



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

SECOND SECTION

CASE OF Q AND R v. SLOVENIA

(Application no. 19938/20)

JUDGMENT

Art 6 § 1 (civil) • Unreasonable length of proceedings, lasting six years and ongoing, for grandparent requesting foster care of children left without parental care • Failures of first instance court leading to remittal and inadequate provision of experts or excessive expert workload, resulting in significant delays • Restrictions necessitated by Covid-19 not absolving State of responsibility, given option of urgent procedure and need for special diligence

Art 8 • Family life • Court's refusal to hear very young children represented by social services and not by special guardian • Decision based on expert opinion and not affecting applicants' position in the proceedings • Court's refusal to examine one of the experts not unreasonable

STRASBOURG

8 February 2022

FINAL

20/06/2022

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

In the case of Q and R v. Slovenia,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Branko Lubarda,

Pauliine Koskelo,

Marko Bošnjak,

Saadet Yüksel, judges,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 19938/20) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovenian nationals, Ms Q and Mr R (“the applicants”), on 28 April 2020;

the decision to give notice to the Slovenian Government (“the Government”) of the complaint under Article 6 of the Convention about the length of the foster care permission proceedings and the complaints under Articles 6 and 8 of the Convention about the alleged failure to hear the views of the applicants’ grandchildren either directly or through a special guardian and to examine expert D.T. in the contact proceedings and to declare inadmissible the remainder of the application;

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 18 January 2022,

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

INTRODUCTION

1. The case concerns the length of proceedings in which the first applicant requested a foster care permission with respect to her grandchildren, who had been left without parental care. It also concerns an alleged failure of the domestic courts to hear the views of the applicants’ grandchildren either directly or through a special guardian and to examine in the contact proceedings the expert who had given his opinion in the foster care permission proceedings.

THE FACTS

2. The applicants were represented by Mr V. Cugmas, a lawyer practising in Slovenske Konjice.

3. The Government were represented by their Agents, Mrs T. Mihelič Žitko and A. Grum, State Attorneys.

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

I. THE BACKGROUND

5. The applicants are grandmother and grandfather, respectively, of W and Z. W's and Z's mother (the applicants' daughter) was killed in December 2015. Their father, who was accused of killing the mother, was arrested and is in prison. W and Z were five and three years old at the time of these events.

6. Following the mother's death, W and Z stayed with the applicants until they were removed by the welfare authorities (see paragraph 9 below).

7. On 25 January 2016, in order to be able to foster her grandchildren, the first applicant submitted an application for a foster care permission with the S.G. Social Work Centre (hereinafter "the S.G. Centre"), which had jurisdiction considering the first applicant's residence.

8. On 17 February 2016 the S.G. Centre, after holding interviews with the applicants, issued a report in which it found the first applicant not to be the most suitable candidate for fostering W and Z. The final decision was later taken by the Ministry for Labour, Family, Social Affairs and Equal Opportunities (hereinafter "the Ministry", see paragraph 14 below).

9. On 30 March 2016 the V. Social Work Centre (hereinafter "the V. Centre"), which had territorial jurisdiction over the children, took the children from their nursery and placed them with an unrelated foster family located in another region, without the applicants' knowledge. The removal of the children from the applicants received wide media coverage and was the subject of tense public and political debate.

10. The first applicant challenged the removal in domestic proceedings. In these proceedings the Supreme Court (decision of 19 October 2016) noted that the V. Centre's removal of the children had been unlawful. However, the Supreme Court dismissed the first applicant's claim to have the children returned to her because the issue of the placement of the children was to be resolved by the courts in the foster care permission proceedings instituted by her. The issue as to whether the children should have been returned to the applicants following the aforementioned Supreme Court's decision was the subject of the Court's inadmissibility decision in *Q v. Slovenia* (dec.) [Committee], no. 14401/17, 10 April 2018.

11. In July 2017 the first applicant initiated a private prosecution against several workers of the V. Centre and the S.G. Centre in relation to the removal of W and Z and the conduct of the proceedings concerning the application for a foster care permission. According to the latest information, the criminal proceedings are still pending.

12. The identity of the foster parent and other members of her family as well as her address were not revealed to the applicants and her name and

address were not mentioned in the court decisions. The foster parent has been communicating with the applicants via the welfare authorities.

II. PROCEEDINGS CONCERNING A FOSTER CARE PERMISSION

A. Initial proceedings

13. On 1 March 2016 an expert group at the V. Centre adopted an opinion to the effect that it would not be in W's and Z's interest to be fostered by the first applicant. On 5 April 2016 the first applicant requested that the Ministry promptly (within seven days) decide on her application for a foster care permission.

14. On 11 April 2016 the V. Centre issued an assessment report. This report as well as the S.G. Centre's report (see paragraph 8 above) were submitted to the Ministry. The latter, relying on these reports, dismissed the first applicant's application for a foster care permission on the same day.

15. On 22 April 2016 the first applicant challenged this decision before the Administrative Court.

16. On 2 November 2016 the first applicant requested that W and Z participate in the proceedings. The children were initially represented in the proceedings by A.G., who acted as their guardian. On 20 March 2017, relying on section 409 of the Contentious Civil Procedure Act (see paragraph 53 below), the first applicant requested that a special representative, for situations where there was a conflict of interest between the person otherwise acting as a guardian and the children, be appointed to protect the interests of the children. This was rejected by the domestic court on 12 July 2017. The court found no conflict of interest and noted that the differences in the parties' opinions were not sufficient to warrant the appointment of a special representative. In the meantime, on 7 April 2017, the V. Centre terminated the appointment of A.G. at her request and appointed itself as the guardian of W and Z (*skrbnik*, see paragraph 51 below).

17. The Administrative Court held a hearing on 8 March 2017. It appointed experts M.Ž.T. and V.S. with a view to preparing an expert opinion on whether the first applicant's fostering of her grandchildren would be in their best interests. Both experts informed the court that they would need several months to prepare the reports as they were busy with other tasks. Consequently, on 30 March 2017, the court appointed expert T.R. to provide an expert opinion, but he too informed the court, on 13 April 2017, that he was overloaded with other work. Subsequently, on 14 April 2017, the court appointed an expert in clinical psychology – D.T. – and asked him to produce an expert opinion by 31 July 2017. It later extended the deadline to 10 September 2017.

18. D.T., who had conducted interviews with, *inter alios*, W and Z and the applicants, submitted his report on 3 October 2017. He found that while

the first applicant had been capable of taking care of her grandchildren occasionally, she was not equipped for the demanding and comprehensive long-term care of W and Z, both of whom suffered from certain cognitive and/or behavioural issues and needed special care. He concluded that foster care by the first applicant would therefore not be in the best interests of W and Z, who had in the meantime integrated well into the foster family. However, he also found that it would be beneficial for W and Z to maintain emotional ties with the applicants and other relatives and that the applicants were able to play an active role as grandparents. D.T. also noted in his report that the competent authorities were in a position to help overcome the obstacles in communication between the foster parents and the applicants and that it should be made possible for W and Z to visit the applicants and for the latter to visit the children at their respective homes. He concluded that W and Z needed at least occasional contact with the applicants. Following the first applicant's reply to D.T.'s report concerning, *inter alia*, use of a particular assessment method, D.T. submitted an additional opinion on 19 November 2017.

19. During the proceedings the first applicant lodged several pleadings, in some of which she urged the court to expedite the proceedings. She also requested an interim measure to allow W and Z to live with her. This request as well as a subsequent appeal were rejected.

20. On 10 January 2018 the Administrative Court held a second hearing and dismissed the first applicant's claim, relying largely on the findings of D.T.

21. On 15 February 2018 the first applicant, following an erroneous instruction in the judgment, lodged an appeal. This was rejected, as no appeal lay against the Administrative Court's decision. She subsequently, on 25 April 2018, lodged a timely request for leave to appeal which was dismissed by the Supreme Court on 20 June 2018.

22. On 27 July 2018 the first applicant lodged a constitutional complaint. The Constitutional Court informed her that her case would be treated with priority.

23. On 23 May 2019 the Constitutional Court appointed A.R. (an advocate) as a special guardian (*kolizijski skrbnik*) for W and Z, relying on section 269 (2) of the Family Code (see paragraph 52 below). The Constitutional Court noted that the V. Centre had exercised public powers for protecting W's and Z's interests at the earlier stage of the proceedings and there was therefore a possible conflict between its interests and those of the children.

24. On 12 September 2019 the Constitutional Court issued a decision no. Up-1099/18, quashing the Administrative Court's judgment and remitting the case to it for re-examination. It found that – in view of the public powers exercised by the V. Centre in the matter under consideration and the opinion it had provided to the effect that the first applicant had not been suitable for

fostering W and Z – it was necessary to appoint an independent and impartial guardian. It instructed the Administrative Court to appoint a special guardian in the proceedings in which the case would be re-examined. The Constitutional Court further found that the parties should have an opportunity to orally examine D.T. at a hearing.

B. Proceedings following the remittal of the case

25. On 20 November 2019 the Administrative Court appointed advocate A.R. as a special guardian of W's and Z's interests, in order to ensure that their opinion be heard in the proceedings, as instructed by the Constitutional Court.

26. On 20 May 2020 the Administrative Court appointed the Expert Opinions Committee of the Faculty of Medicine in Ljubljana (hereinafter "the expert committee") to produce an expert opinion on the first applicant's suitability to carry out foster care of W and Z and as to whether this would be in their best interests. It requested that W, Z and the first applicant be examined by the experts. The expert committee appointed two experts, M.R.M. and B.Z., and repeatedly asked the Administrative Court to extend the deadline to prepare the requested opinions due to, *inter alia*, the complexity of the case and the situation caused by the Covid-19 pandemic. On the last occasion, the court extended the deadline to 30 December 2020. On 22 November 2020 the first applicant asked for her appointment with the experts scheduled for 25 November 2020 to be postponed due to the death of her brother. On 6 and 15 January 2021 the court urged the experts to submit their reports. In reply, M.R.M. explained that the report was being finalised and that its preparation was delayed because of the epidemiological situation.

27. On 20 October 2020, the first applicant lodged a supervisory appeal due to the delays in the proceedings. She argued, among other things, that the expert committee clearly did not have experts who could provide a reliable opinion promptly and that certain other experts should be appointed instead. On 9 November 2020 the president of the Administrative Court dismissed it, finding that there existed the following objective reasons for the delays. Firstly, there was an increase in the number of cases and the proceedings concerning a foster care permission were not considered to be urgent under the applicable legislation. Secondly, the case was complex and the file extensive. Thirdly, the work of the courts and the experts was affected by the Covid-19 related measures.

28. The first applicant consequently lodged another acceleratory remedy – a motion for a deadline. Her motion was dismissed by the president of the Supreme Court on 1 December 2020. He essentially endorsed the reasons provided by the president of the Administrative Court (see paragraph 27 above) and noted that in view of the relevant legislation the case could be treated with priority if its outcome was particularly important for the parties.

In his view, there was no need for his intervention as the judge rapporteur at the first-instance court dealing with the matter recognised the importance of the case.

29. In the meantime, the first applicant requested that D.T.'s report be disregarded because of his alleged lack of objectivity. She also requested that the expert committee, including M.R.M. and B.Z., be relieved of their duties. These requests were rejected on 24 November 2020. The first applicant seems to have appealed against this decision on 15 February 2021. She subsequently made a similar request with respect to the expert committee, M.R.M. and B.Z., arguing, *inter alia*, that the appointed experts were not suitable for the task and lacked impartiality, and with respect to the judges of the Administrative Court, arguing that their conduct of the proceeding disclosed their lack of impartiality. The latter request was rejected on 5 February 2021. The first applicant's subsequent appeal was rejected on 1 September 2021. She then lodged a constitutional complaint which appears to be pending before the Constitutional Court.

30. On 2 February 2021 the appointed experts submitted their report. They found that the first applicant though being able to develop ties with W and Z, was not able to provide for their long-term stable and stimulating upbringing, given W's and Z's special needs and the first applicant's abilities. They emphasised, however, that she was fit to play the role of a grandmother. In the experts' view Z was not capable of forming an opinion as regards with whom he preferred to live, and W had explicitly preferred his current living arrangement. The experts found that an attempt to place W and Z with the first applicant would have very likely led to a serious decompensation in the mental functioning of the children, who were attached to their foster family and had achieved significant developmental progress and emotional stability. A potential reintegration in their original family, if that would be their wish, would make sense only later, when they were around fourteen or fifteen years old, and with appropriate facilitation. They also noted the importance of contact between the applicants and their grandchildren and advised that contact be gradually organised for longer periods and that the grandchildren be able to visit the first applicant at her home.

31. The first applicant replied to the report on 18 February 2021 and the children's special guardian replied on 8 March 2021. The latter requested that a further explanation be provided by the experts regarding certain issues. He also noted that the contact between the applicants and W and Z should be intensified given the lapse of time which negatively affected the chances of reintegration of W and Z into the applicants' family. On 8 June 2021 the expert committee submitted an additional report.

32. In the meantime, on 11 March 2021 the first applicant made a request for an interim measure to allow W and Z to spend more time with her in order to facilitate their reunification in the event of a positive outcome of the proceedings. On 25 March 2021 the Administrative Court rejected the

request, noting that it had no jurisdiction to deal with the contact arrangements in the foster care permission proceedings. On 19 May 2021 the Supreme Court dismissed the first applicant's appeal.

33. In view of the parties' submissions (see paragraph 31 above), the Administrative Court, on 28 September 2021, decided to appoint a panel of three experts from different areas of psychology to prepare a report concerning, among other things, whether the first applicant would be able to foster W and Z and, if so, whether their reintegration in the first applicant's family would be in their best interests. The experts were also requested to assess W's and Z's ability to express their view on the matter. They were given ninety days to complete the task. On 10 November 2021 the court issued a decision removing one of the experts from the panel and replacing her with another expert. On 11 November 2021 the Chamber of Clinical Psychologists of Slovenia sent to, *inter alios*, the Supreme Court and the Administrative Court a letter, signed also by the newly appointed expert, N.B., in which it criticised the decision to appoint the expert in investigative psychology and the expert in family psychology as members of the panel. Subsequently, the first applicant requested that N.B. be removed from the panel. On 30 November 2021 the court upheld her request and appointed a new expert, R.T., to replace N.B.

34. The proceedings are still pending.

III. CONTACT PROCEEDINGS

35. Pursuant to the C. District Court's decision of 15 June 2017, the applicants were entitled to spend two hours with W and Z every other week in a special centre with facilities for children, under the supervision of welfare officers. This decision was based on expert opinions prepared by forensic experts M.Ž.T. (expert in child psychiatry) and V.S. (expert in clinical psychology). Contact arrangements between W and Z and their father and other relatives had also been put in place. The contact arrangements between the applicants and their grandchildren were later modified (see below). They continued to be implemented as per the below decisions, with the exception of the period between October 2020 and January 2021 when they were interrupted due to the pandemic. The brief reports prepared by the welfare officer present during the visits, which usually lasted three hours, indicate that the children enjoyed the time spent with the applicants. The reports mostly describe a positive and playful atmosphere during the visits.

A. Proceedings before the first and second instance court following the applicants' request for extended contact with W and Z

36. On 17 October 2017 the applicants filed a new proposal for extended contact with their grandchildren. They referred to the expert opinion of D.T.,

provided in the proceedings concerning a foster care permission (see paragraph 18 above), in particular to his observation that the applicants and their grandchildren should be able to visit each other at home. They requested that the contacts be unsupervised and extended to every Wednesday afternoon, all weekends, and all national and school holidays. The opposing parties in these proceedings were the V. Centre (acting as the children's *ex lege* guardian – see paragraph 16 above, and paragraphs 51 and 53 below), the S. Centre (responsible for supervising the implementation of contact), the foster parent (holder of the right to care for W and Z), and the father of W and Z (holder of parental rights). The V. Centre and the foster parent were represented by the same advocate in the proceedings.

37. During the proceedings the S. Centre submitted a report concerning the implementation of contact arrangements between the applicants and W and Z. The V. Centre prepared a report concerning W and Z (their developmental progress, integration into their foster family and so on). The V. Centre, the foster parent and the father did not oppose the applicants having contact with W and Z but disagreed with their proposal for extended and unsupervised contact. The applicants throughout the proceedings objected – unsuccessfully – to the foster parent's anonymity (see paragraph 12 above). They also raised concerns about the V. Centre acting as the guardian of W and Z and argued that the children should be heard in the proceedings.

38. During the proceedings, the C. District Court requested a new expert opinion from child psychiatrist M.Ž.T. The latter met with W and Z as well as the applicants and examined them. In her opinion the frequency of contact between the applicants and their grandchildren should be reduced, while the duration of each contact should be extended. The contacts should be implemented in the presence of an official who could provide guidance to the applicants and ensure that the media did not interfere. M.Ž.T. was also heard at the hearing, in the presence of the applicants. She explained that having regard to their age (at the time they were eight and five years old respectively) and their personal characteristics, W and Z were not able to give a relevant opinion on the matter. Their opinion would have reflected only a momentary mood and the need for comfort.

39. The applicants responded to the expert opinion with written comments.

40. On 30 October 2018 the C. District Court issued a decision, which was largely based on the findings of M.Ž.T. The court, relying on her opinion, did not hear W and Z. It also noted that W and Z could not be parties to the proceedings since pursuant to the applicable law only children who were fifteen years old or older and capable of understanding the importance and consequences of their actions could act autonomously as parties to proceedings. It decided that the contact between the applicants and their grandchildren should take place under the supervision of an officer appointed

by the competent welfare centre every third Wednesday of the month, for a duration of three hours. It noted that the applicants' rights to unsupervised contact had to be balanced against W's and Z's interest to be protected from media intrusion. As regards the examination of D.T., the court read his report but did not find it necessary to hear him in view of his limited field of expertise and given that his opinion was limited to the examination of the first applicant's ability to foster W and Z.

41. The applicants appealed, arguing that W and Z should have been parties to the proceedings, their opinion heard, and expert D.T. examined because his position regarding contact was different from that of M.Ž.T. The applicants also objected to the scope of contact as determined in the first-instance court's decision and the mandatory presence of a welfare officer during contact.

42. On 23 May 2019, the C. Higher Court dismissed the appeal. It essentially endorsed the findings of the C. District Court.

B. Proceedings before the Constitutional Court

43. The applicants lodged a constitutional complaint in which they argued that W and Z should have been able to participate in the proceedings or at least been given an opportunity to provide their view as to what kind of contact they preferred. The applicants also complained about the V. Centre's role as the guardian of W and Z, submitting that the V. Centre could not have been considered impartial and that a special guardian should have been appointed to represent the children. Furthermore, in the applicants' opinion the first instance court should have confronted experts M.Ž.T. and D.T. regarding their diverging statements, and expert D.T. should have been heard. The applicants moreover argued that they should have been allowed to have contact with W and Z without supervision, at their home and more frequently.

44. On 12 March 2020 the Constitutional Court decided on the applicants' constitutional complaint by way of decision no. Up-677/19. It found that W and Z were not formal participants in the contact proceedings and that the V. Centre, which acted as the guardian of the children's interest, did not exercise public powers or adopt any measures regarding the scope and manner of implementing contacts between the applicants and W and Z. Its only role was to act as the guardian of W and Z. The Constitutional Court did not therefore find it necessary that a special guardian for W and Z be appointed.

45. As regards the participation of W and Z in the court proceedings, the Constitutional Court found that the reasoning of the lower courts to the effect that the children's interests were sufficiently protected by way of the participation of the V. Centre as their guardian was compatible with the constitutional right to equal protection of rights. As regards W's and Z's ability to express their views on their preferred contact arrangements, the Constitutional Court noted that this issue had been referred to expert M.Ž.T.,

who had found that W and Z were unable to express such views. The lower courts had relied on M.Ž.T.'s finding and therefore properly addressed this issue.

46. As regards expert D.T., the Constitutional Court found that his examination had been refused by the lower courts on two grounds. Firstly, expert D.T. was not in a position to testify in relation to the benefits of contact for children due to the nature and scope of his expertise. Secondly, his opinion, on which the applicants relied, had been prepared for the purpose of establishing the ability of the first applicant to carry out foster care of her grandchildren and not for determining the benefits of contacts between the applicants and W and Z. In the Constitutional Court's view, these reasons for the rejection of the applicants' request for evidence (that is, the examination of D.T.) were adequate.

47. The Constitutional Court also examined the issue of supervised contact and concluded that the way the scope and the nature of the visits had been determined by the lower courts did not raise concerns as regards the applicants' right to family life, enshrined in, *inter alia*, Article 8 of the Convention. It found that the applicants continued to enjoy contact with W and Z but that at the same time their interest had to give way to that of their grandchildren.

48. The decision was adopted by six votes to one. The dissenting judge, D.J.P., provided a separate opinion in which she pointed out that both the proceedings concerning a foster care permission and the contact proceedings concerned the same family unit. She observed that D.T. had expressed his opinion as to W's and Z's best interests and argued that the request for him to be heard in the contact proceedings had not been rejected with relevant and sufficient reasons. She furthermore argued that only an independent and impartial representative could contribute to illuminating the views of W and Z, who could not themselves participate in the proceedings. She opined that the formal status of W and Z in the proceedings was not important. What mattered was that the proceedings had concerned the children and their views should have thus been properly represented. Unlike the majority, judge D.J.P. considered that there was a potential conflict of interest between the V. Centre and W and Z. In particular, the situation in question resulted from the V. Centre's illegal removal of W and Z, through which the V. Centre had expressed its negative view as regards the suitability of the applicants to look after them. The V. Centre, which had exercised public powers when it removed W and Z, could not therefore be considered an independent and impartial representative of their interests.

RELEVANT DOMESTIC LAW

I. THE CONSTITUTION OF THE REPUBLIC OF SLOVENIA

49. The Constitution provides that the family, motherhood, fatherhood, children, and young people should be protected and that the State shall create the necessary conditions for such protection (Article 53). Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the State. Their position shall be regulated by law (Article 56).

II. DOMESTIC LEGISLATION

A. Contact rights of grandparents

50. The Marriage and Family Relations Act was in force until 15 April 2019. It provided that a child had the right to have contact with persons with whom he or she had a close personal bond, such as, in particular, his or her grandparents, unless this would be contrary to the child's interests. If no agreement on this was reached with the child's parents it was for the civil court to decide on contact in non-contentious proceedings, after seeking an opinion of a competent social work centre regarding the child's best interests. The child's opinion was to be taken into account provided that he or she was capable of understanding its meaning and consequences (section 106a). Similar provisions are found in sections 142 and 143 of the Family Code, which has been in force since 15 April 2019.

B. Representation and guardianship

51. Under the Marriage and Family Relations Act a welfare centre was obliged to take measures necessary for a child's care and upbringing or protection of his or her pecuniary and other rights and interests (section 119). It was required to place a minor who was without parental care under guardianship (section 201). The purpose of a guardianship of minors was to provide for, *inter alia*, a wholesome development of the minors' personality and to protect their pecuniary and other rights and interests (section 178). The welfare centre could decide to carry out the duties of a guardian with respect to the person under the guardianship instead of appointing a guardian (section 185). The guardian, or the welfare centre carrying out the duties of the guardian, was to represent the person under guardianship (section 192).

52. The Marriage and Family Relations Act stipulated under the general provisions concerning the guardianship that a person whose interest conflicted with those of the person under the guardianship could not act as his or her guardian (section 181). Section 212 provided that a body

conducting proceedings could also appoint a guardian and inform the welfare authorities thereof. In the case of a conflict of interests between the person under guardianship and his or her (*ex lege*) guardian, a special guardian was to be appointed for the former (section 213 (2) of the Marriage and Family Relations Act; similar provisions are found in section 269 of the Family Code).

53. Section 409 of the Civil Contentious Procedure Act, which applied *mutatis mutandis* to non-contentious proceedings (such as contact arrangements proceedings), provided at the relevant time that a child under the age of fifteen or unable to understand the meaning and legal consequences of his or her actions was to be represented by a legal representative. Pursuant to the domestic jurisprudence submitted by the Government, the *ex lege* representative (*zakoniti zastopnik*) is determined by law or by the welfare authorities' decision. If the interests of the child and his or her *ex lege* representative are in conflict or if so required for the protection of the child's interest, the court should appoint a special representative. This followed also from the above-mentioned section 409.

C. Foster care

54. Under the Marriage and Family Relations Act, a welfare centre was obliged to place into foster care a child who did not have a family or could for some reason not live with his or her parents or whose physical or mental development was endangered in his or her living environment (section 157).

55. Prior to amendments which came into force on 15 April 2019, the Provision of Foster Care Act provided that a child's relative - that is his or her grandparent, uncle, aunt or a sibling - could carry out foster care if a welfare centre (this was replaced by "a court" with the amendments introduced in 2019) deemed this to be in the child's interests (section 7). Before the aforementioned amendments, the decision granting a foster care permission (*dovoljenje*) was to be taken by the competent ministry, outside the regular foster care licence procedure, based solely on the application made by the relative and the written and reasoned assessment by a welfare centre with jurisdiction over the child to the effect that such foster care arrangement was in the child's interests (old section 14). After the amendments introduced in 2019, the court can place a child with his or her relative when this is in the child's interests, even if such relative does not hold a foster care licence but fulfils the conditions for carrying out foster care set out in law. When deciding on an application for a foster care permission lodged by a relative, the court takes account of the assessment made by a welfare centre with jurisdiction over the relative as regards his or her suitability for fostering and the assessment of a welfare centre with jurisdiction over the child as regards the question whether such arrangements would be in his or her best interests (section 14 (1)).

D. Length of proceedings remedies

56. The Act on the Protection of the Right to a Trial without Undue Delay (“the 2006 Act”) became operational on 1 January 2007 and has been subsequently amended. It provides for acceleratory remedies (a supervisory appeal and a motion for deadline) and a compensation claim (sections 5, 8 and 15). The aggrieved party can claim compensation once he or she has exhausted the acceleratory remedies and the proceedings complained of have been terminated with either a final decision or a decision concerning an extraordinary remedy.

THE LAW

I. THE SCOPE OF THE CASE

57. The Court notes that in their reply to the Government’s observations the applicants argued that the issues dealt with in the foster care permission proceedings and the contact proceedings should be examined together within one set of proceedings. They further submitted arguments to the effect that the removal of W and Z from them and their placement in foster care in March 2016 had been unjustified and unlawful, that they had not exposed the children to the media, and that the media interest was due to the actions of the State authorities. They also criticised the latest expert report provided in the foster care permission proceedings and the findings of M.Ž.T. as well as arguing that the evidence showed that the supervision of their visits was unnecessary. They pointed out that the welfare worker who supervised the visits was a lawyer and thus not competent to provide support to the applicants. Moreover, the applicants stated that given the low frequency of contact, W and Z were being deliberately alienated from them.

58. In the Court’s view, the above arguments raised by the applicants are not an elaboration of their original complaints lodged with the Court on 28 April 2020 and communicated to the Government on 6 October 2020 (see paragraphs 59 and 84 below). Mentioned incidentally in their observations, they are not of such a nature as to qualify as a “complaint” within the meaning of the Court’s case-law (see *Petrov and X v. Russia*, no. 23608/16, §§ 63 and 64, 23 October 2018, and *Chizhov v. Russia*, no. 11536/19, §§ 47-48, 6 July 2021). The Court will therefore not examine them.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION REGARDING THE FOSTER CARE PERMISSION PROCEEDINGS

59. The applicants complained that the proceedings in which the first applicant requested a permission to foster W and Z have been unreasonably

long and unfair, in breach of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

1. The parties' submissions

60. The Government argued that only the first applicant could claim to be a victim of a violation on account of the length of the foster care permission proceedings since only she was party to these proceedings. They further pointed out that the first applicant had used the acceleratory remedies provided by the 2006 Act only after the case had been remitted for re-examination. The earlier pleadings in which she had urged that the proceedings be expedited could not be considered a remedy under the 2006 Act. They also objected that the complaint was premature because the first applicant would be able to use a compensatory remedy once the proceedings are terminated with a final decision.

61. The applicants pointed out that under the domestic law only one relative could apply for a foster care permission. However, the outcome of the proceedings would affect both applicants because they lived together, and both would care for W and Z in the event the permission was granted. They furthermore submitted that the first applicant had urged the domestic courts to expedite the proceedings during their first round.

62. In their submissions of 25 October and 13 December 2021, concerning factual developments in the case, the applicants complained that the continuing participation of the welfare authorities in the foster care permission proceedings, despite the appointment of the special guardian, was in breach of their right to a fair trial.

2. The Court's assessment

63. The Court notes that for Article 6 § 1 in its “civil” limb to be applicable, there must be a “dispute” regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018). It further notes that in the present case it has not been disputed that in the proceedings in question only the first applicant has asserted her right to a special foster care permission

with respect to W and Z and that the second applicant has not been a party to these proceedings. In this connection, the Court reiterates, in line with its well-established case-law, that a person cannot complain of a violation of his or her Convention rights in proceedings to which he or she was not a party (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 273, 18 July 2019 § 273, and *Kugler v. Austria* (dec.), no. 65631/01, 27 November 2008). Therefore, the second applicant cannot claim to be a victim of the alleged violation of Article 6 § 1 in the foster care permission proceedings. This is so even if the outcome of the proceedings might have in practical terms certain consequences for him. This part of the application is thus incompatible *ratione personae* with the provisions of the Convention and the protocols thereto within the meaning of Article 35 § 3 (a) and must be rejected according to Article 35 § 4.

64. As regards the first applicant it has not been disputed that she can claim to be a victim of the alleged violation of Article 6 § 1. The Court sees no reason to find otherwise.

65. The Court further notes that the Government objected that the complaint concerning the length of proceedings was premature (see paragraph 60 above). It observes in this connection that the first applicant exhausted the acceleratory remedies provided by the 2006 Act. She will be able to lodge a compensation claim only after the proceedings are finally resolved or – in the event an appeal on points of law is lodged – terminated with the decision of the Supreme Court (see paragraph 56 above). The Court reiterates that for the compensation claim available under the 2006 Act to be considered effective the aggrieved party should have prompt access to it once he or she has made use of the accelerative remedies (see *Žunič v. Slovenia* (dec.), no. 24342/04, §§ 50 and 54, 18 October 2007). However, in the present case, the proceedings, which seem of great importance to the first applicant, have continued for two years since the remittal of the case and over a year since the first applicant lodged the supervisory appeal. Therefore, it cannot be considered that the first applicant will be granted prompt access to the compensation remedy (contrast, *Žunič*, cited above, § 53). By not waiting for the compensation remedy to become available to her, the first applicant cannot be said to have failed to exhaust available domestic remedies with respect to her complaint concerning the length of the foster care permission proceedings. This objection of the Government should thus be dismissed.

66. The Government furthermore argued that the first applicant should have used the acceleratory remedies also earlier in the proceedings. The Court considers that this argument essentially relates to the merits of the complaint under Article 6 § 1 and it will be considered accordingly (see paragraph 81 below).

67. In view of the above, the Court finds that the first applicant's complaint concerning the length of the foster care permission proceedings is

neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

68. With respect to the first applicant's complaint concerning the continuing participation of the welfare authorities in the foster care permission proceedings (see paragraph 62 above), the Court notes that it was raised in her submissions before the Court, lodged on 25 October and 13 December 2021, and relates to the recent developments in the domestic proceedings. The Government have not been invited to comment on it, because the Court considers that it is premature. The first applicant, in the event of an unfavourable decision by the Administrative Court, will be able to invoke in her appeal the issue of the welfare authorities' continuing involvement and, if unsuccessful, will be able to complain about that before the Constitutional Court (see *Knežević and Others v. Slovenia* (dec.), no. 51388/13, § 27, 19 September 2017). This complaint must therefore be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

69. The first applicant argued that her case should be treated as urgent, with the use of short deadlines which should be respected also by the experts. She pointed out that the delays had resulted from, *inter alia*, the difficulties in obtaining expert opinions and the unlawfulness of the first round of the proceedings. She maintained that the Covid-19 pandemic should have not stopped the courts from adopting decisions appointing experts or decisions concerning requests for removal of experts.

70. The first applicant disputed that the case was of a particular complexity as regards the requested expertise. She considered that the State should have ensured a sufficient number of experts qualified to assess family related issues, in particular forensic psychologists, and should use the available resources effectively. She stressed that the passage of time affected the relationship between the applicants and their grandchildren, led to alienation, and reduced the chances of her succeeding in the proceedings concerning her application for a foster care permission.

71. The Government, who acknowledged that the matter in question was of significant importance for the first applicant, argued that the issue before the Administrative Court was complex, involved several parties, and required forensic expertise. In the first round of proceedings, the first-instance court encountered difficulties when two experts declined the task. Expert D.T., who took up the task, was late in submitting his report, the preparation of which required him to conduct a number of tests and interviews. The resulting delays could not be attributed to the judge who had acted diligently. Following the remittal of the case, the first-instance court again faced difficulties when

attempting to obtain expert opinions, which was due to, *inter alia*, the experts' significant workload and the restrictions necessitated by the Covid-19 crisis.

72. The Government pointed out that due to the Covid-19 related public-health crisis a pandemic was declared twice. During the first pandemic the courts processed only urgent cases from 16 March until 5 May 2020. During the second pandemic the courts processed all, not only urgent, cases under the conditions of respecting the recommended health guidelines. However, from 16 November 2020 until 31 January 2021 the courts' operation was limited, except in the cases which were defined as urgent. During this period hearings were not held in non-urgent cases, except for those held via video link. Apart from the formal restrictions necessitated by the Covid-19 crisis, the work of courts and experts was impeded also by the increased staff absences due to illnesses, quarantine and other obstacles related to that crisis.

73. The Government explained that the present case did not qualify as an urgent case because it did not concern a placement of children in foster care or carrying out of such care, as provided by the Marriage and Family Relations Act, but instead a foster care permission, which was regulated by the Provision of Foster Care Act. The case was to be examined following the regular order of cases and, during the pandemic, no actions could be taken by the domestic courts in the period between 16 March and 5 May 2020. Subsequently and during the period between 16 November 2020 and 31 January 2021, when the courts operated to a limited extent, the first instance court was anyway waiting for the experts to prepare their opinion.

74. As regards the first applicant's conduct, the Government pointed out that she had submitted a number of pleadings and requests which had had to be sent to the opposing parties for information and comment. The other parties had lodged significantly fewer submissions. Moreover, the first applicant's late request that W and Z be involved delayed the proceedings for at least a month.

2. *The Court's assessment*

75. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

76. The instant case concerns the proceedings in which the first applicant has sought a special permission to foster her grandchildren, who had been left without parental care. The proceedings have so far lasted almost six years (see paragraphs 7 and 34 above). They are currently pending at first instance following the remittal of the case by the Constitutional Court (see paragraph 24 and 34 above).

77. As regards the complexity of the case, the Court notes that while the domestic courts had to resort to expert opinions in order to determine the first applicant's ability to act as a foster carer of her grandchildren and to identify the best interests of the latter in the sensitive circumstances of this case, this fact alone can neither explain nor justify that after almost six years the proceedings are still pending before the first-instance court.

78. As regards the first applicant's conduct in the proceedings, the Government referred to what they considered to be a late request for the inclusion of W and Z in the proceedings (see paragraph 16 above) which had resulted in at least a one month long delay, and to numerous submissions and requests lodged by her. The Court, however, observes that while the first applicant indeed made several requests for removal of experts (see paragraph 29 above), the Government failed to show how this could have in fact contributed to the length of the proceedings in the period up to 2 February 2021, when the Administrative Court had in any event been waiting for the expert reports to be prepared. In view of their repeated nature, the Court is also not convinced that the consideration of the second request concerning removal of experts M.R.M. and B.Z. (see paragraph 29 above) could be particularly time-consuming. Having examined the case file and the Government's arguments, the Court considers that the first applicant did not delay the proceedings to any significant degree.

79. The Court notes that, apart from certain periods of inactivity, most notably between the initiation of proceedings before the Administrative Court on 22 April 2016 and the first hearing held on 8 March 2017 (see paragraphs 15 and 17 above), the main reasons for the length of the proceedings relate to the preparation of the expert reports, the remittal of the case following the first's applicant's constitutional complaint and the measures related to the Covid-19 pandemic. As regards the first two issues, the Court reiterates that it is for the Contracting States to organise their judicial system in such a way that their courts are able to guarantee everyone the right to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV). This applies to both the failure of the first-instance court to appoint a special guardian and examine expert D.T., which resulted in a remittal of the case, as well as the difficulties which arose due to the inadequate provision of experts or their excessive workload, which resulted in significant delays (see paragraphs 17, 18, 26, 30 and 71 above). The Court furthermore notes that the appointed experts were acting in the context of judicial proceedings supervised by the judge; the latter remained responsible for the preparation of the case and for the speedy conduct of the trial (see *Capuano v. Italy*, 25 June 1987, § 30, Series A no. 119; *Martins Moreira v. Portugal*, 26 October 1988, § 60, Series A no. 143; and *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII).

80. On the other hand, the restrictions necessitated by the Covid-19 crisis could have understandably had an adverse effect on the processing of cases before the domestic courts. However, the Court is not convinced that in the present case this can absolve the State from its responsibility for the lengthy proceedings. In particular, it appears that the case would have been dealt with during the periods of Covid-19 related restrictions had it been classified as urgent (see paragraph 72 above). The Government explained that it had not been considered an urgent case because it had not concerned a placement of children in foster care or carrying out of such care (see paragraph 73 above; this was also indicated by the president of the Administrative Court – see paragraph 27 above). The Court can accept the argument that the case did not involve the same urgency as one relating to placement in care, since regular contact was maintained between the first applicant and her grandchildren. Nonetheless, it considers that, in view of the limited nature of that contact, the importance of what was at stake for the first applicant, namely her wish to look after her grandchildren following her daughter's death, called for special diligence on the part of the authorities, especially taking into account the first applicant's argument concerning the effect of the passage of time on her relationship with W and Z (see, *mutatis mutandis*, *Širvinskas v. Lithuania*, no. 21243/17, §§ 110-111, 23 July 2019).

81. Having regard to what would appear to be the main reasons behind the delays in the proceedings in question (see paragraphs 79 to 80 above) and to the reasoning by which the first applicant's acceleratory remedies were dismissed (see paragraphs 27 and 28 above), the Court is not convinced that by availing herself of these remedies at an earlier stage of the proceedings (see paragraph 60 above) she could have influenced their course in any significant way.

82. In view of the above and bearing in mind that a special diligence was required in view of the importance of the subject-matter of the proceedings (see, *mutatis mutandis*, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII, and *Niederböster v. Germany*, no. 39547/98, § 39, ECHR 2003-IV (extracts)), the Court concludes that the present case, even assuming that it was of a certain complexity, has not been heard within a reasonable time.

83. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the first applicant.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. The applicants invoked Articles 6, 8 and 13 of the Convention and complained about the domestic court's failure to hear expert D.T. and to ensure that W's and Z's views were heard and/or their interests represented by a special guardian in the proceedings concerning contact arrangements. The Court, being master of the characterisation to be given in law to the facts

of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine these complaints from the standpoint of Article 8 of the Convention alone, which reads as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

85. The Government argued that the applicants had failed to raise their complaint concerning the appointment of a special guardian in their appeal against the first instance court’s decision of 30 October 2018. In their view, the Constitutional Court examined this issue only in the context of the proceedings before it. The applicants did not therefore properly exhaust domestic remedies.

86. The applicants argued that the first instance court should have appointed a special guardian *ex proprio motu*. The matter had been brought to its attention at a hearing (see paragraph 37 above) but was not addressed in the decision of 30 October 2018. They also pointed out that in their appeal the applicants had criticised the decision of the court not to include W and Z as parties to the proceedings. Furthermore, the Constitutional Court was in a position to appoint a special guardian but refused to do so.

87. The Court observes that the applicants did not specifically complain about the failure to appoint a special guardian in their appeal against the first-instance court’s decision (see paragraph 41 above). However, they raised this complaint during the first-instance proceedings (see paragraph 37 above) and in their constitutional complaint (see paragraph 43 above). The Constitutional Court did not dismiss it for non-exhaustion of legal remedies, but instead examined the issue on the merits and found that the appointment of a special guardian had been unnecessary (see paragraphs 44 and 45 above). The Court therefore finds that since the Constitutional Court examined the applicants’ complaint about the failure to appoint a special guardian, the applicants cannot be said to have failed to exhaust domestic remedies. Indeed, they provided the domestic authorities with the opportunity to put right the alleged violation (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007, and *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002).

88. The Court notes that this complaint as well as the other above complaints (see paragraph 84 above) are neither manifestly ill-founded nor

inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The applicants argued that W and Z should have been represented by a special – independent – guardian in the contact proceedings. Instead they had been represented by the same body – the V. Centre – that had unlawfully removed them from the applicants. They also emphasised that the V. Centre had given a negative opinion as regards the applicants' proposal for extended contact. The Constitutional Court should have quashed the lower courts' decisions concerning contact arrangements and ordered that a special guardian be appointed.

90. As regards the court's refusal to hear expert D.T., the applicants argued that he was competent to give an opinion on the contact arrangements. His opinion was accepted as evidence by the first instance court deciding in the contact proceedings, but it nonetheless refused to hear him. The applicants referred to domestic jurisprudence and argued that the hearing of an expert witness was necessary, especially when there was a need for additional explanation or when there existed ambiguities or contradictions between experts' opinions.

91. The Government pointed out that there had been no doubt that the applicants and W and Z had enjoyed family life and that the applicants were entitled to have contact with their grandchildren. However, the concept of family life between the grandparents and grandchildren could not be compared to that of the family life between parents and children.

92. As regards the alleged failure to appoint a special guardian to represent W's and Z's interests in the contact proceedings, the Government pointed out that their father had participated in the proceedings and that the expert, who had provided an opinion, had been independent from the V. Centre, which had acted as the *ex lege* guardian. As regards the alleged conflict of interest between the latter and the applicant's grandchildren, the Government argued that there had been no such conflict, essentially agreeing with the observations made by the Constitutional Court (see paragraph 44 above). As regards the obligation to obtain W's and Z's opinion, they stressed that such obligation was not absolute but depended on the maturity of the children. It was established in the present case that W and Z were not able to form a valid view on the matter.

93. As regards expert D.T., the Government argued that he was qualified to give an opinion regarding adults and not children and that his opinion on which the applicants relied concerned different proceedings and only the first applicant, and thus not the second applicant and W and Z. There were no contradictions between M.Ž.T.'s opinion and that of D.T., because the

opinions concerned different matters. Moreover, the domestic courts had provided sufficient reasons as to why the examination of D.T. was unnecessary in the contact proceedings.

2. *The Court's assessment*

(a) **General principles**

94. The Court points out that “family life” within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life. “Respect” for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII). For the general principles relating to the rights of grandparents, see *Mitovi v. the former Yugoslav Republic of Macedonia*, no. 53565/13, § 58, 16 April 2015, and *Terna v. Italy*, no. 21052/18, § 64, 14 January 2021.

95. In determining whether decisions on restriction of contact with a child in cases concerning parent-child relationship could be regarded as “necessary in a democratic society”, the Court has considered whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient. The Court has emphasised that in cases of this type the child’s interest must come before all other considerations. Account must also be taken of the fact that the national authorities have the benefit of direct contact with all the persons concerned. It is not the Court’s task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding contact issues but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see *S.J.P. and E.S. v. Sweden*, no. 8610/11, §§ 89 and 91, 28 August 2018, and *Gobec v. Slovenia*, no. 7233/04, §§ 132 and 133, 3 October 2013). The Court finds that these principles apply also to the cases concerning decisions on the contact rights of grandparents (see, for example, *Nistor v. Romania*, no. 14565/05, §§ 73 and 75, 2 November 2010, and *Manuello and Nevi v. Italy*, no. 107/10, § 58, 20 January 2015).

96. The Court further reiterates that, whilst Article 8 contains no explicit procedural requirements, the decision-making process must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, for example, *Petrov and X*, cited above, § 101). The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicants have been involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests (see *Z.J. v. Lithuania*, no. 60092/12, § 100, 29 April 2014, with further references).

97. The Court has previously found that, pursuant to the international standards in force, in any judicial or administrative proceedings affecting children's rights under Article 8 of the Convention, children capable of forming their own views should be sufficiently involved in the decision-making process and be given the opportunity to be heard and thus to express their views (see *M. and M. v. Croatia*, no. 10161/13, §§ 171 and 181, ECHR 2015 (extracts)).

(b) Assessment of the present case

98. The Court notes, firstly, that the applicants are grandparents of W and Z, who were left without parental care following the death of their mother and incarceration of their father. It was common ground that issues relating to the relations between the applicants and their grandchildren were covered by Article 8 of the Convention.

99. The Court further observes that the applicants' grievance concerning the contact proceedings is twofold. On the one hand, they complained about the domestic courts' refusal to examine expert D.T. and, on the other hand, they complained about the courts' failure to hear the views of W and Z and appoint a special guardian to represent their interests.

100. As regards the second complaint, it is observed that W and Z were not heard by the domestic court because the child psychiatrist, who was appointed by the court, considered that they were at that time not capable of forming their view on the matter (see paragraphs 38 and 40 above). The domestic court in reaching its decision on contact relied largely on the report prepared by the aforementioned expert, who had examined the children (see paragraphs 38 and 40 above). Considering this matter as pertaining to the overall assessment of evidence and having regard to the expert's opinion and the children's circumstances, the Court finds no reason to call into question the domestic court's decision not to hear the children directly (compare, *Petrov and X*, cited above, § 108).

101. In so far as the applicants complain about the fact that W's and Z's interests were represented by the V. Centre and not by a special guardian, the Court notes that W and Z are not applicants in the present case (contrast *C v. Croatia*, no. 80117/17, §§ 57 and 77, 8 October 2020). It notes that no arguments were put forward demonstrating that the alleged flawed representation of W and Z in the contact proceedings could have affected the applicants' position in those proceedings.

102. It remains for the Court to examine the complaint concerning expert D.T., who was one of several experts that provided opinions in the foster care permission proceedings. In the contact proceedings, the applicants relied on one segment of that opinion, namely the part where D.T. observed that the applicants and their grandchildren should be able to visit each other at home (see paragraphs 18 and 36 above). The applicants argued that expert D.T.

should have been examined in the contact proceedings because his opinion had been relevant to their outcome (see paragraph 90 above).

103. The Court notes that the first-instance court read D.T.'s opinion but refused to examine him at the hearing because of, *inter alia*, his limited field of expertise (see paragraphs 40 and 46 above). It further observes that two experts had been appointed when the contact between the applicants and their grandchildren had initially been determined (see paragraph 35 above) and a new expert report was prepared by the appointed child psychiatrist following the applicants' request for extended contact (see paragraph 38 above). The applicants were able to respond to her opinion in writing and orally at the hearing at which she was examined (see paragraph 38 and 39 above). The first and second instance courts explained why D.T. was not examined and their reasons were found to be adequate by the Constitutional Court (see paragraphs 40-42 and 46 above).

104. The Court reiterates the fundamentally subsidiary role of the Convention system (see, e.g., *Maurice v. France* [GC], no. 11810/03, § 117, with further references, ECHR 2005-IX) and notes that as a general rule it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts (see *Khusnutdinov and X v. Russia*, no. 76598/12, § 87, 18 December 2018, and *Süß v. Germany*, no. 40324/98, § 59, 10 November 2005). Having regard to the foregoing, to the reasons provided by the domestic courts and the relevant aspect of the proceedings (see paragraph 103 above), including the fact that the first applicant later objected to D.T.'s report (see paragraph 29 above), the Court does not find the domestic courts' refusal to examine D.T. unreasonable.

105. Therefore, and in the absence of any indication that the applicants were unable to participate in the proceedings to a degree sufficient to provide them with the requisite protection of their interests, the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with.

Accordingly, there has been no violation of Article 8 of the Convention in this respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. In respect of non-pecuniary damage, the first applicant, together with the second applicant, claimed 10,000 euros (EUR) in relation to the length of the proceedings concerning a foster care permission. She also claimed EUR 30,000 in relation to the removal of W and Z and the restricted contact with them. In addition, the first applicant, together with the second applicant, claimed EUR 10,000 with respect to the alleged procedural shortcomings in the contact proceedings.

108. The Government argued that the claim was unsubstantiated and, alternatively, excessive.

109. The Court, making its assessment on an equitable basis, as required by Article 41 of the Convention, and taking into account that a violation of the Convention has been found only with respect to the first applicant, awards the first applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

110. The first applicant, together with the second applicant, also claimed EUR 22,926 for the costs and expenses incurred before the domestic authorities in different sets of administrative and court proceedings relating to the removal of W and Z, the application for fostering and contact arrangements. She also claimed EUR 6,365 for the legal work and EUR 5,870 for the translation of the submissions in the proceedings before the Court.

111. The Government disputed the claim for costs and expenses incurred in the domestic proceeding and argued that in the most part it related to the sets of proceedings which were not a subject-matter of the present application. As regards the proceedings before the Court, they argued that the costs of translation were in part unsubstantiated and in part unnecessary, and that the claim as regards the legal work was excessive.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant the sum of EUR 3,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the second applicant's complaints under Article 6 § 1 of the Convention concerning the foster care permission proceedings and the first applicant's complaint under Article 6 § 1 of the Convention concerning the continuing involvement of the welfare authorities in those proceedings inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the first applicant's complaint about the length of the foster care permission proceedings;
3. *Holds* that there has been no violation of Article 8 of the Convention as regards the applicants' complaint concerning the contact proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President