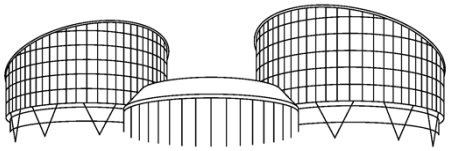

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF F.Z. v. NORWAY

(Application no. 64789/17)

JUDGMENT

STRASBOURG

1 July 2021

This judgment is final but it may be subject to editorial revision.

In the case of F.Z. v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Ganna Yudkivska, *President,*
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 64789/17) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr F.Z. ("the applicant"), on 25 August 2017;

the decision to give notice to the Norwegian Government ("the Government") of the application;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the Government's not having objected to the examination of the application by a Committee;

the comments submitted by the Governments of the Czech Republic and the Slovak Republic and by Ordo Iuris Institute of Legal Culture, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 10 June 2021,

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

INTRODUCTION

1. The application concerns a complaint under Article 8 of the Convention relating to replacement of foster care with adoption in respect of the applicant's son, X.

THE FACTS

2. The applicant was born in 1991 and lives in Norway. Before the Court, he was represented by Mr K. Sorensen, a lawyer practising in Oslo.

3. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent, assisted by Ms H. Lund, attorney at the same office.

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

I. BACKGROUND

5. The applicant is the father of Z, born in August 2010, and X, born in September 2011. B, a former partner of the applicant, is their mother.

6. When the applicant and B had Z in 2010, they were 19 and 17 years old, respectively. Upon a notification of concern from the midwife, they moved into a parent-child centre in preparation for the birth and stayed there for a short time after the birth.

7. Following the family's stay at the parent-child centre, two further notices of concern – from the parent-child centre and from a child health centre, respectively – were received by the child welfare services. An expert in psychology appointed by the child welfare services gave a report on 30 December 2011 in which he recommended that the child welfare services should work towards a care order in respect of Z.

8. On 20 May 2011 the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) issued a care order and decided that Z be placed in foster care. The Board found that Z had a greater care need than other children of a similar age in terms of cognitive, mental and physical stimulation. Furthermore, regarding the applicant's and B's ability to care for Z, the Board considered that neither parent had sufficient maturity or developed independence to be able to establish and manage an adult independent life, and that they relied on the help and aid of the applicant's family. Moreover, the Board found that the applicant and B did not have sufficient understanding, empathy or capacity to meet the child's needs for emotional contact and attachment. The applicant's and B's contact rights were set at three hours, six times per year.

II. PROCEEDINGS CONCERNING PUBLIC CARE FOR X

9. In 2011, when B was pregnant with X, the child welfare services – in the light of the care order in respect of Z (see paragraph 8 above) – made efforts to intervene with assistance measures, but the applicant and B had refused contact with the child welfare services.

10. On the date of X's birth an emergency care order was issued, placing X in an emergency foster home. The decision referred mainly to the decision on the care order in respect of Z issued on 20 May 2011 (see paragraph 8 above). While they were at the hospital, X and his parents were together twice daily, under supervision. Three days later, X was placed in an emergency foster home and the applicant and B met X one hour every week.

11. The applicant and B contested the emergency care order and on 6 October 2011, after having conducted an oral hearing the previous day, the County Social Welfare Board upheld it. The Board found that there were substantial shortcomings in the parents' ability to provide children with emotional care and furthermore that there was a substantial risk of major

harm to X if he were returned to live with them. Regarding the applicant's and B's ability to care, in particular their lack of providing adequate emotional contact, the Board referenced the findings of the Board in the decision of 20 May 2011, relating to Z (see paragraph 8 above). Moreover, the Board pointed to findings in a medical report and, furthermore, to a regular health check-up during which it had been found that X had failed to seek eye contact with B. The Board considered this to be a clear symptom of a gravely lacking relation between mother and child.

12. The applicant and B appealed against the decision and, on 28 November 2011, the District Court (*tingrett*) upheld it. The District Court found that the applicant's and B's ability to care had not improved since the account given in the expert report of 30 December 2010 and the Board's decision of 20 May 2011, concerning the care order in respect of Z (see paragraphs 7-8 above). Furthermore, the District Court emphasised that the applicant and B had failed to establish emotional contact with X during the contact sessions that had been carried out. In addition, the parents had received training on how to hold the child and how in particular to support his neck, but had failed to get this right. Furthermore, the District Court assessed whether measures could be implemented to increase the parents' ability to provide care, but found that no such measures would be effective. Against this background, the District Court concluded that it had been substantiated that the parents would fail to provide X with the emotional and physical safety he was in need of. The contact rights were set at one hour once per week, under supervision.

13. On 13 January 2012 the Board issued a care order in respect of X. In its decision, the Board referred extensively to the decision of 20 May 2011 regarding Z (see paragraph 8 above), and found that the applicant's and B's ability to care had not improved since then. In addition, the Board considered their economy, the support received from the applicant's family, and the applicant's and B's lack of concern in respect of their ability to provide X with adequate care.

14. Regarding the contact sessions that had taken place, the Board referred to the account given by the supervisor appointed by the child welfare services, who had stated that both the applicant and B failed to achieve emotional contact with X, and that she at some instances had been concerned for X's safety, such as when X at one time almost fell down from the nursing table. Furthermore, the supervisor had stated that no progress with improving their ability to provide care had been made by the parents during the contact sessions. In addition, the supervisor had stated that no guidance had been provided to the applicant and B during the contact sessions, as the child welfare services had the impression that they were incapable of separating guidance from criticism.

15. Against the above background, the Board considered that the applicant and B did not manage to create emotional contact between

themselves and X, and, furthermore, that they failed to meet the child's need for physical security. In the light of the measures taken in order to improve their ability to provide Z with care, the Board found that implementation of further assistance measures would not serve to improve the applicant's and B's ability to care for X.

16. Turning to the question of contact rights, the Board held that X, as he had been placed in a foster home immediately after his birth, had no established relation to his parents. Moreover, in the light of the grounds which gave reasons for the care order, the Board considered that the placement in foster care would be long-term. The purpose of contact sessions in the instant case would thus not be to prepare for a quick reunion of the family, but to ensure that X had knowledge of his biological parents. The child welfare services had pleaded before the Board that they envisioned that they with time would institute adoption proceedings, and that X's parents should therefore not be informed of the foster home's address. However, the Board did not find a decision not to disclose the foster parents' address necessary, and noted in that respect, among other things, that X's foster mother was in any event present at the contact sessions. Contact rights for the applicant and B in respect of X were ultimately set at one hour four times per year, under supervision.

17. The applicant and B appealed against the Board's decision, and the District Court held a hearing on 16 and 17 April 2012. The District Court's bench was composed of one professional judge, one psychologist and one lay person. The applicant and B were both present with legal aid counsel and gave testimony and adduced other pieces of evidence.

18. On 7 May 2012 the District Court gave judgment in which it upheld the Board's decision. The District Court found that the applicant's and B's personal capacity to care for children had not changed since the assessments carried out by the authorities when deciding on the emergency care order on 28 November 2011 and the care order on 13 January 2012 (see paragraphs 12 and 13 above), and accordingly concurred with the assessments reflected in those decisions. Furthermore, the District Court referred to assessments made by a psychologist in relation to the parents' stay at the parent-child centre when their caring skills in respect of Z had been assessed (see paragraphs 6-7 above) and a psychologist who had been appointed by the courts as an expert to assist in the proceedings in 2011 (see paragraph 8 above). The District Court found that the two psychologists, independently of each other, had described the same shortcomings in the applicant's and B's ability to provide care for a small child.

19. In the light of the above, the District Court deemed that neither parent had sufficiently mastered to establish contact with Z or seeing her needs after she was born. They had spoken disparagingly to her when they were displeased with her, and they had given up quickly when they had not managed to make her do what they had wanted. B had also appeared not to

be particularly interested in guidance with regard to how she should relate to her child. The applicant had initially been a little more responsive in this regard, but had eventually reacted negatively when given repeated advice on how care should be provided. The District Court stated that the flaws pointed out by the two psychologists with regard to the applicant's and B's ability to care for their child were related to traits that were fundamental to providing a child with proper care.

20. The District Court further stated that neither the applicant nor B had applied for or in any other way received any aid or support which could contribute to make them qualified as care givers, and that this clearly showed that neither of them had comprehended that they were in need of support and assistance to improve their ability to provide a child with care.

21. Furthermore, the District Court examined the situations for the applicant and B, who were no longer in a relationship. As to the applicant, the District Court observed that he was unemployed, but had applied to a high school. He rented a small flat in his grandfather's house and did at times not get out of bed during the day.

22. In the District Court's view, the shortcomings in the applicant's and B's ability to care were so substantial that they could not be remedied through assistance measures. B had clearly shown that she did not understand that assistance was necessary or that she would herself have to be active in creating an acceptable caring situation. As to the applicant, the District Court noted that he had acknowledged that he, owing to his situation at the time, was unable to take care of X, but stated that he also lacked more fundamental necessary conditions for having the care of a child.

23. With regard to contact rights, the District Court took note that X had never lived with his parents, and thus not established any relationship with them. It furthermore found that the care order and placement in a foster home were likely to be long-term. It was therefore important for X to develop an affiliation to and safety in the foster home, and this process should not be disturbed by too extensive contact sessions. The purpose of contact sessions would be to provide X with knowledge of his biological parents. Against this background, the contact rights for the applicant and B were set at two hours, four times per year, if they came to contact sessions together, or two hours, twice per year, if they came alone. The child welfare services were authorised to supervise the sessions.

24. On 25 June 2012 the High Court (*lagmannsrett*) refused the applicant leave to appeal against the judgment. The applicant did not appeal against the High Court's decision to the Supreme Court (*Høyesterett*).

III. CUSTODY PROCEEDINGS AND PROCEEDINGS TO HAVE THE CARE ORDER IN RESPECT OF X LIFTED

25. On 31 January 2014 the applicant and B made an in-court settlement on the custody of X and Z. According to the settlement, the applicant was to have sole custody of both children. The settlement had the effect that the applicant alone was in a legal position to apply for the care orders to be lifted, which he did on 21 August 2014. He withdrew however the application on 8 October 2014, and by way of counsel stated in that connection that he was not at the time able to give the children the material care that he thought they deserved.

IV. PROCEEDINGS REGARDING REMOVAL OF PARENTAL RESPONSIBILITIES AND ADOPTION IN RESPECT OF X

26. On 12 May 2016 the child welfare services applied to the County Social Welfare Board for a decision to withdraw the applicant's and B's parental responsibilities in respect of X and allow X's his foster parents to adopt him. X was at that time four years and eight months old, and had lived with his foster parents since the initial emergency care order had been implemented immediately after his birth (see paragraph 10 above). The applicant and B opposed the application.

27. The Board held a meeting on 25 and 26 August 2016. The bench of the Board was composed of one jurist, one psychologist and one lay person. The applicant and B were both present together with legal-aid counsel and gave evidence.

28. On 8 September 2016 the Board decided to withdraw the applicant's and B's parental responsibilities in respect of X and to authorise that X be adopted. In its decision, the Board assessed whether the care order would in the alternative be permanent, and found that the attachment which X had formed with his foster parents entailed that a reunion of X and his biological parents was unrealistic, both in a short and a long-term-perspective. In particular, the Board held that such a reunion would highly likely cause serious problems for the child.

29. Furthermore, the Board assessed the applicant's and B's caring skills and found that they had not improved since the care order had been issued. The Board referenced the findings in the proceedings on the care order with regard to the applicant's and B's intuitive ability to establish emotional contact with the child, and held that those findings still clearly applied. Moreover, the Board assessed the applicant's life situation and found that there had been few changes in that respect. It noted that the applicant had not completed high school, did not have a job, subsided on public social support schemes, and resided at his parents' house. The Board also noted that the applicant considered the contact sessions as exhausting, and that he

often could not manage to participate in them throughout the two hours set. Against this background, the Board found that the applicant could not in the foreseeable future establish himself as care giver for X.

30. In examining the best interests of the child, the Board stated that general factors such as stability and belonging, which adoption would provide for a child, indicated that adoption should be approved. In X's case, his attachment to the foster home, his marked need for stability and foreseeability, and his present and presumably future lack of attachment to his natural parents made his interests in adoption very considerable. Weighed against the minor interests that the Board deemed the applicant and B to hold, notably in the limited contact rights, the Board found that the parents' interests had to yield.

31. The applicant and B brought the Board's decision before the District Court for review. The applicant requested that the District Court appoint an expert. However, the request was refused in a reasoned decision, which was upheld on appeal by the High Court on 4 January 2017. The High Court noted, among other things, that there already existed a report which, though it dated from 2010, was still relevant.

32. The District Court held a hearing on 24 and 25 January 2017. The bench of the District Court was composed of one professional judge, one psychologist and one lay person. Both the applicant and B were present, represented by legal aid counsel, and gave testimony. There were five witnesses, and relevant documents were presented to the court.

33. In its judgment of 15 February 2017 the District Court upheld the Board's decision. In its reasoning, it first assessed the applicant's ability to provide X with care (as the applicant and B had entered into an agreement after the dissolution of their relationship that the applicant should have the custody for X (see paragraphs 21 and 25 above), B's caring skills were no longer under examination), and found that the applicant's situation had not become significantly better since 2010-2012 (see paragraphs 6-24 above). It considered that the applicant still struggled with creating an independent adult life and had not managed to benefit from the support measures which had been implemented, which were several courses conducted by the welfare services (NAV), vocational training program with the intent to help the applicant establish structure and routines, and psychological treatment and support, however with limited effect. Against this background, the District Court held it to be unlikely that the applicant in the foreseeable future would be able to provide X with the necessary care. Furthermore, the District Court held that the emotional attachment X had formed with his foster parents would hinder a reunion of X and the applicant, as severing this attachment would with a high degree of likelihood entail serious problems for the child.

34. The District Court went on to assess the best interests of the child. In that assessment, it took as its starting point that X would remain in the foster

home until eighteen years old. Furthermore, the District Court assessed the caring skills of the foster parents and the needs of X.

35. The District Court found X to have normal maturity for his age, with no particular health challenges. However, he had some difficulties regulating his emotions and behaviour when faced with resistance and unpredictability, and quickly tired in stressful situations. The District Court found in particular that X was a vulnerable child, and noted that he had been granted extensive support measures by a special needs teacher. The District Court held that meeting X's needs was a demanding task for the care giver, and that a failure to provide adequate care would put X at a high risk of developing symptom behaviour. Which kinds of symptoms he could develop were held to be hard to predict at an early stage. The District Court were of the view that such challenges should be particularly emphasised as they were important for the assessment of the child's best interests, in particular if contact sessions failed to meet X's complex emotional needs.

36. Moreover, the District Court referred to the foster mother's statements to the effect that she had not noticed any visible reactions from X after the contact sessions, but that she believed contact sessions in a long term perspective would be unfortunate as X would to an increasing extent understand that his natural parents lacked interest in him.

37. Regarding X's emotional attachment to the applicant and B as his biological parents, the District Court found that X had no emotional ties to them; he did not ask about them and was not curious about his origins. It took his age into account in this respect.

38. On the topic of X's best interests, the District Court stated that formalising his ties to the foster home was important in the light of his need for security and predictability. If not adopted, one could also not rule out future applications for the care order to be lifted or conflicts in relation to contact rights. Moreover, the District Court rested assured that the foster mother would be open to X contacting his biological parents if he so wished, and accordingly considered that adoption would not entail a final abruption of the ties between him and his biological parents. Lastly, the District Court assessed the relationship between X and his sister Z, who also was placed in a foster home but who enjoyed regular contact with the applicant and B. The District Court found it likely that the foster mother would inform X about this matter in a manner which would not cause stress for X.

39. On 7 April 2017 the High Court, in a reasoned decision, refused the applicant and B leave to appeal against the District Court's judgment, holding in particular that the assessments made by the District Court had been very thorough and that the District Court's application of the law, including its balancing of the best interests of the child, had been correct. Furthermore, the High Court found no procedural errors or any flaws in the conclusion of the District Court.

40. On 6 June 2017 the Supreme Court dismissed the applicant's and B's appeals against the High Court's decision.

RELEVANT LEGAL FRAMEWORK

41. Under section 4-12 of the 1992 Child Welfare Act (*barnevernloven*) a child may be taken into public care if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security needed by the child according to his or her age and development. According to section 4-21 the parties may request the County Social Welfare Board to discontinue the public care as long as at least twelve months have passed since the Board or the courts last considered the matter. Contact rights between a child in public care and his or her parents are regulated in section 4-19, according to which the extent of contact rights is decided by the Board. By virtue of the same provision, the private parties can demand that contact rights also be reconsidered by the Board, as long as at least twelve months have passed. Under section 4-20 the Board may withdraw parental responsibilities and consent to adoption if the parents will be permanently unable to provide the child with proper care, or the child has become so attached to persons and the environment where he or she is living that removing the child may lead to serious problems for him or her.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained that the authorisation of X's adoption without his consent had violated his right to respect for his family life as provided in Article 8 of the Convention, which reads as follows:

> "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

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

B. Merits

1. The parties' and third-party submissions

44. The applicant stated that he had withdrawn his claim to have the care order lifted as he had not felt ready and had not been fully comfortable with his materialistic situation at the time, as he had not had a steady job or home. He stated that he perceived it a paradox that he had never been offered any assistance measures while at the same time he would have been comfortable enough to ask for the care order to be lifted had he received the same measures that were offered to X's foster parents.

45. Furthermore, the applicant argued that a situational mental condition should not be taken as evidence for a life-long disqualification to be parent or that X's adoption had been necessary. In his view, the child welfare services had never had the intention to reunite him and his son.

46. The applicant maintained that he understood that childcare-measures were necessary to protect children from maltreatment, violence, drug- or alcohol abuse and so on, but that he could not understand what arguments that had favoured X's adoption. The reasons given in the domestic decisions complained of did not relate to either X's health or his rights.

47. The Government maintained that the decision to remove the applicant's parental responsibilities in respect of X and to authorise X's adoption by his foster mother had to be regarded as "necessary" in a democratic society within the meaning of Article 8 of the Convention.

48. The Government emphasised that there had been no flaws in the care order proceedings that had affected the proceedings concerning adoption complained of. They pointed out that assistance measures had already been attempted in connection with the care order issued in respect of Z, without any positive effect. The conclusion that the care order in respect of X had to be considered as long-term had been drawn after a careful consideration, also taking account of the authorities' positive duty to take measures to facilitate family reunification. The contact rights between the applicant and X had never been contested by the applicant; in contrast the applicant had not showed up at all contact sessions and had not been able to stay for the time set, among other things owing to him getting exhausted.

49. As to the adoption proceedings, the Government argued that the reasons advanced by the domestic authorities had been relevant and sufficient, and that the decision-making process had been fair and afforded due respect to the applicant's rights. The circumstances had been exceptional and the domestic courts' assessment that the alternative to adoption was X's growing up in foster care was well substantiated. The Government reminded in that context that the applicant had not lodged any claim to have X returned or indicated that he would do so in future.

50. The third party interveners – the Governments of the Czech and Slovak Republics and Ordo Iuris Institute of Legal Culture – primarily made

submissions on the general principles within which to examine applications with complaints relating to proceedings that have concerned childcare-measures. Ordo Iuris also made a comparison of public childcare-practices in Norway and Poland.

2. The Court's assessment

51. The Court notes that the general principles applicable to cases involving child welfare measures (including measures such as those at issue in the present case) are well-established in the Court's case-law, and were extensively set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019), to which reference is made. The principles have since been reiterated and applied in, inter alia, the cases of *K.O. and V.M. v. Norway* (no. 64808/16, §§ 59-60, 19 November 2019); *A.S. v. Norway* (no. 60371/15, §§ 59-61, 17 December 2019); *Pedersen and Others v. Norway* (no. 39710/15, § 60-62, 10 March 2020); *Hernehult v. Norway* (no. 14652/16, § 61-63, 10 March 2020); and *M.L. v. Norway* (no. 64639/16, §§ 77-81, 22 December 2020).

52. Turning to the facts of the instant case, the Court notes that the applicant did not request that the care order be lifted in the course of the proceedings complained of, which dealt solely with the question of authorisation of adoption and withdrawal of parental responsibilities for that purpose. The Court considers that it cannot be called into question that the impugned proceedings and said measures adopted therein entailed an interference with the applicant's right to respect for his family life as guaranteed by Article 8 of the Convention; that the measures were in accordance with the 1992 Child Welfare Act (see paragraph 41 above) and that they pursued the legitimate aims of protecting X's "health and morals" and his "rights". Accordingly, the question is whether they were also "necessary in a democratic society" within the meaning of the second paragraph of Article 8.

53. In that context, the Court notes that the proceedings complained of were extensive and included oral hearings before both the County Social Welfare Board and the District Court (see paragraphs 27 and 32 above). The Court will centre its examination on the judgment provided by the District Court, since that judgment became the final decision on the merits, upon the applicant's having been refused leave to appeal against it to the High Court (see paragraphs 33-38 and 39 above).

54. As to the reasons provided by the District Court for the impugned measures, the Court notes that that court advanced a number of relevant reasons to indicate that X would, if not adopted, have to continue to live in foster care. It thus attached importance to the applicant's caring skills, which it found not have improved since the proceedings on the placement of X in foster care, and considered it unlikely that the applicant would be able to provide X with the necessary care in the foreseeable future. Moreover,

the District Court gave importance to the serious problems that severing X's attachment to his foster home would entail for him (see paragraph 33 above). The District Court also assessed X's best interests, his caring needs, his situation in the foster home and what implications an adoption would have for him (see paragraphs 34-38 above).

55. The Court considers that the above reasons advanced by the District Court were relevant. However, the Court also notes that the District Court had dismissed the applicant's request to commission an updated expert reports on his caring skills (see paragraph 31 above) and that it placed emphasis on the lack of bonds between the applicant and X (see paragraph 37 above). In that context it cannot, in the Court's view, be overlooked that the applicant and X had not been given any real opportunity to develop emotional ties (see, similarly, *M.L. v. Norway*, cited above, § 91). An emergency placement decision had been made in respect of X immediately after his birth. The applicant was then granted contact rights of one hour every week (see paragraphs 10 and 12 above). In the following proceedings on the care order, the child welfare services already envisioned an adoption, and, as it considered that the care order would be long-term, the Board granted contact rights of only one hour, four times per year, under supervision (see paragraph 16 above). The District Court also considered that the care order would be long-term and gave X's parents contact rights at two hours, four times per year, if they came together, or two hours, twice per year, if the applicant came alone, in any case under supervision (see paragraph 23 above).

56. To the Court's assessment, the limited nature of the contact arrangements in the present case had rendered difficult the development of a meaningful relationship between the applicant and his son in the first place (compare, *mutatis mutandis*, *Pedersen and Others*, cited above, § 70), and the Court is therefore unable to consider that the domestic authorities acted in accordance with Article 8 of the Convention when they on the basis of absence of bonds between the applicant X effectively decided to sever all ties between the two (see, *mutatis mutandis*, *M.L. v. Norway*, cited above, § 97).

57. Moreover, in the Court's view, the above sparse contact that had taken place between the first applicant and the children since they had been placed in public care, entailed that there was limited experience from which any clear conclusions could be drawn in respect of the applicant's caring skills in the course of the proceedings complained of (see, similarly, *Strand Lobben and Others*, cited above, § 221). For that reason, and viewed in conjunction with the refusal to ensure an updated expert report, the Court also does not consider that the decision-making process leading to the impugned decision of 15 February 2017 was conducted so as to ensure that all views and interests of the applicants were duly taken into account (ibid., § 225).

58. The Court adds that it has reservations regarding the emphasis placed by the District Court on the need to pre-empt the applicant from resorting in future to legal remedies by which to have the care order re-examined, or to have the contact rights schedule revised (see paragraph 38 above), given the restrictions on contact that had been imposed until then. The Court reiterates that a biological parent's exercise of judicial remedies cannot automatically count as a factor in favour of adoption (see *Strand Lobben and Others*, cited above, §§ 212 and 223).

59. In the circumstances of the instant case, the foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

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

A. Damage

61. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government stated that, in the event of a violation, the Court should adopt the position taken in *Strand Lobben and Others*, cited above, § 230, and award no more than EUR 25,000.

63. The Court considers that the applicant must have sustained non-pecuniary damage through distress, in view of the violation found above, and awards him EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 10,000 in respect of costs and expenses.

65. The Government pointed out that the claim was unsubstantiated.

66. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court rejects the claim for costs and expenses because the applicant did not submit itemised particulars of all claims, together with any relevant supporting documents.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 1 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Martina Keller
Deputy Registrar

Ganna Yudkivska
President