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

SECOND SECTION

CASE OF PINI AND OTHERS v. ROMANIA

(Applications nos. 78028/01 and 78030/01)

JUDGMENT

STRASBOURG

22 June 2004

FINAL

22/09/2004

In the case of Pini and Others v. Romania,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 25 November 2003 and on 10 February, 6 April and 25 May 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 78028/01 and 78030/01) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Italian nationals, Mr Carlo Pini and Ms Annalisa Bertani ("the first applicant couple") and Mr Salvatore Manera and Ms Rosalba Atripaldi ("the second applicant couple"), on 10 March and 20 April 2001 respectively.

2. The applicants were represented by Mr S. Papa, a lawyer practising in Reggio Emilia. The Romanian Government ("the Government") were represented by their Agent, Mr B. Aurescu, then Under-Secretary of State at the Ministry of Foreign Affairs.

3. The applicants complained, in particular, of an infringement of their right to respect for their family life under Article 8 of the Convention on account of the failure to execute decisions of the Braşov County Court concerning their adoption of two Romanian minors, as a result of which they had been deprived of all contact with their children. They further alleged that the Romanian authorities had refused to allow their adopted daughters to leave Romania, in breach of Article 2 § 2 of Protocol No. 4 to the Convention.

4. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). These cases were assigned to the newly composed Second Section (Rule 52 § 1).

6. The Chamber decided on 25 June 2002 to give the applications priority (Rule 41) and on 16 September 2003 to join them (Rule 42 § 1).

7. On 2 October 2002 and 7 October 2003 the President gave various third parties leave to intervene in the written and oral procedure (Article 36 § 2 of the Convention and Rule 44 § 2): the Poiana Soarelui Educational Centre in Braşov, represented by Mr N. Mîndrilă; Baroness Nicholson of Winterbourne, a British national and rapporteur for the European Parliament; Mr I. Ţiriac, founder member of the Poiana Soarelui Educational Centre; and Mr V. Arhire, a lawyer practising in Bucharest, representative of the minors Florentina Goroh ("Florentina") and Mariana Estoica ("Mariana"). The third parties submitted written observations, to which the parties each replied (Rule 44 § 5).

The Italian Government, who were invited on 18 September 2003 to take part in a hearing and/or to submit written comments, did not indicate any intention to exercise that right (Article 36 § 1 of the Convention and Rule 61).

8. A hearing on admissibility and the merits took place in public in the Human Rights Building, Strasbourg, on 25 November 2003 (Rule 59 § 3 and Rule 54 § 3).

There appeared before the Court:

(a) *for the Government*
Mr B. AURESCU, Under-Secretary of State, *Agent*,
Ms R. RIZOIU, Head of the Government Agent's Department,
Mr R. ROTUNDU, *Co-Agents*;

(b) *for the applicants*
Mr S. PAPA, *Counsel*;

(c) *for the third parties*
Mr N. MÎNDRILĂ,
BARONESS NICHOLSON OF WINTERBOURNE,
Mr I. ŢIRIAC,
Mr V. ARHIRE, *Counsel*.

The applicants, Mr Pini, Ms Bertani, Mr Manera and Ms Atripaldi, also attended the hearing.

9. By a decision of 25 November 2003, the Chamber declared the applications partly admissible (Rule 54 § 3). Among other things, it decided to join to the merits the questions raised by the Government as to the

applicability of Article 8 of the Convention and to examine of its own motion under Article 6 § 1 of the Convention the issue of the failure to enforce the final adoption orders, the applicants having relied solely on Article 8 of the Convention on that point.

10. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants were born in 1957, 1952, 1951 and 1953 respectively. The first applicant couple live in Reggio Emilia and the second in Mantua. At the time when they lodged their applications they were deemed to be the adoptive parents of Florentina and Mariana, Romanian nationals who were born on 31 March and 17 April 1991 respectively and were living at the Poiana Soarelui Educational Centre in Braşov ("the CEPSB").

A. Adoption proceedings

1. Adoption of Florentina

12. In a final decision of 17 June 1994 the Iaşi County Court declared that Florentina, who at the time was 3 years old, had been abandoned. Parental rights over her were assigned to a public welfare institution, L.

13. On 6 September 1994, by a decision of the Iaşi Child Welfare Board, the child was placed in the care of the CEPSB.

14. On 15 May 2000, after the entry into force of Government Emergency Ordinance no. 25/1997 on the rules governing adoption ("Ordinance no. 25/1997"), the Romanian government entrusted a private association, C., with the task of finding a family or a person to adopt Florentina. It also instructed the Romanian Committee for Adoption to support the C. association in this process and to draw up a psychosocial report on the child.

15. The first applicant couple informed the C. association of their wish to adopt a Romanian child, and were sent a photograph of Florentina. They met her for the first time on 3 August 2000 at the CEPSB. They were subsequently informed by the C. association of the child's desire to join them and of her love of music.

16. On 30 August 2000 the Braşov Child Welfare Board, on a proposal by the C. association, gave its approval to the adoption of Florentina by the first applicant couple, and on 21 September 2000 it referred the file on their application for adoption to the Braşov County Court, in accordance with section 14(2) of Ordinance no. 25/1997.

17. On 28 September 2000 the court granted the first applicant couple's application. It noted that the Braşov Child Welfare Board had given its approval to the adoption and had confirmed that position before the court. Observing that the child was in the care of the CEPSB, it ordered the Population Registry Office to amend Florentina's birth certificate and to issue her with a new one.

18. The Romanian Committee for Adoption appealed against that decision. On 13 December 2000 the Braşov Court of Appeal dismissed the appeal as being out of time. The decision became final.

19. On 5 February 2001 the Romanian Committee for Adoption attested that Florentina's adoption was in conformity with the domestic legislation in force and with the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, and issued the first applicant couple with a certificate to that effect.

20. On 14 February 2001 the Commission for Intercountry Adoption granted the child leave to enter Italy and to reside there permanently and ordered the notification of that decision, *inter alia*, to the Italian embassy in Bucharest.

21. On an unspecified date the Procurator-General lodged an application to set aside the Braşov County Court's decision and the Braşov Court of Appeal's judgment. On 5 June 2001 the Supreme Court of Justice declared the application inadmissible.

2. Adoption of Mariana

22. On 28 September 2000, following a procedure similar to that outlined in paragraphs 16 to 18 above, the Braşov County Court granted the second applicant couple's application to adopt Mariana. It observed that the child, who had been declared to have been abandoned in a final decision of 22 October 1998, was in the care of the CEPSB, and ordered the Population Registry Office to amend her birth certificate and to issue her with a new one.

23. The Romanian Committee for Adoption appealed against that decision. On 13 December 2000 the Braşov Court of Appeal dismissed the appeal as being out of time. The decision became final.

24. On 28 December 2000 the Romanian Committee for Adoption attested that Mariana's adoption was in conformity with the domestic legislation in force and with the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, and issued the second applicant couple with a certificate to that effect.

B. Attempts to enforce the adoption orders

1. The order for Florentina's adoption

(a) Urgent application for the handing over of the child's birth certificate

25. On an unspecified date the first applicant couple made an urgent application to the Braşov Court of First Instance for an order requiring the CEPSB to hand over the child's birth certificate to them and to give them custody of her. On 24 October 2000 the court allowed their application.

26. The CEPSB appealed against that judgment and applied for a stay of its execution, arguing that the requirements for submitting an urgent application had not been satisfied and that the adoption order was not final and had been made in breach of the relevant statutory provisions.

27. On 7 March 2001 the court dismissed the appeal on the ground that the child's interests and the fact that the adoptive parents lived abroad warranted an urgent examination of the case and that the applicants had therefore complied with the procedural requirements for making an urgent application. The court also found that, according to the documents in the file, the adoption order was final and constituted *res judicata*. It therefore considered that it was no longer possible for the substantive issues relating to the adoption to be re-examined in the context of the urgent proceedings. The court refused the application for a stay of execution on the ground that it was no longer justified in view of its decision to dismiss the appeal.

28. A subsequent appeal by the CEPSB was likewise dismissed by the Braşov Court of Appeal in a final judgment of 7 June 2001.

(b) Proceedings for the enforcement of the decisions in the urgent proceedings

29. The first applicant couple sought to have the decisions of 28 September 2000 and 7 June 2001 enforced by the bailiffs at the Braşov Court of First Instance. On 22 February 2001 the bailiffs notified the CEPSB that it was required to hand over the child's birth certificate to the applicants and to give them custody of her by 2 March 2001. The president of the court subsequently ordered a stay of execution pending a ruling on the CEPSB's objection to enforcement (see paragraphs 30-32 below).

(c) First objection to enforcement

30. On 23 February 2001 the CEPSB lodged an objection to the enforcement of the decision of 28 September 2000, arguing that the operative provisions were unclear and that the adoption order had not complied with the relevant statutory provisions. It also applied for a stay of execution.

31. On 30 March 2001 the court dismissed the objection on the ground that the operative provisions of the decision were clear and did not give rise to any problems regarding execution. As to the second limb of the objection, the court held that the impugned decision constituted *res judicata* and that, accordingly, it was not possible to re-examine the merits of the case in the context of an objection to enforcement. The court also dismissed the CEPSB's application for a stay of execution.

32. The CEPSB appealed to the Braşov County Court, which dismissed the appeal on 2 July 2001 as being ill-founded.

(d) Resumption of the enforcement procedure

33. On 12 June 2001 the first applicant couple asked the bailiffs at the Braşov Court of First Instance to resume the enforcement procedure, having regard in addition to the fact that the Supreme Court of Justice had in the meantime dismissed the Procurator-General's application to set aside.

34. On 13 June 2001 the bailiffs notified the CEPSB that it was required to hand over the child's birth certificate to her adoptive parents and to give them custody of her by 15 June 2001.

35. On 19 July 2001 they again served notice on the CEPSB, requesting it to comply by 8 August 2001.

(e) Second objection to enforcement

36. The CEPSB lodged an objection with the Braşov Court of First Instance to the enforcement of the decisions in the first applicant couple's favour, arguing that the urgent application procedure was intended to deal with temporary situations and that, in the present case, the execution of the decision in the urgent proceedings would, on the contrary, have permanent consequences. The first applicant couple contested those submissions and sought the imposition of a fine for failure to execute a final judgment, together with a penalty for delay.

37. On 8 August 2001 the court allowed the application for a provisional stay of execution until the hearing on 22 August 2001. On that date it extended the stay of execution until the date of the following hearing, scheduled for 11 September 2001. When that day arrived, the court again extended the stay of execution until the hearing on 25 September 2001, on which occasion it dismissed the applications by the CEPSB and the applicants as being ill-founded. The court held that the issue raised by the CEPSB went to the merits of the case, which had already been determined in a judgment that constituted *res judicata*. It also dismissed the first applicant couple's claim on the ground that they had neither proved that the CEPSB had acted in bad faith nor established the extent of the damage they had sustained.

(f) Further resumption of the enforcement procedure

38. On 5 November 2001 the bailiffs notified the CEPSB that it was required to hand over Florentina's birth certificate to the first applicant couple and to give them custody of her as her adoptive parents, warning it that if it did not do so they would resort to coercion.

(g) Third objection to enforcement

39. On an unspecified date the CEPSB lodged an objection to enforcement with the Braşov Court of First Instance, by means of urgent proceedings issued against the first applicant couple, on the ground that an action to set aside the adoption order was pending in the Braşov County Court, as was an application for a review of the order, and that a criminal complaint concerning the adoption process had been lodged. The CEPSB further requested a stay of execution.

40. On 14 December 2001 the court found against the CEPSB, holding that since an ordinary objection to enforcement had already been dismissed, there were no longer any grounds for bringing a similar action under the urgent procedure. As to the merits, it noted that the adoption order and the decision on the applicants' urgent application were final and binding, and that it was immaterial that an application to have them set aside or reviewed was pending.

(h) Application for a stay of execution

41. On an unspecified date the CEPSB applied to the President of the Braşov Court of First Instance for a stay of execution. On 25 January 2002 that application was refused.

(i) Resumption of the enforcement procedure

42. On 30 January 2002 at 2 p.m. the bailiffs at the Braşov Court of First Instance arrived at the CEPSB building, accompanied by police officers. The doorman refused to let them in and locked the door. Half an hour later the director of the CEPSB and his deputy came to the entrance and informed the bailiffs and police officers that the child was not on the centre's premises but had gone on an excursion outside the city. Following a check, Florentina was not found inside the building.

43. The bailiffs pointed out to the director of the CEPSB that he was required to let Florentina join the applicants.

44. On 27 March 2002 the bailiffs ordered the CEPSB to return the child's birth certificate and to allow her to join the applicants within ten days, and informed it that in the event of it refusing they would resort to coercion.

45. On 3 September 2002 at 10.45 a.m. a bailiff, accompanied by the first applicant couple and their lawyer, went to the CEPSB building. In the

report drawn up on that occasion the bailiff stated that the centre's doormen had detained them all inside the building. He also indicated that he had telephoned the police station and that, after he had explained the incident to Superintendent D., the latter had replied that he should have called the police before attempting enforcement. The bailiff lastly noted that it was impossible to provide the necessary legal assistance for the procedure and that an objection to the enforcement had been lodged. He stated that the enforcement attempt had ended at 1 p.m.

(j) Urgent application for a stay of execution

46. The CEPSB brought an urgent application in the Braşov Court of First Instance for a stay of execution on the ground that it had lodged a fresh objection to enforcement with the court. On 8 April 2002 the court dismissed the application as being ill-founded.

(k) Fourth objection to enforcement

47. The CEPSB lodged an objection with the Braşov Court of First Instance to the enforcement of the decisions in favour of the first applicant couple, on the ground that an application to have the adoption order set aside was pending in the Braşov Court of Appeal. The Court has not been informed of the outcome of those proceedings.

(l) Urgent application for a stay of execution

48. The CEPSB brought an urgent application in the Braşov Court of First Instance for a stay of execution on the ground that it had lodged a fresh objection to enforcement with the court. In a judgment of 4 September 2002, the court allowed its application and provisionally ordered a stay of execution.

49. It appears from the evidence produced that the stay of execution was ordered for a period lasting until 3 April 2003. A further stay of execution was subsequently ordered, from 23 August to 12 September 2003.

2. The order for Mariana's adoption

(a) Urgent application for the handing over of the child's birth certificate

50. On an unspecified date the second applicant couple made an urgent application to the Braşov Court of First Instance for an order requiring the CEPSB to hand over Mariana's birth certificate to them and to give them custody of her. On 24 October 2000 the court allowed their application.

51. That judgment was upheld on appeal by the Braşov County Court in a final judgment delivered on 22 August 2001.

(b) First objection to enforcement

52. On 1 February 2001 the CEPSB lodged an objection with the Braşov Court of First Instance to the enforcement of the decision of 28 September 2000, arguing that the operative provisions were unclear and that the adoption order had not complied with the relevant statutory provisions. It also applied for a stay of execution.

53. The court allowed that application and granted a stay of execution until 30 March 2001, on which date it dismissed the objection on the ground that the operative provisions of the decision were clear and did not give rise to any problems regarding execution. As to the second limb of the objection, the court held that the impugned decision constituted *res judicata* and that, accordingly, it was not possible to re-examine the merits of the case in the context of an objection to enforcement.

54. That judgment was upheld by the Braşov County Court in a final decision delivered on 2 July 2001 on an appeal by the CEPSB.

(c) Enforcement proceedings

55. The second applicant couple sought to have the decisions of 28 September 2000 and 24 October 2000 enforced by the bailiffs at the Braşov Court of First Instance. On 22 February, 13 June and 19 July 2001 the bailiffs notified the CEPSB that it was required to hand over Mariana's birth certificate to the applicants and to give them custody of her.

(d) Second objection to enforcement

56. On 15 June 2001 the CEPSB lodged an objection to the enforcement of the decisions in the second applicant couple's favour. They applied several times to the Braşov Court of First Instance for a stay of execution, arguing that decisions on urgent applications were generally intended to deal with temporary situations but that, in the present case, the execution of the decision in the urgent proceedings would, on the contrary, have permanent consequences. The second applicant couple contested those submissions and sought the imposition of a fine for failure to execute a final judgment, together with a penalty for delay.

57. The court ordered a stay of execution from 15 June to 11 July 2001, from 8 August to 11 September 2001 and from 14 to 25 September 2001, and on the last-mentioned date it dismissed the CEPSB's objection and the second applicant couple's application as being manifestly ill-founded. The court held that the issue raised by the CEPSB went to the merits of the case, which had already been determined in the decision of 28 September 2000 that constituted *res judicata*. It also dismissed the adoptive parents' claim on the ground that they had neither proved that the CEPSB had acted in bad faith nor established the extent of the damage they had sustained.

(e) Further resumption of the enforcement procedure

58. On 5 November 2001 the bailiffs enjoined the CEPSB to hand over Mariana's birth certificate to the second applicant couple and to give them custody of her, warning it that if it did not do so they would resort to coercion.

(f) Third objection to enforcement

59. On an unspecified date the CEPSB lodged an objection to enforcement with the Braşov Court of First Instance, by means of urgent proceedings issued against the second applicant couple, on the ground that an action to set aside the adoption order was pending in the Braşov County Court, as was an application for a review of the order, and that a criminal complaint concerning the adoption process had been lodged. The CEPSB applied in addition for a stay of execution.

60. On 14 December 2001 the court refused its application, holding that since an ordinary objection to enforcement had already been dismissed, there were no longer any grounds for bringing a further, similar action. As to the merits, it noted that the adoption order and the decision on the second applicant couple's urgent application were final and binding, and that it was immaterial that an application to have them set aside or reviewed was pending.

(g) Further resumption of the enforcement procedure

61. On 25 March 2002 the bailiffs again notified the CEPSB that it was required to hand over the child's birth certificate to the second applicant couple and to give them custody of her.

62. On 30 January and 9 April 2002 a bailiff went to the CEPSB building, accompanied by the second applicant couple and police officers. He noted that Mariana was not on the centre's premises.

(h) Fourth objection to enforcement

63. The CEPSB lodged an objection with the Braşov Court of First Instance to the enforcement of the decisions in the second applicant couple's favour on the ground that an application to have the adoption order set aside was pending in the Braşov Court of Appeal. The Court has not been informed of the outcome of those proceedings.

(i) Urgent application for a stay of execution

64. The CEPSB made an urgent application to the Braşov Court of First Instance for a stay of execution of the adoption order on the ground that it had lodged a fresh objection to enforcement with the court. In a judgment of 4 September 2002, the court allowed its application and provisionally ordered a stay of execution.

65. It appears from the evidence produced that the stay of execution was ordered for a period lasting until 3 April 2003. A further stay of execution was subsequently ordered, from 23 August to 12 September 2003.

C. Actions brought by the CEPSB to set aside the orders for the adoption of Florentina and Mariana

66. On an unspecified date the CEPSB brought two actions in the Braşov County Court against the applicants, the Romanian Committee for Adoption and the Braşov Child Welfare Board, seeking to have the adoption orders for both of the children set aside on the ground that they were not lawful as it had not given its prior consent.

67. On 14 February 2002 the court found against it on the ground that the sole requirement for the children's adoption had been the approval of the Braşov Child Welfare Board, which exercised parental rights over them in accordance with section 8 of Government Emergency Ordinance no. 26/1997 ("Ordinance no. 26/1997"). The court observed that the Board had given its consent to the adoptions and had notified its position to the court dealing with the applicants' applications for adoption.

68. The CEPSB appealed against that decision. At a hearing on 2 April 2002 in the Court of Appeal, the Romanian Committee for Adoption submitted that the opposing party's numerous applications to the domestic courts were an abuse of process in that they were not in the children's best interests, namely integration into a family, but were intended to delay and hinder the adoption process, thereby prolonging the children's current placement in institutional care.

69. The CEPSB requested that the cases be referred to the Constitutional Court for a ruling on the constitutionality of section 7(1)(a) and (2) of Ordinance no. 25/1997, concerning consent to adopt. On 10 December 2002 the Constitutional Court declared the plea of unconstitutionality inadmissible on the ground that it had already given a ruling, on 12 November 2002, on the constitutionality of the statutory provisions cited by the CEPSB.

70. In a final judgment of 11 February 2004, the Ploieşti Court of Appeal declared the CEPSB's appeal against the judgment of 14 February 2002 void for failure to satisfy procedural requirements. It observed that the centre had omitted to state reasons for its appeal within the statutory period and held in that connection that the plea of unconstitutionality which it had raised at the hearing on 2 April 2002 in respect of certain provisions of Ordinance no. 25/1997 did not dispense it from having to satisfy the statutory formal requirements. The judgment of 14 February 2002 accordingly became final and no ordinary appeal lay against it.

D. Criminal complaint alleging false imprisonment of the children

71. On an unspecified date the applicants lodged a criminal complaint with the public prosecutor's office at the Braşov Court of First Instance against the director of the CEPSB, alleging false imprisonment of the children.

72. On 6 August 2001 the public prosecutor's office informed the applicants that it had decided on 9 July 2001 not to institute criminal proceedings in the case.

73. On 18 February 2002 the applicants filed another complaint against the CEPSB management with the public prosecutor's office at the Braşov County Court, levelling accusations of, among other things, false imprisonment of their adopted daughters, in breach of Article 189 of the Criminal Code. They also expressed their disagreement with the decision of 9 July 2001 not to institute criminal proceedings.

74. A report drawn up by the Braşov police on 15 July 2002 stated that in connection with the investigation opened following the applicants' criminal complaint, police officers had visited the CEPSB, where they had interviewed Florentina and the director. It was noted in the report that the child, who was more than 10 years old on the date of the interview, had expressed the wish to remain in the centre and had refused to join the family of her adoptive parents, whom she had never met.

75. On 28 November 2002 the public prosecutor's office at the Braşov County Court discontinued the proceedings against the director of the CEPSB.

E. Actions brought by the children to have the adoption orders revoked

1. Action brought by Florentina

76. On 4 November 2002 Florentina, represented by counsel and by S.G., director of the CEPSB, as her guardian, brought an action in the Braşov County Court against the first applicant couple, the Romanian Committee for Adoption and the Braşov Child Welfare Board, seeking to have the order for her adoption revoked and relying on section 22 of Ordinance no. 25/1997. In the alternative, she sought 3 billion Romanian lei for non-pecuniary damage if the adoption order was not revoked. Submitting that she had never met the first applicant couple – her adoptive parents – either before or after the date on which the adoption order had been made, she stated that she had seen them only once, on 3 September 2002, when they had come to try to take her away from the CEPSB against her will, accompanied by their lawyer and the bailiff.

77. In a judgment of 9 June 2003, the Prahova County Court, to which the case had been referred by the Supreme Court of Justice, dismissed Florentina's action as being ill-founded. On the basis of the written evidence submitted by the parties, the court considered that it was in the claimant's interests for the adoption order not to be revoked. It noted that she had not in any way established, through her guardian, that her adoptive parents had shown a lack of interest in her; on the contrary, it appeared from the evidence that they had taken numerous steps for her to be able to join them in Italy. The court accordingly rejected the statements by C.V. and D.M., who had given evidence in support of the child in their respective capacities as her "substitute" "mother" and "aunt" at the CEPSB.

78. The court further noted that the adoption order had satisfied the relevant statutory requirements and pointed out that the Braşov Child Welfare Board, which, under section 8 of Ordinance no. 25/1997, had exercised parental rights on the date on which the application for adoption had been lodged with the court, had found the adoption to be in the child's interests and had given its approval.

79. That judgment was upheld on an appeal by the claimant in a final judgment delivered by the Ploieşti Court of Appeal on 22 September 2003 after a public hearing which Florentina had attended, represented by counsel and by her guardian.

80. In an unappealable decision of 16 December 2003, the Ploieşti Court of Appeal dismissed an application by Florentina to set aside its final judgment of 22 September 2003.

2. Action brought by Mariana

81. On 4 September 2002 Mariana, relying on section 22 of Ordinance no. 25/1997, brought an action in the Braşov County Court against the second applicant couple, the Romanian Committee for Adoption and the Braşov Child Welfare Board, seeking to have the order for her adoption revoked.

82. At the hearing on 31 October 2003, Mariana stated in the presence of her guardian that she did not know her adoptive parents and did not wish to move to a different country as she was satisfied with her life at the CEPSB, where the conditions were good.

83. In a judgment of 31 October 2003, the court allowed her application, relying in particular on the statements by her "mothers" and "aunts" at the CEPSB, who confirmed that she had been residing there since 1994 or 1995 and was being provided with a sound education and good living conditions. Noting that there was no evidence of the emotional ties that should have formed between the adoptive parents and the child after the final decision of 28 September 2000, the court revoked the order for Mariana's adoption by the second applicant couple and decided that the child should revert to the name she had used before 28 September 2000.

84. Although an appeal lay against that judgment, the defendants did not avail themselves of that possibility, and the judgment thus became final.

F. Other steps, complaints and petitions by the applicants to secure the execution of the adoption orders

85. On 27 February 2001 the C. association requested the Braşov Child Welfare Board to revoke its decision to place the children in the care of the CEPSB. On 2 March 2001 the Board informed it that as a result of the final orders of 28 September 2000 for the adoption of the children by the applicants, the decision on their placement had been implicitly revoked and that any such request would be superfluous.

86. On 16 July 2001 the Department for Child Welfare and Adoption, in reply to a request from the applicants, informed them that it was not empowered to take the necessary steps for the children to be returned to them. It indicated that it had ceased to have any powers in the matter on the date on which the certificate attesting that the adoption order conformed to the relevant national and international rules had been issued.

87. On 27 August 2001 the applicants lodged a complaint with the Senate committee responsible for examining administrative abuses, on account of the Romanian authorities' failure to execute final decisions.

88. The applicants sought assistance on 6 September 2001 from the Italian embassy in Bucharest and on 12 September 2001 from the Commission for Intercountry Adoption.

89. On 13 September 2001 they lodged a petition with the President of Romania, the Prime Minister and the Minister of Justice.

90. On 23 February, 5 March, 19 April, 6 August, 12 September and 15 November 2001 they complained to the Ministry of Justice about the situation resulting from the failure to execute the adoption orders.

91. On 27 October 2000 and on 19 February, 15 April and 5 June 2001 they travelled to Romania in the hope of seeing their adopted daughters, but to no avail.

92. They regularly sent the girls letters in Romanian and presents, encouraging them to write back in Romanian as they had learnt the language while waiting to see them again, and telling them that their greatest wish was to have them by their side to give them love and affection.

G. The CEPSB and the children's current circumstances

93. It appears from the observations submitted by the parties that the CEPSB, where the children are resident, is a private institution licensed by the Braşov Child Welfare Board and entrusted with the tasks of providing a home for orphans or abandoned children, taking care of them and giving them an education.

94. Reports by the national authority responsible for monitoring the activities of welfare institutions attest to the following: the material and sanitary conditions at the CEPSB are good; medical assistance is provided there in the form of regular check-ups by doctors and permanent supervision by the medical staff; the centre runs special programmes including educational, sports and recreational activities for the children in its care; the children attend schools in the area around the centre and are integrated into the State education system; children at the centre demonstrating particular sporting and artistic abilities are encouraged to develop them; numerous practical activities are arranged; the centre is structured into groups of seven or eight children who are closely supervised by employees assigned to act as "substitute parents"; and the centre employs a full-time psychologist.

95. On 7 September 2000 and 4 February 2002 a CEPSB employee who worked at the centre's bakery was convicted by the Braşov Court of First Instance and given prison sentences for sexually abusing children in the CEPSB's care aged 9, 11 and 12. Florentina and Mariana were not involved.

96. A number of articles in the Braşov local newspaper *M.* reported that after her visit to the CEPSB on 9 January 2001, Baroness Nicholson of Winterbourne, rapporteur for the European Parliament, had expressed the view that children in the centre's care should not travel abroad to join their adoptive families because the CEPSB had formed a genuine family in which the children received a good upbringing and education. The articles also reported that Mr Ioan Ţiriac, the CEPSB's founder, had stated that none of the children would be leaving the centre as they had all become members of his family and that it was time to stop "exporting" Romanian children.

97. It appears from the evidence produced by the parties that Florentina and Mariana regularly go to school, visit their close acquaintances and travel abroad on trips organised by the CEPSB. In particular, Florentina is currently attending the College of the Arts, where she is taking violin and piano lessons, while Mariana is being encouraged by the CEPSB staff to develop her skills in dance and sport.

98. Photocopies of Florentina's passport reveal that she went on a trip to Hungary and Austria in July 2003.

99. A video recording submitted by the Government and produced with the assistance of a psychologist at the centre where the children are living indicates that they have not received any detailed practical information about the ongoing proceedings for their adoption or about the identity of their adoptive parents. It does not appear from the recording that they have been prepared for the possibility of leaving the CEPSB and joining the applicants' families. During the recording Florentina, in particular, expressed her desire to be part of a traditional family, but was also hesitant as to her adoption by the applicants, which she said that she had initially wanted.

It is uncertain whether, before the applicants' visit to the centre in September 2002, the children received the letters which they had been writing to them in Romanian for several years.

It appears from the recording that the girls do not currently wish to travel to Italy to join the applicants, whom they know only vaguely, but would prefer to remain at the CEPSB, where they seem to have established social and emotional ties with the other children and with the "substitute" "mothers" and "aunts".

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Relevant international law and practice

100. The following provisions and aspects of international law and practice are relevant to the present case.

1. The Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, ratified by Romania on 18 October 1994

Article 4

"An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

(a) have established that the child is adoptable;

(b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

(c) have ensured that

1. the persons, institutions and authorities whose consent is necessary for adoption have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

2. such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

3. the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

4. the consent of the mother, where required, has been given only after the birth of the child; and

(d) have ensured, having regard to the age and degree of maturity of the child, that

1. he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

2. consideration has been given to the child's wishes and opinions,

3. the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

4. such consent has not been induced by payment or compensation of any kind."

Article 9

"Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

...

(b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(c) promote the development of adoption counselling and post-adoption services in their States;

..."

Article 10

"Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted."

Article 17

"Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

(a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

(b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

(c) the Central Authorities of both States have agreed that the adoption may proceed; and

(d) it has been determined ... that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State."

Article 18

"The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State."

Article 19

"1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the ... adoptive parents.

..."

2. United Nations Convention of 20 November 1989 on the Rights of the Child, ratified by Romania on 28 September 1990

Article 21

"States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognise that inter-country adoption may be considered as an alternative means of childcare, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

..."

3. European Convention on the Adoption of Children, opened for signature in Strasbourg on 24 April 1967 and ratified by Romania on 18 May 1993

Article 4

"An adoption shall be valid only if it is granted by a judicial or administrative authority (hereinafter referred to as the 'competent authority')."

Article 5

"1. ... an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

(a) the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place to exercise their parental rights in that respect;

(b) the consent of the spouse of the adopter.

2. The competent authority shall not:

(a) dispense with the consent of any person mentioned in paragraph 1 of this Article, or

(b) overrule the refusal to consent of any person or body mentioned in the said paragraph 1,

save on exceptional grounds determined by law.

..."

Article 10

"1. Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock.

Adoption confers on the adopted person in respect of the adopter the rights and obligations of every kind that a child born in lawful wedlock has in respect of his father or mother.

2. When the rights and obligations referred to in paragraph 1 of this Article are created, any rights and obligations of the same kind existing between the adopted person and his father or mother or any other person or body shall cease to exist. ..."

4. Report of 24 July 2001 to the European Parliament on Romania's application for membership of the European Union

101. In her report to the European Parliament, Baroness Nicholson of Winterbourne, noting with satisfaction the progress made by Romania in consolidating the rule of law and respect for human rights, emphasised in her capacity as rapporteur that the situation of children in Romania required further improvements. She noted that the fate of children in institutions remained a major cause for concern and a problem in terms of fundamental rights, with an impact on the accession procedure.

B. Relevant domestic law and practice

102. The following provisions and aspects of domestic law and practice are relevant to the present case.

1. Government Emergency Ordinance no. 25 of 9 June 1997 on the rules governing adoption (published in the Official Gazette on 12 June 1997), approved by Law no. 87 of 25 April 1998

Section 1

"(1) Adoption is a special measure for the protection of the child's interests, establishing a parental relationship between the adopter and the adopted person and family ties between the child and the members of the adopter's family.

...

(3) An adoption order shall take effect on the date when a judicial decision [granting the application for adoption] becomes irrevocable."

Section 7

"(1) The following shall be required for an application for adoption to be granted: (a) the consent of the adopted person's parents or, as appropriate, parent ...; (b) the approval of the Child Welfare Board for the child's place of residence; (c) the consent of the child if he or she is ten or more years of age; (d) the consent of the person or family adopting the child.

(2) If ... the child has been declared to have been abandoned in a final court decision, the consent referred to in section 7(1)(a) shall not be necessary."

Section 18

"(1) The court shall decide on the application for adoption in private, as a panel of two judges ...

(2) The following shall be summoned to attend the hearing: the Child Welfare Board which approved the adoption, representing the child; the person or family wishing to adopt; and the Romanian Committee for Adoption. State Counsel's attendance shall be compulsory. ...

(3) The court may examine any evidence admitted by law.

(4) The consent of the child, if he or she is aged ten years or more, shall be obtained in court."

Section 21

"The child shall acquire the surname of the person who adopts him or her. ... Pursuant to an irrevocable decision by the court that makes the adoption order, the relevant registry office shall draw up a new birth certificate for the child, on which the adoptive parents shall be entered as the biological parents. The previous birth certificate shall be retained, with a marginal note referring to the issuing of the new document."

Section 22

"(1) An adoption order may be set aside or revoked in accordance with the law.

(2) An adoption order may be revoked at the request of the child, if he or she is aged ten years or more, or of the Child Welfare Board for the child's place of residence, if revocation is in the child's best interests.

(3) The court [revoking an adoption order] shall also rule on the surname which the child is to take after the adoption order has been revoked."

2. Government Emergency Ordinance no. 26 of 9 June 1997 on the protection of children in difficulty (published in the Official Gazette on 12 June 1997)

Section 7

"In order to ensure the best interests of a child in difficulty, the Child Welfare Board may order:

...

(e) the placement of the child in the care of a specialist public welfare institution or a licensed private institution."

Section 8

"If the child has been declared to have been abandoned in a final judicial decision ... parental rights shall be exercised by the county council, through the Child Welfare Board."

3. Government Decision no. 502 of 12 September 1997 on the organisation and functioning of the Romanian Committee for Adoption

Paragraph 1

"(1) The Romanian Committee for Adoption shall be structured and shall act as a specialist body under the authority of the Government with the purpose of supervising

and supporting activities for the protection of children's rights through adoption and ensuring international cooperation in this field.

(2) The Romanian Committee for Adoption shall be the central Romanian authority responsible for assuming the obligations laid down in the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption ..."

4. Government Decision no. 770 of 3 July 2003 on the organisation and functioning of the National Authority for Child Protection and Adoption

Paragraph 1

"The National Authority for Child Protection shall act as a specialist body of the central Government, with legal personality and under the authority of the Ministry of Labour, Social Solidarity and Family Affairs."

Paragraph 7

"The Authority shall have the following duties:

...

(f) proposing that the relevant authorities suspend or terminate any activities that pose a serious and immediate danger to the health or physical or psychological development of children, and withdrawing the operating licences of the legal entities responsible;

(g) taking action to prevent or put an end to the consequences of any acts or deeds contrary to the principles and rules laid down in international treaties on children's rights and adoption to which Romania has acceded ..."

5. Family Code

Article 75

"[From the date on which the adoption order becomes final], the rights and obligations of the adopted person in relation to the adopter shall be the same as those of a child born to a married couple in relation to his or her parents ..."

Article 100

"Children below the age of majority shall live with their parents ..."

Article 103

"Parents shall be entitled to request that their child be returned to them by any person having unauthorised custody of the child. The courts shall refuse to grant such a request if this would not be in the child's interests. The child shall be consulted if he or she is aged ten years or more."

103. These provisions were repealed and replaced by Government Emergency Ordinance no. 25/1997 on adoption (see paragraph 102, point 1, above).

6. Criminal Code

Article 189

"1. False imprisonment shall be punishable by a prison sentence of between one and five years.

2. If ... the victim is a minor, the penalty shall be a prison sentence of between five and twelve years."

7. Code of Criminal Procedure

Article 275

"1. Anyone whose legitimate interests have been adversely affected by measures and decisions taken during criminal proceedings may lodge a complaint.

..."

Article 278

"Complaints about measures or decisions taken by the public prosecutor or under his orders shall be submitted to the Principal Public Prosecutor."

8. Constitutional Court decision no. 308 of 12 November 2002

104. The Constitutional Court allowed an objection that section 7(1)(a) and (2) of Government Emergency Ordinance no. 25/1997 on the rules governing adoption was unconstitutional on the ground that, in the case of a child who had been judicially declared to have been abandoned, it did not require the prior consent of the person or body entitled to exercise parental rights over the child in question.

9. The Constitution

Article 11

"2. Treaties lawfully ratified by Parliament shall form an integral part of the domestic legal order."

Article 20

"1. The constitutional provisions on citizens' rights and liberties shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with the covenants and other treaties to which Romania is a party.

2. In the event of conflict between the covenants and treaties on fundamental human rights to which Romania is a party and domestic laws, the international instruments shall prevail."

10. Government Emergency Ordinance no. 121 of 8 October 2001 on the temporary suspension of all international adoption proceedings

Section 1

"All proceedings relating to the adoption of Romanian children by persons and families of foreign nationality shall be suspended ... for a period of twelve months from the date on which this Ordinance comes into force."

Section 2

"During the period referred to in section 1, the National Authority for Child Protection and Adoption and the Ministry of Justice shall review the rules governing international adoption, in order to bring the national legislation into line with the relevant international law and practice."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

105. The applicants complained of the failure to execute the domestic courts' final decisions concerning the adoption of Florentina and Mariana, and submitted that this amounted to an infringement of their right to respect for their family life as guaranteed by Article 8 of the Convention, the relevant parts of which provide:

"1. Everyone has the right to respect for his ... family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicants

(a) Whether there was a bond amounting to "family life" within the meaning of Article 8 § 1 of the Convention

106. The applicants submitted that the relationship established between them and their respective adopted daughters constituted a family tie, protected by Article 8 of the Convention, which was therefore applicable in the present case. They referred to *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (judgment of 28 May 1985, Series A no. 94), *Eriksson v. Sweden* (judgment of 22 June 1989, Series A no. 156), *Marckx v. Belgium* (judgment of 13 June 1979, Series A no. 31) and *Ignaccolo-Zenide v. Romania* (no. 31679/96, ECHR 2000-I).

107. They submitted that the Court had already held that the word "family" applied to the relationship between two people who believed themselves to be married and genuinely wished to cohabit and lead a normal family life, on the ground that the committed relationship thus established was sufficient to attract the application of Article 8 (see *Abdulaziz, Cabales and Balkandali*, cited above, pp. 32-33, § 63). On the basis of the final adoption orders, they argued that the relationship between them and their respective adopted children *a fortiori* amounted to a family tie.

108. Furthermore, they pointed out that they had met Florentina and Mariana and that, although the CEPSB had denied them the right to pay them further visits, they had constantly thought of them, showing them affection and frequently sending them letters and presents.

109. Referring in particular to their visit on 3 August 2000, they disputed Florentina's and Mariana's allegations and doubted that they had actually been made by the children, bearing in mind the atmosphere of hostility and resistance fostered by the CEPSB. They pointed out that a video recording proved that the girls had been pleased with their visit and had expressed the desire to join them as they had appreciated spending time with them.

110. While accepting that the girls had been able to develop emotional ties with the other children in the CEPSB or with the "substitute mothers", they argued that children needed support when they had to leave surroundings which they had regarded for years as their real life in order to join their new family; however, no such support had been provided in the present case. In the applicants' submission, the very foundations of the

institution of adoption suggested that children should be assisted in this delicate stage of their lives.

(b) Whether their "family life" was respected

111. The applicants pointed out that all the international treaties on children's rights stated unequivocally that the family provided the best environment for the development of the child's personality. Referring in addition to a European Parliament report (see "Relevant international law and practice" above, paragraph 101), they noted that one of the areas given priority by the Romanian government with a view to European Union accession was the question of children in institutions. Notwithstanding the CEPSB's qualities, they considered that the centre could not under any circumstances replace a family in so far as it merely provided the children in its care with "contract substitute mothers", who were nothing but ordinary employees and could be dismissed or resign at any moment.

112. In any event, the applicants contended that the role of such an institution was not to hinder the adoption process; nor should it engage in a smear campaign by making unsubstantiated allegations against adoptive parents, which the newspapers had taken up using the epithet "child traffickers".

113. The centre's intention to discredit at all costs those foreigners who wished to adopt Romanian children raised doubts, in the applicants' submission, as to its qualities, particularly as it would have sufficient opportunity to find other children to replace those who left as a result of adoption orders made by the competent authorities. They submitted that such doubts were further reinforced by the recent conviction of one of the centre's employees for sexually abusing three of the children in its care (see paragraph 95 above).

114. Lastly, they noted that if the girls had not become aware of the adoption orders until 3 September 2002 and only "by chance", as they had alleged, that proved that the centre had never told them about the orders.

115. With regard to the CEPSB's alleged lack of consent to the adoptions, they emphasised that the procedures for adopting Florentina and Mariana had complied with Romanian legislation and with the relevant international treaties, seeing that pursuant to section 8 of Government Emergency Ordinance no. 26/1997, parental rights over children who had been judicially declared to have been abandoned had been exercised by the Braşov Child Welfare Board and that the Board had given its approval to the children's adoption and had reiterated that position before the court that had ruled on the applicants' applications for adoption orders.

2. The Government

(a) Whether there was a bond amounting to "family life" within the meaning of Article 8 § 1 of the Convention

116. The Government argued, as their main submission, that Article 8 of the Convention did not apply to the circumstances of the applicants, who could not claim that there was "family life" meriting protection under that provision. They submitted that, although the applicants had been acknowledged as the adoptive parents of Florentina and Mariana in final judicial decisions, that fact alone should not be regarded as bringing their cases within the scope of Article 8, seeing that no family life had ever existed in practice. They observed in that connection that the applicants had never met their adopted daughters in their capacity as parents and had never enjoyed genuine family relations with them.

117. Although they had visited the CEPSB on 3 August 2000, the visit could not in the Government's opinion be taken to have created any bond that was sufficiently deep to amount to family life. They submitted that the adoptions had been arranged through the C. association and that the children had never lived with the applicants and had never regarded them as their parents.

118. The Government contended that the applicants had not in fact shown any real interest in getting to know the girls or in ensuring that their well-being came first. They observed in that connection that, during the adoption process, the first applicant couple had travelled to Romania on only five occasions, and the second applicant couple on only three; just one of those visits had taken place before the adoption order had been made on 28 September 2000.

119. They argued that the applicants were still in the position of "prospective" parents, as there were no blood ties and no *de facto* family life binding them to their children. That being so, the existence of a formal family tie established by a court decision should not, they maintained, enjoy the protection of Article 8, the Convention institutions having always favoured an approach based on substantive aspects rather than a formal approach based on the definition of the concept of family in domestic law.

120. Relying in particular on the judgments in *Fretté v. France* (no. 36515/97, ECHR 2002-I) and *Salgueiro da Silva Mouta v. Portugal* (no. 33290/96, ECHR 1999-IX), the Government submitted that an adoptive parent attempting to establish actual relations with the adopted child could not be treated in the same manner for the purposes of Article 8 as a person claiming the existence of a family relationship based on biological descent or on existing emotional ties. They considered that in the former case the prospective parent was seeking to obtain a right, whereas a biological parent was attempting to preserve it.

121. The Government submitted in conclusion that the concept of family life within the meaning of Article 8 could not apply to a relationship based on adoption, which only the adoptive parents viewed as a family tie while the child refused to live with them.

(b) Whether the applicants' "family life" was respected

122. In the alternative, the Government maintained that the particular circumstances of the present cases effectively altered the scope of the positive obligations arising for the State from the concept of "respect for family life". They pointed out in the first place that the family ties established between Florentina and Mariana and the CEPSB staff did not equate merely to the relationship between a social worker and her clients but had attained the same depth as the bonds developed in a traditional parent/child relationship. The girls' respective "mothers" and "aunts" at the centre had "witnessed" their growing up, having shared in the most significant moments of their childhood; this, in the Government's submission, was of great significance for their personal development.

123. The Government submitted that the girls' feelings towards these people and the other children in the centre were extremely warm, sincere and strong. The sudden and deliberate severing of such ties, which had built up over time, could have devastating consequences for the children's psyche.

124. Pointing out that the centre's management made efforts to trace the biological parents of the children in its care, the Government considered that there were major issues at stake in the present case, as it concerned intercountry adoption. They noted in that connection that the possibility for the children to see their biological parents or their close friends from the CEPSB would be greatly reduced if they were adopted and taken to Italy, and that the suffering resulting from their separation from those people would be heightened in a foreign environment, in view of the cultural and religious differences and the lack of familiar reference points.

125. The Government further observed that the girls were not treated in an "institutionalised" or "arithmetical" manner at the centre but that, on the contrary, they lived there as in a family, without fearing that they might be thrown out when they reached adulthood, since they knew that they would receive support from the centre until the point where they took control of their own lives. They also pointed out that the centre provided the girls with all the necessary conditions for pursuing their own vocations. In particular, the Government noted that Florentina was attending the College of the Arts, where she was taking violin and piano lessons, while Mariana was being encouraged to develop her skills in dance and sport.

126. All those aspects, together with the girls' consistent attitude towards their adoption, had a strong bearing, in the Government's submission, on the steps that should be taken by the authorities to ensure

respect for the applicants' family life. They argued in that connection that the two children had always been opposed to moving to Italy, as was clear, for example, from their applications to have the adoption orders revoked and from the statement made by Florentina in the course of criminal proceedings instituted by the applicants against the centre's director for false imprisonment of the girls (see paragraph 74 above).

127. The Government submitted, lastly, that no breach of Article 8 could be made out in the instant case, since that provision could not be construed as requiring the State to take radical steps to enforce an adoption order with police assistance or to use other means of psychological preparation to develop a family relationship while court proceedings to determine the children's interests were still pending.

B. Submissions of the third parties

1. Whether there was a bond between the applicants and the children amounting to "family life" within the meaning of Article 8 § 1 of the Convention

128. The third parties all considered that Article 8 of the Convention was not applicable in the instant case, in the absence of any genuine family life between Florentina and Mariana, on the one hand, and the applicants, on the other. They observed in that connection that in weighing up the interests at stake, regard had to be had to those of the children, since it was for them to accept their adoptive family and not vice versa. In the third parties' submission, the only family that the children accepted was the CEPSB.

129. Florentina and Mariana submitted, in particular, that it had not been until 3 September 2002 that they had learned, quite by chance, of the existence of a final and binding decision on the basis of which their respective adoptive parents were seeking to force them to leave their country and the family within which they had been living at the CEPSB for eight and four years respectively. They pointed out that they were not related to the applicants by blood or by *de facto* family ties and argued that the applicants' alleged visit to the centre on 3 August 2000, of which they had no recollection, could not be regarded as a sufficiently close bond to commit them to a new family life.

2. Whether the applicants' "family life" was respected

130. The third parties submitted that the CEPSB was structured in such a way as to provide the children with living conditions resembling those offered by a traditional family. They pointed out that Florentina and Mariana lived there in a modern house with their respective families, each comprising a "substitute aunt and mother" and eight other children. There

were eleven similar families at the CEPSB, each living in a modern house and providing for all the children's needs. The third parties emphasised that Florentina and Mariana, like the other children, lived there without being forced to do so.

131. Noting that on 3 September 2002 Florentina had been physically assaulted by her adoptive parents, their lawyer and the police, who had come to remove her from the centre, they submitted that that incident had traumatised both Florentina and Mariana.

132. They expressed doubts as to the lawfulness of the children's adoption, submitting, firstly, that by the date of their adoption they had already been integrated into one of the families formed at the centre. They observed that both the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children, opened for signature in Strasbourg on 24 April 1967, permitted intercountry adoptions only where the child could not be adopted or cared for in a suitable manner in his or her own country (see paragraph 100 above).

133. They further submitted that the adoption of the children without their consent or that of the CEPSB would have infringed Article 5 § 1 (a) of the European Convention on the Adoption of Children.

134. Accordingly, relying on the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, they observed that adoption orders should be made with due regard to the wishes and views of those being adopted; that had not occurred in the present case.

135. Florentina and Mariana emphasised, in particular, that they intended to pursue their family life in Romania, at the CEPSB, where they took part in sports and musical activities and had made friends. They submitted that they could not imagine any other kind of family life and that their opinions and wishes should be respected, especially as they were now more than eleven years old. They considered that being in the care of the CEPSB was the best solution and opposed the enforcement of the orders for their adoption.

C. The Court's assessment

1. Applicability of Article 8 of the Convention

136. The Court notes that this is a matter of dispute, in so far as the applicants, relying on the lawfulness of the adoption orders and on the actual contact they had been able to have with their respective adopted daughters, argued that there was a family tie protected by Article 8 of the Convention, which was therefore applicable in the instant case, whereas the Government disagreed, for reasons relating mainly to the absence of

de facto family relations between the adoptive parents and the children. The third parties shared the Government's opinion.

137. The Court must therefore determine whether the facts of the case fall within the scope of Article 8 of the Convention.

138. The Court reiterates that the Convention must be applied in accordance with the rules of international law, in particular those concerning the international protection of human rights (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 90, ECHR 2001-II, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI).

139. With regard in particular to the obligations imposed by Article 8 of the Convention on the Contracting States in the field of adoption, and to the effects of adoption on the relationship between adopters and those being adopted, they must be interpreted in the light of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children, opened for signature in Strasbourg on 24 April 1967.

140. In this connection, the Court would refer to an older line of case-law to the effect that, although the right to adopt is not, as such, included among the rights guaranteed by the Convention, the relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 of the Convention (see *X v. France*, no. 9993/82, Commission decision of 5 October 1982, Decisions and Reports (DR) 31, p. 241, and *X v. Belgium and the Netherlands*, no. 6482/74, Commission decision of 10 July 1975, DR 7, p. 75).

141. In the instant case the Court notes that the applicants are able to rely on final and irrevocable decisions by the domestic courts, which allowed their applications for adoption and acknowledged them as the parents of Florentina and Mariana.

142. It must be pointed out that the adoption orders conferred on the applicants the same rights and obligations in respect of their adopted children as those of a father or mother in respect of a child born in lawful wedlock, while at the same time ending any rights and obligations existing between the adopted children and their biological father or mother or any other person or body, as is clear from Article 10 of the European Convention on the Adoption of Children, which Romania ratified on 18 May 1993. The Court further notes that the relevant domestic legislation, in particular section 1 of Government Emergency Ordinance no. 25/1997, approved by Law no. 87 of 25 April 1998, which replaced the former Article 75 of the Family Code, likewise makes no distinction between the parents of children born in lawful wedlock and adoptive parents (see paragraphs 100 and 102 above).

143. Admittedly, by guaranteeing the right to respect for family life, Article 8 presupposes the existence of a family (see *Marckx*, cited above, pp. 14-15, § 31, and *Abdulaziz, Cabales and Balkandali*, cited above, p. 32, § 62), a requirement which does not seem to have been met in the instant case as the applicants did not live with their respective adopted daughters or have sufficiently close *de facto* ties with them, either before or after the adoption orders were made. However, this does not mean, in the Court's opinion, that all intended family life falls entirely outside the ambit of Article 8. In this connection, the Court has previously held that Article 8 may also extend to the potential relationship between a child born out of wedlock and his or her natural father (see *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI), or apply to the relationship that arises from a lawful and genuine marriage, even if family life has not yet been fully established (see *Abdulaziz, Cabales and Balkandali*, cited above, p. 32, § 62).

144. There is no reason in the instant case to cast doubt on the compliance of the adoption orders with domestic legislation or with the relevant international treaties. The national authorities established that the children, who had been judicially declared to have been abandoned, were eligible for adoption, and considered that intercountry adoption would be in their best interests, having obtained the consent of the prospective adopters and of the Braşov Child Welfare Board, which exercised parental rights over the children, in accordance with section 8 of Government Emergency Ordinance no. 26/1997 (see paragraphs 100-04 above).

145. It is true that the children's consent was not obtained by the courts that allowed the applicants' applications for adoption. The Court observes, however, that that was not an omission. As the children were nine and a half years old on the date on which the national courts ruled on the applications for adoption, they had not yet reached the age at which their consent should have been obtained for the adoption order to be valid, set at ten years under the domestic legislation. Such a threshold does not appear unreasonable, since the relevant international treaties leave the national authorities some discretion as to the age from which children are to be regarded as sufficiently mature for their wishes to be taken into account (see paragraph 100 above – point 1, Article 4 (d)).

146. Lastly, the Court notes that, although family life has not yet been fully established in the instant case, seeing that the applicants have not lived with their respective adopted daughters or had sufficiently close *de facto* ties with them either before or after the adoption orders were made, that fact is not attributable to the applicants. In selecting the children solely on the basis of a photograph without having had any real contact with them that would have served as preparation for the adoption, the applicants were simply following the procedure put in place by the respondent State in such matters.

147. It further appears from the evidence before the Court that the applicants always viewed themselves as the girls' parents and behaved as such towards them through the only means open to them, namely by sending them letters written in Romanian (see paragraph 92 above).

148. In the light of the foregoing, the Court considers that such a relationship, arising from a lawful and genuine adoption, may be deemed sufficient to attract such respect as may be due for family life under Article 8 of the Convention, which accordingly is applicable.

2. Compliance with Article 8 of the Convention

149. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

150. As regards the State's obligation to take positive measures, the Court has repeatedly held – where it has established the existence of family relations based on descent or on existing emotional ties – that Article 8 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 (see, for example, the following judgments: *Eriksson*, cited above, pp. 26-27, § 71; *Margareta and Roger Andersson v. Sweden*, judgment of 25 February 1992, Series A no. 226-A, p. 30, § 91; *Olsson v. Sweden (no. 2)*, judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90; and *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55).

151. However, the obligation on the national authorities to take measures to that end is not absolute – even in the case of family relations based on descent – especially where the parent and child are still strangers to one another (see *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII). The nature and extent of such measures will depend on the circumstances of each case, but the understanding and cooperation of all concerned will always be an important ingredient. While 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 and 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. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see *Hokkanen*, cited above, p. 22, § 58; *Nuutinen*, cited above, § 128; and *Scozzari and*

Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII).

152. What is decisive in this case is therefore whether the national authorities took the necessary steps to enable the applicants – who had been acknowledged as the adoptive parents of Florentina and Mariana and had in both cases obtained a court order, on an urgent application, requiring the CEPSB, a private institution, to hand over the child to them – to establish family relations with each of the children they had adopted.

153. As the Government stated, at issue here are the competing interests of the applicants and of the adopted children. There are unquestionably no grounds, from the children's perspective, for creating emotional ties against their will between them and people to whom they are not biologically related and whom they view as strangers. It is clear from the facts of the case that at present Florentina and Mariana would rather remain in the social and family environment in which they have grown up at the CEPSB, into which they consider themselves to be fully integrated and which is conducive to their physical, emotional, educational and social development, than be transferred to different surroundings abroad.

154. The adoptive parents' interest derived from their desire to create a new family relationship by forging ties with Florentina and Mariana, their adopted children.

155. Although such a desire on the part of the applicants is legitimate, the Court considers that it cannot enjoy absolute protection under Article 8 in so far as it conflicts with the children's refusal to be adopted by a foreign family. The Court has consistently held that particular importance must be attached to the best interests of the child in ascertaining whether the national authorities have taken all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents. In particular, it has held in such matters that the child's interests may, depending on their nature and seriousness, override those of the parent (see *E.P. v. Italy*, no. 31127/96, § 62, 16 November 1999, and *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1008-09, § 78).

156. The Court considers that it is even more important that the child's interests should prevail over those of the parents in the case of a relationship based on adoption, since, as it has previously held, adoption means "providing a child with a family, not a family with a child" (see *Fretté*, cited above, § 42).

157. It must be pointed out that in the instant case the children rejected the idea of joining their adoptive parents in Italy once they had reached an age at which it could reasonably be considered that their personality was sufficiently formed and they had attained the necessary maturity to express their opinion as to the surroundings in which they wished to be brought up (see paragraphs 74, 76, 82, 99 and 135 above). The Court further notes that

Romanian law expressly affords them the opportunity to express their opinion on the matter since, firstly, children who are the subject of adoption proceedings are required to give their consent from the age of 10 onwards and, secondly, children who have already been adopted are entitled to apply to have the adoption order revoked once they have reached that age.

158. Admittedly, it is not in doubt that the children's interests were assessed by the relevant authorities in the course of the adoption proceedings. In the Court's opinion, however, that does not rule out the possibility of a fresh examination of all the relevant evidence at a later stage where this is required by specific circumstances and where the child's best interests are at stake (see, *mutatis mutandis*, *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 63, 24 April 2003).

159. In this connection, the Court notes, as the Government did, that after 28 September 2000 the applicants' relationship with the girls was recognised on a purely formal basis and was not accompanied by any real ties. They have never truly known the children, since the adoption was carried out through the C. association and the children had not lived with them beforehand and did not regard them as their parents. The girls, who at the time of their adoption were nine and a half years old and were thus close to the age from which their consent to the adoption would have been compulsory, did not accept this relationship and were opposed to it.

160. They also lodged applications in their own name to revoke the adoption orders on the ground that they did not wish to leave the country and the surroundings in which they had been raised and into which they felt fully integrated. It is of some significance here that Mariana's application was successful and the order for her adoption has now been revoked in a final decision effective *ex nunc* (see paragraph 83 above).

161. The Court also notes that for a number of years after the decisions of 28 September 2000 in the applicants' favour, various other sets of proceedings were pending in the national courts to have the adoption orders declared void on the ground that, among other things, provisions of the international treaties on the subject had been infringed. The Court does not find it unreasonable that the authorities awaited the conclusion of those proceedings, whose outcome could not have been foreseen, before taking measures of a permanent nature that were likely to create a new family life for the applicants.

162. Indeed, in so far as allegations of irregularities in adoption procedures were the subject of proceedings before the competent courts, the authorities had a duty to ensure that any uncertainty as to the lawfulness of the adoption was dispelled. That conclusion is particularly valid in the present case as the enforcement of the decisions in the applicants' favour, with the children moving to Italy, would have made it difficult for the children and harmful to their interests to return to Romania in the event of a subsequent court decision setting aside or revoking the adoption orders.

163. The Court deplores the manner in which the adoption proceedings were conducted, in particular the lack of real, effective contact between the interested parties before the adoption, a state of affairs made possible by shortcomings in the relevant domestic legislation at the material time. It finds it particularly regrettable that the children clearly did not receive any psychological support capable of preparing them for their imminent departure from the centre which had been their home for several years and in which they had established social and emotional ties. Such measures would probably have made it possible for the applicants' interests to converge with those of their adopted children, instead of competing with them as occurred in the present case.

164. Nevertheless, in the circumstances of the case, given that the applicants' interests were weaker as they had been acknowledged as the adoptive parents of children aged almost 10 without having any genuine pre-existing ties with them, there could be no justification for imposing on the Romanian authorities an absolute obligation to ensure that the children went to Italy against their will and irrespective of the pending judicial proceedings instituted with a view to challenging the lawfulness and well-foundedness of the initial adoption orders. The children's interests dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them.

The children's consistent refusal, after they had reached the age of 10, to travel to Italy and join their adoptive parents carries a certain weight in this regard. Their conscious opposition to adoption would make their harmonious integration into their new adoptive family unlikely.

165. In the light of the foregoing, the Court concludes that the national authorities were legitimately and reasonably entitled to consider that the applicants' right to develop ties with their adopted children was circumscribed by the children's interests, notwithstanding the applicants' legitimate aspirations to found a family.

166. There has therefore been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

167. The Court considers it necessary in the circumstances of the case to examine the applicants' complaint about the failure to execute final decisions relating to the adoption of Florentina and Mariana under Article 6 § 1 of the Convention, the relevant parts of which provide:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

A. The parties' submissions

168. The applicants submitted that the Romanian State had for several years failed in its duty to execute final and irrevocable judgments. They referred in particular to the bailiff's report of 3 September 2002, which stated that the attempt to enforce the final judgments had resulted, through the intervention of the centre's doormen, in their being unlawfully detained, together with the bailiff and their lawyer (see paragraph 45 above).

169. The respondent Government highlighted the sensitive nature of the issues to which the final decisions in question had related and contended that no breach of Article 6 § 1 could be made out in the instant case, as that provision could not be construed as requiring the State to take radical measures, with police assistance, to enforce decisions that could upset a child's equilibrium.

170. Accepting that the right to execution of a decision was recognised in the Court's case-law as an element of the right of access to a court enshrined in Article 6, and referring to the respective dissenting opinions of Judges Thomassen and Maruste in *Ruianu v. Romania* (no. 34647/97, 17 June 2003) and *Ignaccolo-Zenide* (cited above), the Government considered that there could be exceptional circumstances in which the authorities were entitled not to execute a decision, such as a change in the factual situation (see, *mutatis mutandis*, *Sylvester*, cited above).

171. In the Government's submission, the present cases constituted exceptional circumstances of that nature, justifying the authorities' failure to execute the decisions in question. They argued in that connection that the right of the adopted children to keep their family and home within the CEPSB should prevail over the adoptive parents' procedural right to the enforcement of a decision potentially causing significant damage to the children's future and equilibrium.

172. Pointing out that the bailiffs had commenced the procedure for enforcing the judicial decisions concerning the adoption, the Government submitted that there had not been any lengthy periods of inactivity on the part of the authorities during the times when execution had not been stayed by the national courts, and that in any event, the State could not be held responsible for the refusal of the CEPSB, a private institution, to hand the children over to the applicants.

173. They emphasised, lastly, that the question should be addressed with due regard to the efforts by the State and Romanian society as a whole to adapt to the body of European Union legislation ("*acquis communautaire*"), including in the field of child protection and intercountry adoption. The Government submitted that, at the European Commission's request, a moratorium on intercountry adoption had been introduced in Romania until such time as the domestic legal framework was capable of fully protecting children's rights.

B. The Court's assessment

174. The Court notes that the judgments delivered on 28 September 2000 by the Braşov County Court – involving the determination of the applicants' civil rights, namely their recognition as the adoptive parents of Florentina and Mariana – and the subsequent orders by the same court requiring the CEPSB to hand the children over have yet to be enforced, despite being final and irrevocable.

175. It reiterates that the enforcement of decisions of this kind requires urgent handling as the passage of time can have irremediable consequences for relations between children and parents who do not live with them (see, *mutatis mutandis*, *Maire v. Portugal*, no. 48206/99, § 74, ECHR 2003-VII).

176. The Court would further reiterate its settled case-law to the effect that Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003; and *Ruianu*, cited above, § 65).

177. In the instant case the Court notes that the proceedings to enforce the decisions in the applicants' favour have been pending since September 2000. It observes at the outset that this situation is not in any way attributable to the applicants, who have made approaches to the national authorities to put an end to it and have regularly taken steps to have the children and their birth certificates handed over to them.

178. The Court also notes, as the Government did, that the bailiffs have not remained inactive either. Outside the periods during which execution of the decisions in issue has been stayed by the national courts, they have put the CEPSB on notice to comply with the final and binding judicial decisions in the applicants' favour (see paragraphs 29, 34, 35, 38, 42, 43, 44, 55, 58, 61 and 62 above).

179. It must be recognised, however, that all the attempts by the bailiffs to enforce the adoption orders have met with manifest opposition on the part of the private institution where the children live, and have remained unsuccessful.

180. It would therefore appear that, in the circumstances of the case, the failure to execute the decisions granting the applicants' applications for adoption was due solely to the actions of the CEPSB staff and its founder members, who consistently opposed the children's departure to Italy by lodging various objections to enforcement or by thwarting the steps taken by the bailiffs.

181. While the Government argued that they could not be blamed for the actions of a private institution, the Court should look behind appearances to assess whether the State may be held responsible for the situation complained of. A number of facts are particularly striking in this regard.

182. The Court notes, firstly, that in spite of the efforts by the bailiffs to ensure the execution of the decisions in question, their actions were wholly ineffective in the instant case. The events recorded by the bailiff in his report of 3 September 2002 are a significant example, since the attempt at enforcement on that date appears to have resulted in the bailiff himself, the applicants and their lawyer actually being detained within the CEPSB building (see paragraph 45 above).

183. The Court considers that such conduct towards bailiffs, who work to ensure the proper administration of justice and thus represent a vital component of the rule of law, is incompatible with their position as law-enforcement officers and that action should be taken against those responsible. In this connection, it is for the State to take all the necessary steps to enable bailiffs to carry out the task they have been assigned, particularly by ensuring the effective participation of other authorities that may assist enforcement where the circumstances so require, failing which the guarantees enjoyed by a litigant during the judicial phase of the proceedings will be rendered devoid of purpose (see, *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

184. In the instant case the Court observes that the uncomfortable situation in which the bailiff responsible for enforcing the decisions in the applicants' favour found himself on 3 September 2002, when he was detained inside the CEPSB building, resulted directly from the police authorities' failure to assist the enforcement, and that no subsequent action has been taken.

185. In that connection, the Court notes that a wide range of legislative measures have been implemented by the Romanian government in order to comply with European and international treaties on adoption. Its attention has been drawn in particular to Decisions nos. 502 and 770, governing the organisation and functioning of the Romanian Committee for Adoption and the National Authority for Child Protection, which are, among other things, empowered to suspend or terminate activities that endanger children's health or physical or psychological development, for example by withdrawing the operating licences of the bodies responsible.

186. However, in spite of those domestic legal provisions, the Court observes that no sanctions have been taken in respect of the lack of cooperation of the private institution in question with the authorities empowered to enforce the adoption orders made in the instant case. It further notes that the CEPSB director's refusal to cooperate with the bailiffs has had no repercussions for him in almost three years.

187. The Court agrees with the Government that the use of force to execute the final decisions in question would have been a very delicate matter in the present case. Nevertheless, as the orders for the adoption of the two children have become final but have not been executed, they have been deprived of their binding force and have remained mere recommendations. Such a situation contravenes the principles of the rule of law and of legal certainty, notwithstanding the existence of special reasons potentially justifying it, the Government having cited the obligations on the respondent State with a view to its future accession to the European Union legal order.

188. By refraining for more than three years from taking the effective measures required to comply with final, enforceable judicial decisions, the national authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

That conclusion is made all the more necessary in the present case by the probably irreversible consequences of the passage of time for the potential relationship between the applicants and their adopted daughters. Here, the Court notes with regret that the prospects of that relationship flourishing now appear if not seriously jeopardised, then at least highly unlikely, particularly as the children, now aged 13, recently indicated that they were strongly opposed to being adopted and moving to Italy.

189. There has consequently been a violation of Article 6 § 1 of the Convention.

...

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

199. 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

200. With regard to pecuniary damage, the applicants sought the reimbursement of the costs they had incurred in travelling to Romania, amounting to 5,708 euros (EUR) for the first applicant couple and to EUR 2,348.48 for the second applicant couple. The first applicant couple claimed a further sum of EUR 2,360, corresponding to their loss of earnings during their trips to Romania.

201. They also sought an award in respect of the non-pecuniary damage sustained both by themselves and by their adopted daughters as a result of the failure to execute the decisions in which their applications for adoption

had been granted. They argued that the opposition they had encountered for many years had ultimately led to frustration and suffering, as well as a loss of opportunities for them and for their adopted children, and had also affected their initial motivation and legitimate desire to found a family through adoption.

Leaving it to the Court to assess the amount to be awarded under that head, they submitted that it should not in any event be less than EUR 750,000 for each of the two applicant couples.

202. The Government submitted that the costs incurred by the applicants before the adoption orders had been made, in particular those relating to their journey to Romania in August 2000, were not connected to the violations alleged in the proceedings before the Court, which concerned the failure to execute the decisions in issue – in other words, events occurring after that journey. The Government accordingly asked the Court not to award any compensation under that head.

203. They further submitted that the sum claimed by the applicants in respect of non-pecuniary damage was excessive and that the claim was a serious abuse of the purpose of the proceedings before the Court. Lastly, they submitted that no sum should be awarded in respect of the damage allegedly sustained by the children, since they were not applicants in the present case and the applicants had no real entitlement to receive compensation on their behalf.

204. As regards pecuniary damage, the Court notes that there is a direct causal link between only part of the sums claimed and the violation of Article 6 § 1 of the Convention found in paragraph 189 above.

205. As regards non-pecuniary damage, it does not find it unreasonable to conclude that the applicants undoubtedly sustained some damage – particularly on account of the frustration caused by the failure to execute final and binding decisions in their favour for several years, and of the probably irreversible consequences of that situation – for which the mere finding of a violation cannot constitute sufficient redress. However, the amounts claimed under this head are excessive.

206. In these circumstances, having regard to all the evidence before it and making its assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the first applicant couple EUR 12,000 and the second applicant couple EUR 10,000, in respect of all heads of damage taken together.

B. Costs and expenses

207. The applicants sought reimbursement of all the costs which they had incurred in the proceedings before the Romanian authorities and before the Court, which they broke down as follows, submitting vouchers in support of their claim:

(a) EUR 868 (the first applicant couple) and EUR 868.36 (the second applicant couple) for translation costs;

(b) EUR 8,754 (the first applicant couple) and EUR 7,133.28 (the second applicant couple) for their lawyer's fees in the proceedings before the Court; and

(c) EUR 5,002 (the first applicant couple) and EUR 652.18 (the second applicant couple) for their lawyers' fees in the proceedings before the national authorities.

They further sought reimbursement of EUR 35,107 (the first applicant couple) and EUR 36,824.63 (the second applicant couple) in respect of "provisional costs linked to the outcome of the proceedings", without giving further details.

208. The Government objected to the award of the sums claimed by the applicants in respect of "provisional costs", submitting that such a description was unclear. They disputed that those amounts had actually been incurred and pointed out that they had not been substantiated as required by the Court's case-law in relation to Article 41 of the Convention.

209. The Court has assessed the claims in the light of the principles set forth in its case-law (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Öztürk v. Turkey* [GC], no. 22479/93, § 83, ECHR 1999-VI; and *Witold Litwa v. Poland*, no. 26629/95, § 88, ECHR 2000-III).

210. Applying these criteria to the present case, and making its assessment on an equitable basis as required by Article 41 of the Convention, the Court considers it reasonable to award EUR 7,000 to the first applicant couple and EUR 6,000 to the second applicant couple in respect of all their costs and expenses.

C. Default interest

211. The Court considers it appropriate that the default interest 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

1. *Holds* by five votes to two that there was a bond between the applicants and the adopted children amounting to "family life" within the meaning of Article 8 § 1 of the Convention, which is applicable in the present case;

2. *Holds* by six votes to one that there has been no violation of Article 8 of the Convention;

3. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

...

5. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 12,000 (twelve thousand euros) to the first applicant couple and EUR 10,000 (ten thousand euros) to the second applicant couple in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 7,000 (seven thousand euros) to the first applicant couple and EUR 6,000 (six thousand euros) to the second applicant couple in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 22 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY	Jean-Paul COSTA
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Mr Costa;
(b) partly dissenting opinion of Mr Loucaides;
(c) partly dissenting opinion of Mr Bîrsan;
(d) dissenting opinion of Mrs Thomassen joined by Mr Jungwiert.

J.-P.C.
T.L.E.

CONCURRING OPINION OF JUDGE COSTA

(Translation)

I agree with the conclusions reached in the judgment. However, it was only after considerable hesitation that I voted in favour of finding that there had been no violation of Article 8 of Convention. The two girls, Florentina and Mariana, who had been declared to have been abandoned at the ages of three and seven respectively, were adopted by the two applicant couples in final judgments when both of them had reached the age of nine. The educational centre which had been their home since they had been abandoned created numerous obstacles to the execution of the judgments and, to put it mildly, hardly facilitated exchanges and physical meetings between the children and their adoptive parents, who live in Italy. For their part, Florentina and Mariana, who are now 13 years old, have never shown any desire to go and live with their parents, whose language they do not speak, and seem to be enjoying a happy life at the centre and developing their personalities and abilities in a satisfactory way. Furthermore, they have applied to have the adoption orders revoked and we are now faced with a strange situation in which the order for Florentina's adoption has been upheld but the one concerning Mariana has been revoked in a final judgment!

Such circumstances elicit mixed feelings. The Romanian government has scarcely any powers in dealing with a private institution which is, in fact, functioning well and offers guarantees as to the quality of education provided. While it is clear that the Government's responsibility is engaged under Article 6 in that they have not succeeded in enforcing the relevant judgments and/or have not wished to do so, their responsibility under Article 8 is much less evident. It actually relates more to positive obligations than to interference with the right to respect for family life; above all, it is difficult to deny that it is in the best interests of the children (to which our case-law rightly attaches considerable weight), who were adopted at a late stage (perhaps too late) and have barely formed any ties with their adoptive parents, to remain in the educational centre where they have lived for many years rather than to undergo a complete change of lifestyle, environment, language and culture. Admittedly, it is very irritating that the centre's stubbornness and the public authorities' inefficiency have resulted, since time cannot be turned back, in a situation where the teenagers now have little chance of being able to develop a harmonious relationship within their adoptive families. But irritation is a poor counsellor. On reflection, I consider, like the majority of my colleagues, that the violation of the Convention by the respondent State is to be found under Article 6 rather than under Article 8.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

While I agree with the majority that there has been a violation of Article 6 § 1 of the Convention for the reasons set out in the judgment, I do not agree with the finding that there has been no violation of Article 8 of the Convention in this case. In deciding this question, I endorse the following approach set out in paragraph 152 of the judgment:

> "What is decisive in this case is therefore whether the national authorities took the necessary steps to enable the applicants – who had been acknowledged as the adoptive parents of Florentina and Mariana and had in both cases obtained a court order, on an urgent application, requiring the CEPSB, a private institution, to hand over the child to them – to establish family relations with each of the children they had adopted."

On the basis of the facts and circumstances of the case I find that the respondent State has failed to discharge its positive obligations under Article 8 of the Convention and this is in substance confirmed by what the majority state in paragraph 163 of the judgment where it is accepted that there has been

> "... [a] lack of real, effective contact between the interested parties before the adoption, a state of affairs made possible by shortcomings in the relevant domestic legislation at the material time"

and

> "that the children clearly did not receive any psychological support capable of preparing them for their imminent departure from the centre which had been their home for several years and in which they had established social and emotional ties. Such measures would probably have made it possible for the applicants' interests to converge with those of their adopted children, instead of competing with them as occurred in the present case."

In spite of these findings the majority found that there has been no violation of Article 8 of the Convention taking into account "the children's consistent refusal, after they had reached the age of ten, to travel to Italy and join their adoptive parents" (see paragraph 164 of the judgment) and that "their conscious opposition to adoption would make their harmonious integration into their new adoptive family unlikely" given also the absence of "genuine pre-existing ties" with their adoptive parents (ibid.). The majority found that an "absolute obligation" on the part of the authorities of the respondent State "to ensure that the children went to Italy against their will and irrespective of the pending judicial proceedings instituted with a view to challenging the lawfulness and well-foundedness of the initial adoption orders" was not justified (ibid.).

Yet all these problems relied on by the majority (the children's objection after they had reached the age ten, the absence of previous ties with their adoptive parents and the fact that legal proceedings against the adoption were pending) were problems created by the authorities of the respondent State. As the Court points out in finding a violation of Article 6 § 1 of the

Convention in this case, "... the enforcement of decisions of this kind requires urgent handling as the passage of time can have irremediable consequences for relations between children and parents who do not live with them" (see paragraph 175 of the judgment).

The failure to execute the relevant decisions concerning the adoptions in this case and the ensuing delay and the negative repercussions it had on the implementation of those decisions were attributable to the authorities of the respondent State.

Judge Costa points out in his concurring opinion that "admittedly, it is very irritating that the centre's stubbornness and the public authorities' inefficiency have resulted, since time cannot be turned back, in a situation where the teenagers now have little chance of being able to develop a harmonious relationship within their adoptive families".

In the circumstances, I do not see how the respondent State can, on the basis of its own wrongful conduct, be absolved of its responsibility to take the necessary positive measures in time to enable the adoption to proceed. Nobody can take advantage of his own wrongdoing to avoid his responsibilities ("*Nullus commodum capere potest de injuria sua propria*").

The positive obligations of the respondent State in this case were not confined to ensuring that the children joined their adoptive parents. They included all the preparatory acts which would make that result possible (see *Kosmopoulou v. Greece*, no. 60457/00, § 45, 5 February 2004). In my opinion, a failure to carry out those acts amounts by itself to a violation of the right to respect for family life and therefore a breach of Article 8 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE BÎRSAN

(Translation)

I regret that I am unable to agree with the majority's conclusion that there has been a violation of Article 6 § 1 of the Convention in the present case. To my mind, the majority have adopted an overly formal approach under Article 6 § 1, which I cannot accept for the following reasons.

The judgment, it has to be emphasised, reaches a finding of a violation of Article 6 § 1 of the Convention on the ground that the authorities refrained for more than three years from taking the effective measures required to comply with final, enforceable judicial decisions (see paragraphs 187 and 188 of the judgment). In my opinion, such a conclusion is difficult to reconcile with that reached by the majority under Article 8 of the Convention (see paragraph 166 of the judgment), which I wholly endorsed after careful reflection.

I acknowledge that the majority's arguments in finding a violation of Article 6 § 1 – based, in particular, on the lack of police assistance in the enforcement procedure – are sound and do not in any way conflict with our Court's case-law (see, among other authorities, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Ruianu v. Romania*, no. 34647/97, § 65, 17 June 2003; and *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003).

While emphasising my firm attachment to the principles established in such settled case-law, to the effect that "the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party" and "execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6", I nonetheless consider that a less formalistic approach was required here, in view of the very particular circumstances of the case.

With all due respect to my colleagues, I feel that more consideration should have been given to the fact that the judicial decisions in question concerned extremely sensitive and delicate issues, since in my opinion a certain paradox emerges from the judgment. The majority attached decisive weight under Article 8 to the children's overriding interest in remaining within the CEPSB; that interest dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them (see paragraph 164 *in fine*). I had no hesitation in agreeing with that conclusion. From a reading of the judgment it is quite understandable that such an interest was deemed sufficient to justify the authorities' lack of cooperation in allowing the applicants to develop ties with the children.

But was the same overriding interest of the children not also relevant, in the same manner and to the same extent, under Article 6 § 1 of the Convention? How, in the particular circumstances of the case, can a purely theoretical approach have prevailed – correct though it may have been from a dogmatic or procedural standpoint – with no consideration being given to the importance of what was at stake in terms of the children's best interests?

I consider that a more balanced approach was highly advisable in this case and, in this connection, I am pleased to note that the Court's more recent case-law concerning the execution of judicial decisions is less characterised by formalism than before. I would simply refer to the *Sylvester v. Austria* judgment of 24 April 2003 (nos. 36812/97 and 40104/98), in which the Court held in paragraph 63 that "a change in the relevant facts may exceptionally justify the non-enforcement of a final return order". I consider that that judgment marks a significant change from the Court's previous strictly theoretical approach to the matter.

Nor can I neglect the views expressed recently along similar lines in dissenting opinions in judgments concerning the execution of judicial decisions, to the effect that "access to a tribunal cannot require a State to enforce all judgments in civil cases regardless of their nature and the circumstances" (see the dissenting opinion of Mrs Thomassen in *Ruianu*, cited above). I would stress that that particular case concerned the demolition of a building which the applicant's neighbours had begun to erect, adjoining his house and occupying a small part of his land; this caused me to vote with the majority in favour of finding that there had been a violation of Article 6 § 1 of the Convention.

The circumstances of the present case were quite different, being at once much more delicate and more complicated: two young girls were required to move to a foreign country to join adoptive families whom they barely knew. The only criticism that could be made of the national authorities, in my opinion, would be that they did not take all the necessary measures to allow bonds to develop between the girls and the applicants' families prior to adoption; that, moreover, would appear to be a problem for any intercountry adoption in any State party to the Convention.

In any event, I am persuaded that in this case there were indeed exceptional circumstances justifying the non-enforcement of the adoption orders in respect of Florentina and Mariana.

In finding a violation of Article 6 § 1, the majority tipped the balance of the interests at stake in favour of the adoptive parents' procedural right to the enforcement of a judicial decision, appearing to disregard the considerations that had led them to find that there had been no violation of Article 8. Such considerations, rightly outlined in paragraphs 159 and 160 of the judgment, were to my mind also entirely applicable under Article 6 § 1 of the Convention and constituted relevant and sufficient grounds for finding no violation of the right guaranteed by that provision.

It should not be forgotten that in paragraph 162 of the judgment the majority themselves observed that "the enforcement of the decisions in the applicants' favour, with the children moving to Italy, would have made it difficult for the children and harmful to their interests to return to Romania in the event of a subsequent court decision setting aside or revoking the adoption orders".

Furthermore, the respondent Government's argument, as summarised in paragraph 172 of the judgment, that there had not been any lengthy periods in the present case during which no steps had been taken to enforce the adoption orders in issue does not appear unreasonable to me, having regard to the repeated stays of execution ordered by the national courts pending the conclusion of the various judicial proceedings in progress across the country. I consider that such proceedings were likely to dispel any uncertainties regarding the lawfulness of the adoptions and that the authorities were right to await their conclusion before resorting to enforcement measures of a permanent nature.

It is not insignificant in this context to note that one of the sets of proceedings in question recently resulted in the order for Mariana's adoption being revoked (see paragraph 83 of the judgment).

For all these reasons, I find it regrettable that the Court did not grasp the opportunity afforded to it by this sensitive and delicate international adoption case to confirm a new, more balanced and less formalistic approach to the issue of execution of judicial decisions.

DISSENTING OPINION OF JUDGE THOMASSEN JOINED BY JUDGE JUNGWIERT

(Translation)

I agree with the conclusion of the majority that there has been no violation of Article 8 of the Convention in the present case. However, unlike the majority, I consider that no family life within the meaning of Article 8 of the Convention ever existed between the applicants and their adopted children. Nor do I share the majority's opinion that the Romanian authorities' failure to execute the adoption orders infringed the applicants' rights under Article 6 of the Convention.

The applicants are two Italian couples who, under Romanian law, had each adopted a child in Romania. At the time when the adoption orders were made, the children, Florentina and Mariana, were both nine and a half years old and had never seen their adoptive parents. They did not wish to move to Italy with the applicants. The order for Mariana's adoption was subsequently revoked at her request, while a similar application was pending in respect of Florentina. The adoption orders were not executed by the Romanian authorities because of uncertainties as to whether the proper procedure had been followed (see also the opinion of the majority as set out in paragraphs 161 and 162 of the judgment).

The applicants complained of the failure to execute the decisions in question, submitting that this amounted to a breach of their right to respect for their family life as guaranteed by Article 8 of the Convention.

The first issue which the Court had to address was whether there were family ties between the applicants and the children.

In my opinion, that was not the case. The Court's case-law concerning the bonds between adults and children as protected by Article 8 has always emphasised the actual existence of family life, normally based on biological ties. Relationships between adoptive parents and their children deserve the same protection, precisely because of the existence of this genuine family life. The Commission decisions cited in paragraph 140 concern genuine ties of this kind, contrary to the relationship between the applicants and the two children in the present case. In *X v. France* (no. 9993/82, Commission decision of 5 October 1982, Decisions and Reports (DR) 31) the adoptive father had lived with the child for seven years, and in *X v. Belgium and the Netherlands* (no. 6482/74, Commission decision of 10 July 1975, DR 7) the applicant had for several years looked after the child whom he wished to adopt.

To my mind, therefore, what deserves protection under Article 8 is not simply the adoption order itself but what it represents in terms of social reality. To hold otherwise would produce a surprising, and in my view unacceptable, result, namely that the relationship between a biological

father and his child, without any additional factors, would not automatically give rise to family life (see *L. v. the Netherlands*, no. 45582/99, ECHR 2004-IV), whereas family life would, on the contrary, be created by an adoption order, irrespective of the manner in which adoption had taken place and of the relations between those concerned.

I consider that in the present case there were no additional factors to warrant affording the protection of Article 8 to the legal relationship between the applicants and the children. At the time when the adoption orders were made, the children had never seen the applicants or had the slightest direct contact with them. It does not appear from the evidence that they were ever asked for their opinion, either directly in an interview with a judge or a counsellor or indirectly through expert assessments which would have provided an opportunity to ascertain their views and feelings about the adoption in practical terms. The centre where the children had lived for approximately five and six years respectively at the time of the adoption orders, and where they had been looked after and brought up, had no means of conveying its opinion, based on its knowledge of them, during the proceedings. Once this became possible, the children themselves instituted proceedings to have the adoption orders revoked, thereby finally being able to express the view that they did not wish to move to Italy to live with the applicants. In short, there were no emotional or *de facto* ties that would have allowed the children to feel close to the applicants and would have provided the legal fiction of the adoption order with some substance that could be held to constitute family life.

I will readily admit that the manner in which the adoption proceedings were conducted must have been hard for the applicants to endure. But the fact that the proceedings in their case were not conducted properly cannot in my opinion be decisive for determining whether family life existed between them and the children. Nor, to my mind, is the existence of family life sufficiently established by the fact that the applicants always viewed themselves as the girls' parents and behaved as such towards them through the only means open to them, namely by sending them letters written in Romanian. That would imply that, in this context, the position of children aged nearly 10 should be completely disregarded.

Admittedly, intercountry adoption proceedings that have clearly been conducted in a scrupulous manner, and even those concerning very young children, often raise delicate issues both for the parents and for the children. In this connection, the need for the child to move to the country where the parents live can play a significant role. I am not saying that this factor in itself constitutes a reason to abandon efforts to find a family to provide a loving environment for a child, even if this has to be in another country. However, the very delicate position in which such children find themselves certainly requires special protection. In the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, such

protection is afforded, for example, by the obligation on States to give due consideration to the possibilities for placing the child within the State of origin (Article 4 (b)) and to ensure, having regard to the age and degree of maturity of the child, that he or she has been counselled and duly informed of the effects of the adoption and that consideration has been given to the child's wishes and opinions (Article 4 (d)).

I consider that in this case there are serious doubts as to whether those requirements have been complied with.

Accepting the existence of family life in the circumstances of the present case would afford insufficient protection to children involved in intercountry adoptions who have reached an age at which their wishes and opinions should be taken seriously *before* a final order is made for their adoption, in view of the consequences of such an order (see, for example, paragraph 152 of the judgment).

The Court examined of its own motion the question whether the non-enforcement of the adoption orders constituted a violation of Article 6. The majority consider that "such a situation contravenes the principles of the rule of law and of legal certainty, notwithstanding the existence of special reasons potentially justifying it" (see paragraph 187 of the judgment). I cannot endorse such an interpretation of Article 6, which amounts to acknowledging the absolute pre-eminence of every legal rule. In my opinion, Article 6 cannot justify the execution of a judicial decision whose application infringes the fundamental rights of others. In the present case the execution of the decisions in question would have forced the children to leave their country against their will to live with parents whom they had never met. I do not believe that the Romanian authorities should have enforced such decisions. To do so would in my view have constituted an act of State raising serious problems as to the respect due for the children's rights under Article 8. For that reason, I consider that there was no violation of Article 6.