, taking into account in particular the best interests of the child (see, mutatis mutandis, Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 141, ECHR 2010, K.A.B. vs. Spain, no. 59819/08, § 115, April 10, 2012).

66. In this regard and with regard to the obligation of the State to take positive measures, the Court has consistently held that Article 8 implies the right for a parent to measures intended to reunite them with their child and the obligation for national authorities to take such measures (see, for example, Margareta and Roger Andersson v. Sweden, February 25, 1992, § 91, series A no. 226-A, and P.F. c. Poland, no. 2210/12, § 55, September 16, 2014).
In this type of case, the adequacy of a measure is judged on the basis of speed of its implementation (Maumousseau, cited above, § 83, and Zhou, cited above, § 48).

b) Applications of these principles in the present case.

67. The Court considers that the decisive point in the present case consists of knowing whether the national authorities have taken all necessary and adequate measures that could reasonably be required of them so that the child can lead a normal family life within their own family between June 2009 and November 2016.

i. On the placement of the child

68. The Court notes that C. was placed in an institution on June 10, 2009 and that, ten days later, the court opened, at the request of the prosecutor, a procedure aimed at declaring the child adoptable.

69. It notes that the applicants were mainly criticized for not offering the child adequate material conditions and having her entrusted to a third person. It also notes that no investigation no criminal proceedings have been opened in this regard.

70. An initial expertise highlighted the deep attachment that linked the child and the applicants and recommended reinstatement to the court gradual transition of the child into his or her family of origin.

71. The Court recalls that it is not up to it to substitute its assessment with that of the competent national authorities regarding the measures which should have been taken, these being better placed to carry out a such evaluation, in particular because they are in direct contact with the context of the case and the parties involved (Reigado Ramos v. Portugal, no. 73229/01, § 53, November 22, 2005). That said, in this case, it considers from the outset that it was objectively obvious that the situation of the applicants was particularly fragile given that it was a family many living in a camp in precarious conditions.

72. The Court is of the opinion that, before placing C. and opening proceedings of adoptability, the authorities should have taken concrete measures to allow the child to live with the applicants. In this regard, it recalls that the role of social protection authorities is precisely to help people in difficulty, to guide them in their efforts and to advise, among other things, on the different types of social benefits available, the possibilities of obtaining social housing or other ways to overcome their difficulties (Saviny v. Ukraine, no. 39948/06, § 57, December 18, 2008, and R.M.S. vs. Spain, no. 28775/12, § 86, June 18 2013). In the case of vulnerable people, the authorities must evidence of special attention and must provide them with protection increased protection (B. v. Romania (no. 2), no. 1285/03, §§ 86 and 114, February 19, 2013, Todorova v. Italy, no. 33932/06, § 75, January 13, 2009, Zhou v. Italy, no. 33773/11, § 58, January 21, 2014, Akinnibosun v. Italy, no. 9056/14, § 82, July 16, 2015 and Soares de Melo v. Portugal, no. 72850/14, § 106, February 16 2016).

73. While it is true that, in certain cases declared inadmissible by the Court, the placement of the children was motivated by living conditions unsatisfactory or material deprivation, this has never constituted the sole reason for the decision of the national courts: to this were added other elements such as the psychological conditions of the parents or their emotional, educational and pedagogical incapacity (see, for example, Rampogna and Murgia v. Italy (dec.), no. 40753/98, May 11, 1999, and M.G. and M.T.A. vs. Italy (dec.), no. 7421/02, June 28, 2005).

74. In the present case, it must be noted that, at no time during the procedure, situations of violence or mistreatment against children were not mentioned (see, a contrario, Dewinne v. Belgium (dec.), no. 56024/00, March 10, 2005,

and Zakharova v. France (dec.), no. 57306/00, December 13, 2005), nor sexual abuse (see, conversely, Covezzi and Morselli, cited above, § 104, Clemeno and others v. Italy, no. 19537/03, § 50, October 21, 2008, and Errico v. Italy, no. 29768/05, § 48, February 24, 2009). THE courts have not found emotional deficiencies either (see, a contrario, Kutzner, cited above, § 68, and Barelli and others v. Italy (dec.), no 15104/04, April 27, 2010) or a worrying state of health or a psychological imbalance of the parents (see, a contrario, Bertrand v. France (dec.), no. 57376/00, February 19, 2002, and Couillard Maugery, cited above, § 261).

75. On the contrary, it appears that the links between the applicants and the child were particularly strong, which the court of appeal noted in its decision to reform the court's judgment regarding the adoptability status of the child (paragraph 19 above) emphasizing that, since the placement of this, the first two applicants had not been granted the opportunity to prove their parental abilities.

76. The Court notes in this regard that, according to the Court of Appeal, the two first applicants were capable of fulfilling their parental role and that they did not have a negative influence on the child's development. Of moreover, the court had not taken into consideration the first expert opinion favorable to the applicants (see paragraph 13 above), according to which a reintegration process had to be put in place to allow the return of the child to his family.

77. Consequently, the Court considers that the reasons given in this case by the court to refuse the return of C. to his family and to declare adoptability, do not constitute “completely exceptional circumstances” likely to justify a breakdown in family ties.

ii. On the non-execution of the judgment of the court of appeal providing for the return of the child.

78. The Court also notes that, following the judgment of the Court of Appeal of October 26, 2012 reforming the court's judgment regarding the state of adoptability of the child, the decision to return the child to his family was to be executed within six months. In this regard, it notes that the meetings were not set up appropriately and that no merger project has been implemented. The first two applicants had to contact the prosecutor to complain about the non-execution of the court’s judgment court of appeal.

79. However, the Court observes that the prosecutor applied to the court for request the suspension of the merger project and the extension of the placement of C. in the foster family on the grounds that the first applicant did not have stable work, that the applicants had been evicted from their accommodation and that they were hosted by members of their family, and that, moreover, C. was well integrated into the host family and that she was not opposed to meetings with the applicants.

80. The Court notes that, notwithstanding the expert opinion which highlighted the attachment existing between the applicants and the child and the lack empathy of social services staff towards the first two applicants, the court granted the prosecutor's request, extended the placement of the child in the foster family and reduces the number of meetings with his family four times a year.

81. To refuse to order the return of C. to his family of origin, the court based itself on the behavior and material conditions of the life of the applicants, on the potential difficulties of integrating C. into his family of origin and the deep ties that C. would have forged with the family reception.

82. This decision was subsequently overturned by the Court of Appeal in 2015, which however confirmed the placement in a foster family on the grounds that, due to the passage of time, very strong links were forged with the host family and that a return to the applicants was no longer possible.

83. Furthermore, the Court of Appeal recognized, as it had already done in 2012, as part of the child’s adoption procedure (see paragraph 19 above), that the first two applicants were able to offer C. normal living conditions and that their affection for the child was sincere.

84. The Court recalls its case law according to which the fact that a child can be welcomed in a framework more conducive to his education cannot in justify removing him from the care of his biological parents (Wallová and Walla v. Czech Republic, no. 23848/04, § 71, October 26, 2006). In in this case, the educational and emotional capacities of the applicants were not implicated and have been recognized on several occasions by the court of appeal (see, a contrario, Rampogna and Murgia, cited above, and M.G. and M.T.A, cited above).

85. One of the decisive arguments retained by the domestic courts for reject the request of the first two applicants for the return of the child was the attachment that would have developed between C. and the family reception over the past years; the domestic courts have thus considered that it was in C.'s best interests that she continue to live temporarily in the environment that would have been her for several years and into which she would have integrated. Such an argument is understandable taking into account the adaptability of a child and the fact that C. was placed in foster care from a very young age.

86. The Court, however, reiterates the principle well established in its case law according to which the aim of the Convention is to protect rights and not theoretical or illusory, but concrete and effective (see, mutatis mutandis, Artico v. Italy, judgment of May 13, 1980, § 33, Series A no. 37). In this logical, it considers that effective respect for family life requires that future relationships between parent and child are regulated on the sole basis of all the relevant elements, and not by the simple flow of the time (Ignaccolo-Zenide, cited above, § 102, and Pini and others v. Romania, nos. 78028/01 and 78030/01, § 175, ECHR 2004-V (extracts)).

87. The Court considers that, in the present case, the reasons given by social services first, by the prosecutor and the court then, to refusing the return of C. to the applicants does not constitute "entirely exceptional" circumstances which could justify a breakdown of family ties. However, it understands that, due to the passage of time and the integration of C. into the host family, the national courts could have refused the return of the child. That said, if the Court accepts that a change in the factual situation can justify exceptional manner a decision concerning the support of the child, it must ensure that the essential changes in question are not not the result of action or inaction of state authorities (see Monory v. Romania and Hungary, no. 71099/01, § 83, April 5, 2005, and, mutatis mutandis, Sylvester v. Austria, nos. 36812/97 and 40104/98, § 59, April 24 2003, Amanalachioai v. Romania, no. 4023/04, § 90, May 26, 2009) and that the competent authorities have made every effort to maintain relations personal and, if necessary, "reconstitute" the family when the time comes (Schmidt v. France, no. 35109/02, § 84, July 26, 2007).

88. Thus, the elapsed time – consequence of the inertia of services social aspects in the implementation of the merger project – and the reasons advanced by the court to extend the provisional placement of the child have

contributed decisively to preventing the reunion of the applicants and the sixth applicant, which should have taken place in 2012.

iii. Conclusions

89. Having regard to the considerations developed above (paragraphs 68-88) and notwithstanding the margin of appreciation of the State defendant in the matter, the Court concludes that the Italian authorities did not made adequate and sufficient efforts to enforce the law of the applicants to live with C., between June 2009 and November 2016 then that they ordered the placement of the child with a view to adoption and did not then correctly execute the 2012 judgment of the Court of Appeal which provided for the return of the child to his family of origin, thus ignoring the applicants' right to respect for their family life, guaranteed by Article 8.

90. There has therefore been a violation of Article 8 of the Convention.

II. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Under Article 41 of the Convention, “If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party does not allow erasure that imperfectly the consequences of this violation, the Court grants to the party injured party, if applicable, just satisfaction. »

A. Damage

92. For moral damage, the applicants claim 50,000 euros (EUR) for each of the first five of them and EUR 75,000 for the sixth applicant.

93. The Government considers that, having obtained the return of C, the applicants no longer have victim status. Therefore, it invites the Court not to grant them no just satisfaction.

94. The Court observes that the applicants have long experienced a deep distress due to the violations noted in this case. It believes that they thus suffered certain moral damage. Considering all of the elements available to it and ruling on an equitable basis, as required by article 41 of the Convention, it considers that it is appropriate to grant the six applicants jointly EUR 40,000 for non-pecuniary damage.

B. Fees and expenses

95. Supporting supporting documents, the applicants also request EUR 15,175 for costs and expenses incurred in the proceedings before the Court.

96. The Government does not dispute these claims.

97. According to the Court's jurisprudence, an applicant cannot obtain the reimbursement of its costs and expenses only to the extent that they are established their reality, their necessity and the reasonableness of their rate. In the species, taking into account the documents at its disposal and its case law, the Court considers it reasonable to award the applicants the entire amount claimed, i.e. EUR 15,175.

C. Default interest

98. The Court considers it appropriate to base the rate of default interest on the interest rate of the marginal lending facility of the Central Bank European Union increased by three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the request admissible;

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

3. Said

(a) which the respondent State must pay jointly to the applicants, in three months from the day the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sums following:

i. 40,000 EUR (forty thousand euros), plus any amount that may be due as tax on these sums, for moral damage,

ii. 15,175 EUR (fifteen thousand one hundred and seventy-five euros), plus everything amount that may be owed by the applicants as tax, for costs and expenses;

b) that from the expiration of the said period and until payment, these amounts will be increased by simple interest at a rate equal to that of

the applicable European Central Bank marginal lending facility during this period, increased by three percentage points;

4. Rejects the request for just satisfaction for the remainder.

Done in French, then communicated in writing on June 22, 2017, in application of Article 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Linos-Alexandre Sicilianos
Clerk	President