



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

## FIRST SECTION

Application no. 6033/13  
A.H. AND OTHERS against Russia  
and 22 other applications  
(see list appended)

### STATEMENT OF FACTS

The applicants are nationals of the United States of America (the US applicants), prospective adoptive parents of children nationals of Russia, who are also indicated as applicants. The applicants in cases nos. 6033/13, 8927/13, 9417/13, 10490/13, 10549/13, 12275/13, 23879/13, 23890/13, 26309/13, 29191/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42289/13, 42340/13 and 42403/13 are represented before the Court by lawyers of the International Protection Centre based in Moscow, Russia. The applicants in case no. 27161/13 are represented before the Court by Irina O'Rear, a lawyer practising in Russia.

#### **A. The circumstances of the cases**

The facts of the cases, as submitted by the applicants, may be summarised as follows.

##### *1. General background*

###### **(a) Adoption procedure**

In 2010-2012 the US applicants started proceedings for adoption of a child from Russia. They have complied with the requirements set by the United States authorities having obtained a favourable conclusion concerning their living and financial conditions and their suitability to adopt a child. Some of the applicants had to comply with additional requirements established by the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children ("Bilateral Agreement on Adoption") upon its entry into force on 1 November 2012. They then applied to the Russian competent authorities who, in most cases, provided them with information on children available for adoption.

In all cases the US applicants received a positive conclusion from the Russian authorities concerning both the impossibility to transfer the child to a Russian family and their suitability to be the adoptive parents. They received a referral to visit the child concerned as part of the adoption procedure, which enabled them to spend several days with him or her in the orphanage. They visited the children; according to the US applicants, they formed a bond with them and confirmed their consent to adopt them. In some cases, according to the US applicants, they formed a bond with the child prior to having initiated the adoption procedure, and in one case the situation concerned adoption of a brother of a previously adopted girl (cases nos. 23890/13, 37173/13 and 42340/13, see the specific circumstances below). In such cases the adoption procedure initially concerned a particular child. Many of the prospective adoptive children suffer from serious health issues and require specialised medical care.

It appears that as of December 2012 the US applicants completed all the steps of the adoption procedure required prior to submitting the application for adoption to a court. However, on 21 December 2012 the Russian State Duma adopted the Federal Law no. 272-FZ on Measures in respect of Persons Involved in a Breach of Fundamental Human Rights and Freedoms, Rights and Freedoms of Nationals of the Russian Federation (“Law no. 272-FZ”), which, *inter alia*, banned the adoption of Russian children by nationals of the United States. The law entered into force on 1 January 2013.

Those US applicants who had submitted the application for adoption to a court before 1 January 2013 and had had hearings scheduled for the end of January-February 2013 received information about the hearings being rescheduled for an earlier date in January 2013. Most of them were not able to attend the hearings because of short notice. The courts then discontinued the adoption procedure relying on Law no. 272-FZ. Some of the applicants appealed. It is not clear whether the appeal hearings took place.

The applications for adoption submitted by the US nationals after 1 January 2013 were rejected on procedural grounds also with reference to Law no. 272-FZ. Where the application was submitted on behalf of the US applicants by an adoption agency, it was rejected on the ground that as the agency’s activity had been banned it could not submit the application to the court. Where the application was submitted by another representative, it was rejected because it could only be submitted by an adoption agency.

It is not clear whether all the US applicants eventually submitted an application for adoption to a Russian court.

In April-May 2013 the US applicants received letters from the Ministry of Education and Sciences informing them that pursuant to Law no. 272-FZ their names were removed from the State data bank containing information on prospective adoptive parents which meant that they could no longer be considered as such.

In spring-summer 2013 some of the US applicants received information about their prospective adoptive children being transferred for adoption to other families.

**(b) Circumstances surrounding the entry into force of the Bilateral Agreement on Adoption and Law no. 272-FZ**

On 13 July 2011 the United States and the Russian Federation signed the Bilateral Agreement on Adoption setting out the procedure for intercountry adoption between the two States. It entered into force on 1 November 2012.

On 21 December 2012 the Russian State Duma adopted and on 28 December 2012 the President signed Law no. 272-FZ, also known as the “Anti-Magnitsky Law” or “Dima Yakovlev Law” due to the circumstances underlying its adoption. In the first place, the law has been described as a response to the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 passed by the United States Congress in November-December 2012 and signed by the United States President on 14 December 2012 (“Magnitsky Act”). The Magnitsky Act imposed sanctions on Russian officials who were thought to be responsible for the death of Sergei Magnitsky, a lawyer who had exposed an alleged large-scale tax fraud involving State officials and subsequently died in custody. The Magnitsky Act prohibited the Russian officials their entrance to the United States and the use of the United States’ banking system. The list of eighteen persons concerned was made public by the Administration of the President of the United States.

Russian authorities considered a response envisaging passing a similar act in respect of the United States nationals responsible for gross human rights violations, prohibiting their entry into Russia and freezing their assets within Russia. However, Section 4 § 1 of Law no. 272-FZ also introduced a ban on adoptions of Russian children by the United States nationals. The provision appears to have come about in the aftermath of the death in 2008 of Dima Yakovlev, a Russian toddler adopted by United States nationals. He was left alone for nine hours being strapped into his adoptive father’s car as the latter forgot to bring him to daycare service. The father was eventually acquitted of involuntary manslaughter. This news produced a stir in Russian media and highlighted a number of abuse cases involving Russian children adopted by the United States nationals, which entailed calls on the part of certain Russian authorities to either restrict or end adoptions by nationals of the United States.

At the same time as the introduction of the ban, according to Section 4 § 2 of Law no. 272-FZ, Russia terminated the Bilateral Agreement on Adoption. As under Article 17 of the Bilateral Agreement on Adoption it remains in force until one year from the date that one of the State-Parties informs the other Party of its intention to terminate the Agreement, this caused confusion concerning the validity of the agreement and the outcome of the pending adoption cases involving prospective adoptive parents from the United States.

On 28 December 2012 the United States Department of State released a statement concerning the adoption of Law no. 272-FZ which read, insofar as relevant:

“We deeply regret Russia’s passage of a law ending inter-country adoptions between the United States and Russia and restricting Russian civil society organizations that work with American partners. American families have adopted over 60,000 Russian children over the past 20 years, and the vast majority of these children are now thriving thanks to their parents’ loving support. The Russian government’s politically

motivated decision will reduce adoption possibilities for children who are now under institutional care. We regret that the Russian government has taken this step rather than seek to implement the bilateral adoption agreement that entered into force in November. We are further concerned about statements that adoptions already underway may be stopped and hope that the Russian government would allow those children who have already met and bonded with their future parents to finish the necessary legal procedures so that they can join their families.”

On 1 January 2013 Law no. 272-FZ entered into force.

During a briefing on 8 January 2010, the United States Department of State Spokesperson said that Russia had informed the United States of its intention to suspend the bilateral adoption agreement.

On 10 January 2013 news agencies, including BBC and RIA-Novosti, reported that the Press Secretary of the Russian President stated that the Bilateral Agreement on Adoption remained in force on that date and that it would remain valid through early January 2014. On the afternoon of the same day the Russian Ministry of External Affairs posted a comment on its website stating that Russia had terminated and not just suspended the Bilateral Agreement on Adoption and that a note to this effect had been handed over to the United States Embassy in Moscow on 1 January 2013.

On 13 January 2013 about twenty thousand people went out in the streets of Moscow to take part in the action called March Against Scoundrels so as to protest against Law no. 272-FZ.

The law was also criticised by human rights organisations including Amnesty International and Human Rights Watch and received numerous negative reactions from the media, including Time, Economist and The Guardian. According to most of the criticism, the law was politically motivated and detrimental to the children’s interests.

On 15 January 2013 forty-eight members of the United States Congress sent a letter to the President of Russia, Vladimir Putin, on behalf of the United States families affected by Law no. 272-FZ. The letter requested exemption for the families that were in the final stages of the adoption procedure and invited Russia to re-join the Bilateral Agreement on Adoption.

On 22 January 2013 the Russian Supreme Court issued a letter instructing the lower courts to allow the transfer of Russian adopted children into families of the United States nationals where a decision on adoption had been taken prior to 1 January 2013 even if it entered into force after that date.

It appears that proceedings in all cases involving prospective adoptive parents from the United States where a decision on adoption had not been delivered before 1 January 2013 were halted irrespective of the stage of the proceedings.

On 2 July 2013 the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a Resolution on Intercountry Adoption, where it called on the member-States “to recognize the foundational bond between prospective adoptive parents and the child and to honor and protect these nascent families” and urged them “to resolve differences, disputes, and controversies related to intercountry adoptions in a positive and humanitarian spirit” so as “to avoid any general, indiscriminate disruption of intercountry adoptions already in progress that could jeopardize the best interests of the child, harm the nascent family, or

deter prospective adoptive parents from pursuing an intercountry adoption”. Although Russia was not specifically referred to in the Resolution, it was introduced by the United States Senator Roger Wicker precisely as a response to the ban on adoptions by the United States nationals.

According to a news report by RIA Novosti of 5 July 2013, the Russian Ministry of External Affairs called futile any attempts of the OSCE Parliamentary Assembly to make Russia annul the previously adopted decisions concerning intercountry adoption, the latter being in full compliance with international law.

## *2. Specific circumstances*

**1. Application no. 6033/13** lodged on 22 January 2013 by three groups of applicants.

(a) First group of applicants: A.J.H., born on 16 May 1976, and J.A.H., born on 26 June 1977, who live in Vaughn, Montana, United States (the US applicants), and D.M. who was born on 17 August 2009 and lives in Lobnya, the Moscow Region.

D.M. suffers from Down syndrome, delayed psychological and speech development, congenital heart disease, cerebral ischemia of third degree and flat-footedness. He was prematurely born.

Having completed the required steps for the intercountry adoption, the US applicants obtained the referral to visit D.M. from the Ministry of Education and Science. They spent five days with him in September 2012. Subsequently the application for adoption was submitted to the Moscow Regional Court. The hearing initially scheduled for January 2013 was rescheduled for February 2013, following which it was again rescheduled for 30 January 2013. On the latter date the adoption procedure was discontinued on the ground that under Law no. 272-FZ the US applicants had no right to adopt D.M. The US applicants appealed. The appeal hearing was scheduled for 14 May 2013. It is not clear whether it took place.

(b) Second group of applicants: G.D.C. who was born on 14 August 1980 and lives in Salt Lake City, Utah, United States (the US applicant), and E.G. who was born on 28 May 2010 and lives in St. Petersburg.

E.G. is developmentally delayed, she is HIV positive and suffers from ectopic dermatitis.

The US applicant initiated the adoption procedure in December 2011. Having obtained the referral to visit E.G. from the Ministry of Education and Science, she spent several days with her in November 2012. The application for adoption, submitted to the St. Petersburg City Court, was rejected on 13 February 2013 on the ground that the US applicant’s representative, E.F., could not represent her as the application could only be submitted through an authorised agency. The US applicant appealed. On 2 April 2013 the St. Petersburg City Court dismissed the appeal. At the same time the US applicant resubmitted the application through another representative, O.T. On 21 March 2013 the second application was rejected for the same reasons. The US applicant appealed. On 12 April 2013 the St. Petersburg City Court dismissed the appeal.

(c) Third group of applicants: J.M., born on 1 June 1981, and A.M., born on 14 April 1982, who live in Gainesville, Georgia, United States (the US applicants), and V.T. who was born on 30 September 2008 and lives in Mytischy, the Moscow Region.

V.T. is developmentally delayed, he suffers from Down syndrome, hearing loss, heterotropy, intrauterine hypoxia, congenital heart disease (he underwent heart surgery in 2009 where an electric cardiostimulator was implanted), and a number of other illnesses.

The US applicants, who have two biological and one adopted child, initiated the procedure to adopt another child in March 2012. Having obtained the referral to visit V.T. from the Ministry of Education and Science, they spent five days with him in October 2012. The application for adoption was subsequently submitted to the Moscow Regional Court. The hearing initially scheduled for January 2013 was rescheduled for 12 February 2013, following which it was again rescheduled for 31 January 2013. On the latter date the adoption procedure was discontinued on the ground that under Law no. 272-FZ the US applicants had no right to adopt V.T. The US applicants appealed. The appeal hearing was scheduled for 14 May 2013. It is not clear whether it took place.

**2. Application no. 8927/13** lodged on 4 February 2013 by J.J., born on 12 December 1983, and Jn.J., born on 25 January 1984, who live in Dover, New Jersey, United States (the US applicants), and A.M. who was born on 27 January 2007 and lives in Moscow.

A.M. is HIV positive, suffers from heart murmur, ocular hypertension rhinitis and has medical issues with her eyes.

The US applicants initiated the adoption procedure in March 2012. Having obtained the referral to visit A.M. from the Ministry of Education and Science, they spent four days with her in November 2012. Subsequently the application for adoption was submitted to the Moscow Regional Court. The hearing was scheduled for 8 February 2013. However, the court then rescheduled the hearing for 31 January 2013. On the latter date the court rejected the request to postpone the hearing and discontinued the adoption procedure. The US applicants appealed. The appeal hearing was scheduled for 14 May 2013. It is not clear whether it took place.

**3. Application no. 9417/13** lodged on 5 February 2013 by S.K.L., born on 11 October 1972, and M.D.L., born on 23 September 1969, who live in Fairview Heights, Illinois, United States (the US applicants), and S.M. who was born on 17 May 2009 and lives in Malakhovka, the Moscow Region.

S.M. suffers from Down syndrome, hip deformity, heart septum defect, hyperplasia of the thymus gland, obstructive pulmonary disease, inborn femur deformity, dermatitis, anaemia and allergies.

The US applicants have a biological daughter who suffers from Down syndrome. Wishing to provide another child with similar needs with the same care and opportunities, they initiated the procedure for adoption of a child with special needs in April 2012. Having obtained the referral to visit S.M. from the Ministry of Education and Science, they spent four days with her in December 2012. Subsequently the application for adoption was submitted to the Moscow Regional Court. On 30 January 2013 it rejected the request to postpone the hearing and discontinued the adoption procedure on the ground that under Law no. 272-FZ the US applicants had no right to

adopt S.M. The US applicants appealed. The appeal hearing was scheduled for 14 May 2013. It is not clear whether it took place.

**4. Application no. 10490/13** lodged on 11 February 2013 by J.V. who was born on 16 June 1980 and lives in Grove City, Ohio, United States (the US applicant), and I.K. who was born on 28 August 2011 and lives in Volgograd.

I.K. was prematurely born and had prenatal contact with HIV and Hepatitis C. She had developmental delays and suffers from an open oval window of the heart, a false cord of a left ventricle and partial atrophy of the ophthalmic nerve.

The US applicant initiated the adoption procedure in December 2011. Having obtained the referral to visit I.K. from the Ministry of Education and Science, she spent six days with her in November 2012. On 5 December 2012 the application for adoption was submitted to the Volgograd Regional Court. On 4 February 2013 the adoption procedure was discontinued on the ground that under Law no. 272-FZ the US applicant had no right to adopt I.K. On 15 February 2013 the US applicant appealed. On 20 February 2013 the Volgograd Regional Court stayed the proceedings concerning the complaint and instructed the US applicant to correct certain deficiencies by 20 March 2013, in particular, to submit an original power of attorney for the representative. It is not clear whether the appeal was eventually examined.

**5. Application no. 10549/13** lodged on 11 February 2013 by J.E.L., born on 1 June 1962 and A.M.L., born on 4 February 1972, who live in Williamsport, Pennsylvania, United States (the US applicants), and S.T. who was born on 29 November 2011 and lives in Volgograd.

S.T. had prenatal contact with HIV and Hepatitis C.

The US applicants initiated the adoption procedure in December 2011. Having obtained the referral to visit S.T. from the Ministry of Education and Science, they spent six days with her in October 2012. On 3 December 2012 the application for adoption was submitted to the Volgograd Regional Court. On 1 February 2013 the adoption procedure was discontinued on the ground that under Law no. 272-FZ the US applicants had no right to adopt S.T. On 15 February 2013 the US applicants appealed. On 20 February 2013 the Volgograd Regional Court stayed the appeal proceedings and instructed the US applicants to correct certain deficiencies by 20 March 2013. It is not clear whether the appeal was eventually examined.

**6. Application no. 11327/13** lodged on 13 February 2013 by A.N., born on 9 June 1980, and B.N., born on 16 February 1980, who live in Germantown, Maryland, United States (the US applicants), and T.S. who was born on 16 January 2009 and lives in St. Petersburg.

T.S. suffers from Down syndrome, planovalgus deformity and hyperopia.

The US applicants initiated the adoption procedure in August 2011. Having obtained the referral to visit T.S. from the Ministry of Education and Science, they spent several days with him in October 2012. Application for adoption was submitted to the St. Petersburg City Court in November 2012. It was returned to the US applicants' representative E.F. on 28 December 2012, which precluded the applicants from going ahead with the adoption. On 12 and 28 March and 3 April 2013 the US applicants' representative O.T. requested a copy of the St. Petersburg City Court's

ruling on application of the US applicants. However, the file was not in the registry and the copy was not provided to her. On 11 April 2013 O.T. resubmitted her request to Judge G. and the President of the St. Petersburg City Court. In a letter of 16 April 2013 Judge G. refused to provide her with a copy of the ruling. On 22 April 2013 O.T. submitted a complaint against the refusal. The US applicants never received any court decisions in respect of their application.

**7. Application no. 11672/13** lodged on 14 February 2013 by C.E.H., born on 17 April 1974, and M.S.H., born on 27 August 1976, who live in Scottsdale, Arkansas, United States (the US applicants), and K.P. who was born on 2 August 2012 and lives in Vidnoye, the Moscow Region.

The US applicants had previously adopted a child from Russia in 2006. As they wished their son to have a sibling also of Russian ancestry, they initiated the procedure for adoption of another child from Russia in February 2012. Having obtained the referral to visit K.P. from the Ministry of Education and Science, they spent several days with her in November 2012. Subsequently the application for adoption was submitted to the Moscow Regional Court, and a hearing was initially scheduled for 22 January 2013. On 14 January 2013 the US applicants were instructed not to travel to Moscow as the hearing had been postponed. On 8 February 2013 they were informed that the adoption procedure had been discontinued on 30 January 2013 on the ground that under Law no. 272-FZ the US applicants had no right to adopt K.P. The US applicants appealed. It appears that the appeal hearing was scheduled for 14 May 2013. It is not clear whether it took place.

**8. Application no. 12275/13** lodged on 18 February 2013 by nine groups of applicants.

(a) First group of applicants: M.S.P., born on 15 May 1974, and A.N.P., born on 6 March 1980, who live in Papillon, Nebraska, United States (the US applicants), and A.A. who was born on 21 June 2005 and lives in St. Petersburg.

A.A. suffers from Down syndrome, moderate mental deficiency, strabismus, planovalgus deformity, delay in development, umbilical hernia and enuresis.

The US applicants initiated the adoption procedure in August 2011. Having obtained the referral to visit A.A. from the Ministry of Education and Science, they spent three days with her in October 2012. The application for adoption was submitted to a court on 20 December 2012. On 3 April 2013 the US applicants learned from their representative O.T. of a court ruling dated 24 December 2012 accepting the withdrawal of the application by the US applicants' representative E.F. The US applicants complained against the ruling arguing that they had never requested their representative to withdraw the application and that the power of attorney did not empower her to do that. They received no response.

(b) Second group of applicants: D.S.G. who was born on 29 May 1974 and lives in New York, New York, United States (the US applicant), and O.N. who was born on 24 June 2011 and lives in St. Petersburg.

O.N. suffers from prenatal encephalopathy, umbilical hernia, farsightedness, perinatal insufficiency, enlarged liver and atopic dermatitis.



The US applicant initiated the adoption procedure in December 2011. Having obtained the referral to visit O.N. from the Ministry of Education and Science, she spent four days with her in December 2012. On 11 February 2013 the application for adoption was submitted to a court through an adoption agency. On 14 February 2013 the court rejected the application having stated that according to Law no. 272-FZ the work of US adoption agencies was banned and they were not authorised to submit applications for adoption. The US applicant appealed on 4 March 2013. On 18 April 2013 she asked the court, by fax, to send the ruling concerning her appeal to her representative I.-Y. She received no response.

(c) Third group of applicants: B.C., born on 13 June 1965, and J.W.S., born on 4 January 1955, who live in Sag Harbor, New York, United States (the US applicants), and A.R. who was born on 24 March 2010 and lives in St. Petersburg.

A.R. was left by her parents, who suffered from substances addictions, at the age of eleven months. She was Hepatitis C positive, had enlarged liver and spleen and developmental delays.

The US applicants had two children, a son and a daughter. After their daughter had died of paediatric cancer at the age of twelve, they decided to adopt a child as their son did not wish to be the only child. The US applicants initiated the adoption procedure in February 2011. Having obtained the referral to visit A.R. from the Ministry of Education and Science, they spent five days with her in November-December 2012. On 11 February 2013 the application for adoption was submitted to a court through an adoption agency. On 14 February 2013 the court rejected the application having stated that according to Law no. 272-FZ the work of US adoption agencies was banned and they were not authorised to submit applications for adoption. The US applicants appealed on 4 March 2013. It is not clear whether the appeal has been examined.

(d) Fourth group of applicants: T.L.B.-S. who was born on 21 June 1968 and lives in Oltown, Maryland, United States (the US applicant), and V.O. who was born on 7 August 2005 and lives in St. Petersburg.

The US applicant has two biological children and a son adopted from Russia. She decided to adopt another child and appears to have initiated the adoption procedure in early 2012. Having obtained the referral to visit V.O. from the Ministry of Education and Science, the US applicant spent several days with her in November 2012. The adoption file was completed in December 2012. However, the application for adoption was not submitted to the court because of the entry into force of Law no. 272-FZ.

(e) Fifth group of applicants: S.M., born on 12 May 1966, and K.M., born on 30 April 1968, who live in lake Elsinore, California, United States (the US applicants), and V.G. who was born on 19 December 2005 and lives in St. Petersburg.

V.G. suffers from Down syndrome.

Having obtained the referral to visit V.G. from the Ministry of Education and Science, the US applicants spent three days with her in July 2012. The application for adoption was submitted to a court on 26 November 2012 by the US applicants' representative E.F. According to the applicants, several days before 1 January 2013 a judge called E.F. and asked her to withdraw the application, even though E.F.'s power of attorney did not authorise her

to do so. Several days later E.F. found out that the application was “lost” and the only record of submission was a note in the court’s register. On 12 and 28 March and 3 April 2013 the applicants’ representative O.T. requested a copy of the St. Petersburg City Court’s ruling on the application of the US applicants. However, the file was not in the registry and the copy was not provided to her. On 11 April 2013 O.T. resubmitted her request to Judge G. and the President of the St. Petersburg City Court. In a letter of 16 April 2013 Judge G. refused to provide her with a copy of the ruling. On 22 April 2013 O.T. filed a complaint against the refusal. It is not clear whether the complaint has been examined.

(f) Sixth group of applicants: J.R.V., born on 3 January 1973, and M.L.V., born on 27 May 1973, who live in Aurora, Colorado, United States (the US applicants), and Dz.L. who was born on 13 July 2010 and lives in St. Petersburg.

Dz.L. suffers from perinatal CNS affection of Hypoxic and ischemic genesis, astigmatism of both eyes, abnormal gall bladder, atopic dermatitis, dysplasia of the skin surface on the sole of her foot, food allergies and speech delay. She also had perinatal contact with Hepatitis C.

The US applicants initiated the adoption procedure in December 2011. Having obtained the referral to visit Dz.L. from the St. Petersburg Committee of Social Politics, they spent two days with her in December 2012. On 18 February 2013 the application for adoption was submitted to a court on the US applicants’ behalf by a private person. It was rejected on 19 February 2013 apparently on the ground that it could only be submitted by an authorised adoption agency. The US applicants appealed. It is not clear whether the appeal has been examined.

(g) Seventh group of applicants: Q.S., born on 8 April 1979, and W.S., born on 6 May 1980, who live in Salt Lake City, Utah, United States (the US applicants), and D.K. who was born on 26 May 2011 and lives in Perm.

D.K. suffers from Down syndrome because of which she was abandoned after birth by her biological parents.

The US applicants initiated the adoption procedure in July 2012. Having obtained the referral to visit D.K. from the Ministry of Education and Science, they spent three days with her in December 2012. It appears that the adoption file was completed in December 2012. However, the application for adoption was not submitted to the court because of the entry into force of Law no. 272-FZ.

(h) Eighth group of applicants: S.A.K. who was born on 9 May 1960 and lives in Chicago, Illinois, United States (the US applicant), and K.R. who was born on 31 May 2009 and lives in St. Petersburg.

The US applicant previously adopted a girl from Russia. She decided to adopt another child and initiated the adoption procedure in May 2012. Having obtained the referral to visit K.R. from the Ministry of Education and Science, the US applicant spent several days with him in November 2012. On 11 February 2013 the application for adoption was submitted to a court through an adoption agency. On 13 February 2013 the court rejected the application having stated that according to Law no. 272-FZ the work of US adoption agencies was banned and they were not authorised to submit applications for adoption. The US applicant appealed on 4 March 2013. It is not clear whether the appeal has been examined.

(i) Ninth group of applicants: C.B., born on 1 December 1967, and T.B., born on 23 October 1966, who live in Pittsburgh, Pennsylvania, United States (the US applicants), and A.E.A. who was born on 22 August 2011 and lives in Perm.

A.E.A. suffers from CNS affection of hypoxic genesis, open oval window, umbilical hernia and psychomotor development delay, and had prenatal contact with HIV and Hepatitis C.

The US applicants initiated the adoption procedure in May 2011. Having obtained the referral to visit A.E.A. from the Ministry of Education and Science, they spent five days with her in November 2012. The completed adoption file was received by a local adoption coordinator. It is not clear whether the application was eventually submitted to a court as apparently the US applicants could not obtain the relevant information from their adoption agency.

**9. Application no. 23879/13** lodged on 7 April 2013 by L.C., born on 25 November 1974 and S.C., born on 9 November 1975, who live in Los Angeles, California, United States (the US applicants), and I.A. who was born on 26 June 2011 lives in St. Petersburg.

The US applicants initiated the adoption procedure in November 2011. Having obtained the referral to visit I.A. from the Ministry of Education and Science, they spent three days with him in November 2012. The application for adoption was submitted to the St. Petersburg City Court on 18 February 2013 by the US applicants' representative, a private person. On 19 February 2013 the court rejected the application without examination on the ground that it could only be submitted by an authorised adoption agency.

**10. Application no. 23890/13** lodged on 5 April 2013 by M.W., born on 2 February 1961, and D.W., born on 17 March 1964, who live in Woodstock, Virginia, United States (the US applicants), and M.K. who was born on 21 March 1998 and lives in Chelyabinsk.

The US applicants were involved in charity work in the Chelyabinsk Region since 2001. In particular, they helped with renovations of an orphanage where in 2008 they met M.K. As they developed a close relationship with him, in the winter of 2011-2012 they decided to adopt him and initiated the adoption procedure. On 11 December 2012 their application was rejected by the Ministry of Education and Science on the ground that it was submitted by the US applicants directly and not by an authorised adoption agency. The US applicants were recommended to re-apply through an agency. The adoption procedure was eventually halted by the entry into force of Law no. 272-FZ.

**11. Application no. 26309/13** lodged on 18 April 2013 by C.Z., born on 29 October 1974, and S.Z., born on 2 October 1976, who live in Simpsonville, South Carolina, United States (the US applicants), and A.K. who was born on 8 November 2008 and lives in Zelenogradsk.

A.K. has approximately eighteen months' developmental delay and a speech development delay; he suffers from enuresis, flat-footedness, open window in his heart and allergies. A.K. was taken from his home by social workers in August 2011 as he had been neglected and possibly abused by his parents.

The US applicants previously adopted a boy from Russia. They initiated the procedure for adoption of another child in April 2012. Having obtained the referral to visit A.K. from the Ministry of Education and Science, the US applicants spent four days with him in October 2012. They submitted the application for adoption to the Kaliningrad Town Court, and the hearing was scheduled for 17 January 2013. On 28 December 2012 they were informed that the hearing had been cancelled due to the adoption of the Law.

**12. Application no. 27161/13** lodged on 11 April 2013 by S.S., born on 13 March 1978, and G.S. born on 30 January 1982, who live in Shirley, Florida, United States (the US applicants), and E.O. who was born on 14 September 2009 and lives in Perm.

E.O. is HIV positive.

The US applicants initiated the adoption procedure in March 2012. Having obtained the referral to visit E.O. from the Ministry of Education and Science, they spent seven days with her in September 2012. On 10 October 2012 the Ministry of Education and Science confirmed that it appeared impossible to place the child into a family of Russian nationals living in Russia. The application for adoption was finalised by 28 December 2012. However, it is not clear whether it was eventually submitted to a court.

**13. Application no. 29191/13** lodged on 29 April 2013 by A.M., born on 13 January 1966, and M.M., born on 14 October 1966, who live in Barrington Hill, Illinois, United States (the US applicants), and G.Sh. who was born on 13 September 2011 and lives in St. Petersburg.

G.Sh. has an additional chord of the left heart ventricle. He suffers from mild hypermetropic astigmatism, cerebral ischemia and malnourishment. He also has developmental and speech delay.

The US applicants initiated the adoption procedure in January 2011. Having obtained the referral to visit G.Sh. from the Ministry of Education and Science, they spent several days with him in November 2012. Shortly afterwards the US applicants completed the file so as to submit the application for adoption to a court. It is not clear whether the application was eventually submitted as apparently the US applicants could not obtain the relevant information from their adoption agency which closed shortly after the entry into force of Law no. 272-FZ.

**14. Application no. 29197/13** lodged on 29 April 2013 by C.M.S. who was born on 27 February 1967 and lives in New York, NY, United States (the US applicants), and A.N. who was born on 9 December 2011 and lives in St. Petersburg.

At birth A.N. had the umbilical cord wrapped around his throat which led to a number of complications. He suffers from congenital heart disease, open foramen oval; congenital renal disease, pyelectasis; neonatal encephalopathy with seizures and conditions caused by the central nervous system ischemia. He also has motor and speech delay.

The US applicant initiated the adoption procedure in early 2012. Having obtained the referral to visit A.N. from the Ministry of Education and Science, she spent three days with him in December 2012. The application for adoption was submitted to the St. Petersburg City Court on 20 December 2012. It is not clear whether it was examined.

**15. Application no. 32224/13** lodged on 13 May 2013 by R.K.B., born on 21 December 1969, and T.B., born on 7 December 1973, who live in Wetumpka, Alabama, United States (the US applicants), and V.B. who was born on 3 March 2012 and lives in Volgograd.

The US applicants previously adopted a girl from Kazakhstan. In September 2011 they initiated the procedure to adopt another child from Russia. Having obtained the referral to visit V.B. from the Ministry of Education and Science, they spent seven days with her in December 2012. It is not clear whether the application for adoption was submitted to a court as apparently the US applicants could not obtain the relevant information from their adoption agency which closed shortly after the entry into force of Law no. 272-FZ.

**16. Application no. 32331/13** lodged on 16 May 2013 by D.M.L., born on 25 February 1972, and De.M.L., born on 7 November 1968, who live in Omaha, Nebraska, United States (the US applicants), and R.P. who was born on 19 February 2012 and lives in Vladivostok.

R.P. was prematurely born. He suffers from prenatal encephalopathy of anoxic-ischemic genesis, an anomaly of heart development, and anomaly of development and narrowing of palpebral fissure. He also has an additional chord of the left heart ventricle.

The US applicants initiated the adoption procedure in January 2012. Having obtained the referral to visit R.P. from the Ministry of Education and Science, they spent seven days with him in December 2012. It is not clear whether the application for adoption was eventually submitted to a court. After the entry into force of Law no. 272-FZ the US applicants contacted numerous authorities seeking possibilities to complete the adoption procedure.

**17. Application no. 32351/13** lodged on 16 May 2013 by J.F.B., who was born on 24 October 1966 and lives in Boston, Massachusetts, United States (the US applicant), and M.I. who was born on 18 April 2011 and lives in Vsevolzhsk, the Leningrad Region.

M.I. was prematurely born and has speech and psychomotor development delay. She suffers from congenital heart defect: open oval window.

The US applicant initiated the adoption procedure in July 2011. Having obtained the referral to visit M.I. from the Ministry of Education and Science, she spent several days with her in October 2012. The US applicant then submitted the application for adoption to the Leningrad Regional Court. On 25 December 2012 the court stayed the proceedings due to certain shortcomings in the documents submitted. In particular, in the certificate confirming that the US applicant had taken the required training for prospective adoptive parents her middle name was not indicated, hence the court doubted whether the certificate was actually issued to her. Furthermore, the validity of the certificate concerning her housing conditions expired on 7 November 2012 and therefore she had to renew it. The court instructed the US applicant to rectify this by 28 February 2013. However, on 17 January 2013 the Leningrad Regional Court discontinued the adoption proceedings and returned the application without examination on the ground that pursuant to Law no. 272-FZ the US applicant did not have a right to adopt M.I. Therefore, it was immaterial whether she could

rectify the shortcomings indicated earlier. The US applicant appealed. It is not clear whether the appeal was examined.

**18. Application no. 32368/13** lodged on 16 May 2013 by L.A.P., born on 3 March 1966, and J.N.T., born on 5 August 1971, who live in Long Beach, NY, United States (the US applicants), and K.K. who was born on 24 August 2010 and lives in St. Petersburg.

K.K. was abandoned at birth by her mother who was a drug addict. She is HIV positive and suffers from hepatitis.

The US applicants initiated the adoption procedure in 2011. Having obtained the referral to visit K.K. from the Ministry of Education and Science, they spent three days with her in February 2012. Subsequently the St. Petersburg City Court would not accept the application for adoption until the entry into force of the Bilateral Agreement on Adoption, following which the US applicants had to comply with additional requirements introduced by the Agreement. Later they also had to provide proof that their house had not been affected by the hurricane Sandy that had hit the Northeastern United States in October 2012. The application for adoption was eventually submitted to the St. Petersburg City Court on 22 May 2013. On 23 May 2013 the court returned the application without examination on the ground that it was submitted by private persons acting on the US applicants' behalf, whereas it could only be submitted through an authorised agency. The US applicants appealed. It is not clear whether the appeal has been examined.

**19. Application no. 37173/13** lodged on 7 June 2013 by J.W.H., born on 29 July 1981, A.M.H., born on 18 March 1969 (the US applicants) and G.N.Y.H., who live in Smartsville, California, United States, and V.B. who was born on 14 November 2001 and lives in Prokopyevsk.

On 5 July 2010 the US applicants adopted the third applicant, G.N.Y.H. As a result of what appears to be a clerical mistake, the information on her siblings had not been included in the State data bank, and it was at a later stage that the US applicants learned about her brother who was still in an orphanage, V.B. The US applicants then started making enquiries with a view to adopt V.B. as well. On 19 July 2011 they received a letter from the prosecutor's office of the Kemerovo Region stating that it would be possible to adopt V.B. if they were willing to do so. The US applicants then initiated the adoption procedure. At the same time they started corresponding with V.B. and sent him letters, photos and parcels. In June 2012 the US applicants informed the local authorities that they wanted to meet V.B. However, because of a number of events unrelated to the US applicants, including a local investigation with respect to the regional authorities and adoption in July 2012 of a regional act banning adoption of children by US nationals, repealed on 6 December 2012, the US applicants were not able to meet him. When all these issues seemed to be resolved, in December 2012 the US applicants prepared the application for adoption to be submitted to a court. It is not clear whether it was eventually submitted. The US applicants have been staying in contact with V.B. by telephone.

**20. Application no. 38490/13** lodged on 12 June 2013 by A.B., who was born on 24 July 1964 and lives in Sierra Vista, Arkansas, United States (the US applicant), and Ye.L., who was born on 23 July 2009 and lives in Novosibirsk.

Ye.L. was prematurely born. He suffers from hearing loss and has speech development delay. He also suffers from respiratory ailments and requires special medication.

The US applicant initiated the adoption procedure in 2008. As the adoption agency's licence was eventually revoked, she had to restart the procedure in 2011. Having obtained the referral to visit Ye.L. from the Ministry of Education and Science, the US applicant spent four days with him in July 2012. The application for adoption was finalised on 10 December 2012. It is not clear whether it was submitted to a court.

**21. Application no. 42289/13** lodged on 30 June 2013 by P.M., who was born on 2 April 1963 and lives in Montclair New Jersey, United States (the US applicant), and R.R., who was born on 23 April 2011 and lives in Tver.

R.R. is very small and underweight for her age. She has a developmental delay of motor skills and speech. R.R. was abandoned by her mother at birth.

The US applicant previously adopted a child from Russia. She initiated the adoption procedure of her second child in November 2011. Having obtained the referral to visit R.R. from the Ministry of Education and Science, she spent five days with her in October 2012. After that the US applicant completed the paperwork and in December 2012 travelled to Russia again. She spent the day of 18 December 2012 with R.R. and on the next day met with a judge to see if the paperwork was in order. The judge confirmed that the file was complete. However, on 20 December 2012 the US applicant's representative A.B. told her that the judge had called him and said that he had been instructed to postpone all hearings concerning adoption by Americans in view of the draft law being discussed in the Russian Duma. The US applicant then spent 20 and 21 December 2012 with R.R. On the latter date the US applicant's representative informed her that the hearing would not take place in December 2012. The US applicant had to return home. On 8 February 2013 the Tver Regional Court discontinued the adoption proceedings on the ground that pursuant to Law no. 272-FZ the US applicant did not have a right to adopt R.R. It is not clear whether the US applicant appealed.

**22. Application no. 42340/13** lodged on 30 June 2013 by M.B., born on 28 December 1966, and D.B., born on 9 November 1968, who live in Alabaster, Alabama, United States (the US applicants), and K.S., who was born on 29 November 2005 and lives in St. Petersburg.

K.S. spent five weeks at the US applicant's home in December 2010-January 2011 as a part of Orphan Hosting Program. As soon as she left, the US applicants started making enquiries about the adoption. In March 2011 they started the adoption procedure in respect of K.S. and her brother. In November-December 2011 and February-March 2012 the US applicants travelled to Russia. As it appeared, they could not go ahead with K.S.'s adoption as, whereas her mother's parental rights had been revoked, the revocation of her father's parental rights was pending but not finalised. This issue was resolved in March 2012. However, in April 2012 the US applicants learned that K.S.'s biological mother had had a baby girl, and that thus K.S. had three siblings. In May 2012 they amended the paperwork so as to apply for adoption of three children: K.S., her brother and sister. It

appears that adding the new-born girl first caused certain confusion at the Ministry of Education and Science, but the situation was resolved in August 2012. In September 2012 the US applicants had to comply with additional requirements introduced by the Bilateral Agreement on Adoption. In December 2012 they submitted certain clarifications concerning the children they were seeking to adopt. All this time the US applicant stayed in contact with K.S. The adoption procedure was halted by the entry into force of Law no. 272-FZ.

**23. Application no. 42403/13** lodged on 30 June 2013 by M.M., born on 20 September 1974, and J.M., born on 9 August 1976, who live in Westminster, MD, United States (the US applicants), A.M., who was born on 11 June 2002 and lives in Furmanov, the Ivanovo Region, and D.T., who was born on 22 October 2002 and lives in Kineshma, the Ivanovo Region.

A.M. and D.T. are not related. Their parents were stripped of parental rights. D.T. suffers from mitral heart prolapse. A.M. had been adopted at the age of five years old but then returned to the orphanage.

The US applicants initiated the adoption procedure in 2011 and initially were given an opportunity to choose between the two girls. They spent several days with each girl in September 2012, and eventually decided to adopt both. A.M. and D.T. met and, according to the US applicants, bonded. The application for adoption was subsequently submitted to the Ivanovo Regional Court. On 9 January 2013 it rejected the application on the ground that pursuant to Law no. 272-FZ the US applicants did not have a right to adopt A.M. and D.T. The US applicants appealed. On 4 February 2013 the Ivanovo Regional Court upheld the ruling of 9 January 2013 on appeal.

## **B. Relevant international and domestic law and practice**

### *1. General provisions on adoption*

#### **(a) International instruments**

Russia signed the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993 (The Hague Adoption Convention) on 7 September 2000, but it has not been ratified. Russia is not a party to the European Convention on the Adoption of Children, opened for signature in Strasbourg on 24 April 1967.

On 13 June 1990 Russia ratified the United Nations Convention on the Rights of the Child of 20 November 1989. The Convention provides, in so far as relevant:

#### **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; ...”

At its twenty-second annual session held in Istanbul, Turkey between 29 June and 3 July 2013 the OSCE Parliamentary Assembly adopted the Resolution on Intercountry Adoptions, which reads as follows:

“1. Desirous that a child, for the full development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding,

2. Understanding the necessity to take appropriate measures to keep the child with his or her birth family but, where that is not possible, to place the child with a substitute family in the child's country of origin for the purposes of upbringing,

3. Acknowledging that intercountry adoption may offer the advantages of a permanent family to a child if a suitable family cannot be found for the child in his or her country of origin,

4. Affirming the sovereign prerogatives and responsibilities of participating States to permit, prohibit, restrict, or otherwise regulate the practice of intercountry adoptions consistent with international norms and commitments,

5. Concerned that the political volatility of intercountry adoptions can have a deterring effect on the willingness of prospective adoptive parents to commit the substantial emotional and other resources required to pursue an intercountry adoption, thus increasing the likelihood that more children will be deprived of the happiness, love, and understanding of a family,

6. Sensitive to the fact that a child who is unable to grow up with his or her birth family has suffered loss, rejection, abandonment, neglect, or abuse and that, in all matters relating to the placement of a child outside the care of his or her own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration and every effort should be made to spare the child further disappointment and harm,

7. Recognizing the bond that forms rapidly between a child and prospective adoptive parents during the adoption process but before a legal parent-child relationship has been effected,

8. Convinced that this bond forms the foundation of a nascent family and that such a family is worthy of the recognition, respect, and protection of participating States,

The OSCE Parliamentary Assembly:

9. Calls on participating States to recognize the foundational bond between prospective adoptive parents and the child and to honor and protect these nascent families;

10. Urges participating States to resolve differences, disputes, and controversies related to intercountry adoptions in a positive and humanitarian spirit with special attention being given to avoid any general, indiscriminate disruption of intercountry adoptions already in progress that could jeopardize the best interests of the child, harm the nascent family, or deter prospective adoptive parents from pursuing an intercountry adoption;

11. Requests the OSCE take the necessary steps in a Ministerial Council decision, possibly in the context of existing human dimension commitments concerning family reunification, to clarify the issue of safeguarding, on a collective basis, the nascent family formed where an intercountry adoption is well-advanced.”

**(b) Constitution**

Article 15 of the Constitution of the Russian Federation provides, insofar as relevant:

“4. The generally recognised principles and norms of international law and the international treaties of the Russian Federation shall be an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than those provided for by the law, the rules of the international treaty shall apply.”

**(c) Code of Civil Procedure**

Article 269 (2) of the Code provides that nationals of the Russian Federation permanently living abroad, foreign nationals and stateless persons may submit an application for adoption to a court according to the place of residence or whereabouts of the child they seek to adopt.

Under Article 270, the application for adoption should contain the name of the adoptive parent(s) and his/her/their place of residence; the name, date of birth and place of residence or whereabouts of the child candidate for adoption as well as information on whether he/she has any siblings; reasons for the application; a request, if any, to change the child’s name or date of birth.

Article 271 provides a list of documents to be submitted with the application for adoption, which include:

- (1) a copy of the child’s birth certificate;
- (2) a copy of the adoptive parents’ marriage certificate if the application is submitted by a married couple;
- (3) if the application is submitted by one of the spouses – the other spouse’s consent or a document attesting that marital relations have been discontinued and the spouses have not been living together for over a year or other written proof thereof;
- (4) medical report on the state of health of the adoptive parent(s);
- (5) employment certificate and either a pay statement or other document attesting the income;
- (6) a document either confirming property rights or the right to use a dwelling;
- (7) a document confirming that the applicant(s) has (have) been included in the register as a prospective adoptive parent;
- (8) a document confirming that the applicant(s) has (have) undergone training for prospective adoptive parents.

Article 271 (1.1-2) further provides that nationals of the Russian Federation permanently living abroad, foreign nationals and stateless persons, apart from the documents listed above, should also enclose with their application an attestation of the competent agency of the State of the applicant’s nationality (or of the Russian national’s permanent place of residence) concerning their living conditions and aptitude to be adoptive parents as well as that State’s permission for the child’s entry and subsequent permanent residence in the State.

Article 272 (1) states that in the course of preparation for the hearing the court must obtain an opinion of the custody and guardianship office concerning the prospective adoption. Under Article 272 (2) – in case of adoption by nationals of the Russian Federation permanently living abroad,

foreign nationals and stateless persons – a document attesting the lack of possibility to place the child into care of Russian nationals or of the child’s relatives irrespective of their nationality and place of residence should be enclosed with the opinion.

Under Article 273 the application for adoption is examined by a court in camera in the mandatory presence of the adoptive parent(s), the representative of the custody and guardianship office, the prosecutor, and the child if the latter is older than fourteen years old; and, if necessary, in the presence of the child’s parents, other interested parties and the child between ten and fourteen years old.

Under Article 274, if the court grants the application for adoption, the rights and obligations of the adoptive parents and the adopted child become established on the date of the entry into force of the decision.

**(d) Family Code**

Under Article 126 of the Code Russian local executive agencies have to keep a register of foreign nationals and stateless persons wishing to adopt a child.

Article 165 of the Code provides that adoption of a child who is a Russian national by foreign persons should be carried out in compliance with the law of the State of the adoptive parents’ nationality. At the same time, general provisions of Russian law concerning adoption and provisions of the relevant international treaties should also be complied with.

**(e) Government’s Decree no. 275 of 29 March 2000 on Adoption of the Rules for Transfer of Children for Adoption and Exercise of Control over the Conditions of their Living and Upbringing in Foster Families in the Territory of the Russian Federation and [on Adoption] of the Rules on Registration by Consulates of the Russian Federation of Children – Nationals of the Russian Federation Adopted by either Foreign Nationals or Stateless Persons**

The Decree provides that adoption by foreign nationals or stateless persons of children who are Russian nationals is only allowed when it appears impossible to place such children into care of Russian nationals permanently residing in Russia or into care of the children’s relatives irrespective of the latter’s nationality and place of residence (Article 24).

The Decree further provides that an adoption agency specially authorised by a foreign State through its representatives in Russia may represent the interests of Russian nationals permanently living abroad, foreign nationals or stateless persons in respect of adoption-related matters (Article 25).

**(f) Federal Law no. 44-FZ of 16 April 2001 on State Data Bank of Children Left without Parental Care**

The law governs the functioning of the State data bank of children left without parental care (“The State data bank”). According to the law, the data bank should also contain information about persons wishing to adopt a child, including the person’s nationality (Section 7). Information about a person may be removed from the State data bank, in particular, if the circumstances which allowed the person to accept a child for upbringing

into his or her family, have changed (Section 9 § 2). The law uses the terms “federal operator” of the State data bank for a federal executive agency and “regional operator” for an executive agency of a subject of the Russian Federation, which carries out placement into families of children left without parental care (Section 1).

**(g) Government’s Decree no. 217 of 4 April 2002 on State Data Bank of Children Left without Parental Care and Exercise of Control over its Formation and Use**

The Decree develops the provisions of Federal Law no. 44-FZ of 16 April 2001 and provides a procedure for persons wishing to adopt a child that they have to comply with prior to submitting an application for adoption to a court. Article 20 of the Decree sets out the list of documents that Russian nationals permanently living abroad, foreign nationals or stateless persons wishing to adopt a child have to submit to the operator of the State data bank of children left without parental care. They include:

(1) statement of intent to adopt a child and a request to obtain information on children from the State data bank of children left without parental care;

(2) filled in application form;

(3) an undertaking to register the child with the Russian consulate abroad;

(4) an undertaking to provide a possibility for inspection of the adopted child’s living conditions;

(5) a copy of an identity document;

(6) attestation of the competent agency of the State of the person’s nationality concerning his or her living conditions and suitability to be adoptive parent;

(7) undertaking of the competent agency of the State of the person’s nationality to exercise monitoring of the adopted child’s living conditions and of his/her upbringing in the adoptive parents’ family;

(8) undertaking of the competent agency of the State of the person’s nationality to ensure that the adopted child is registered with the Russian consulate abroad;

(9) a copy of the licence or other document confirming the authority of the competent agency of the State of the person’s nationality indicated in (6) above.

All the above documents should be legalised and a certified translation into Russian should be provided for documents in a foreign language (Article 23). Upon receipt of the documents the operator of the State data bank provides the foreign applicant with information on the child which would correspond to the applicant’s wishes or returns the documents with a written refusal to provide the information requested indicating the reasons for the refusal (Article 24). In case of favourable outcome, the operator provides the applicant with a referral for a visit of the child (Article 25). The referral is valid during ten days which can be extended by the operator. The applicant has to visit the child and to subsequently inform the operator whether he/she wishes to continue the adoption procedure (Article 16). Within ten days upon the receipt of the foreign applicant’s request to adopt a child the regional operator provides the information on the applicant and

the child to the federal operator. The latter confirms within ten days the child's inclusion in the State data bank and the lack of possibility to place the child into care of Russian nationals permanently residing in Russia (Article 28). The foreign applicant should inform the operator in writing within ten days of (a) the application for adoption having been submitted to a court; (b) the court's decision in this respect; (c) the applicant's decision to abort the efforts on finding the child for adoption and removal of the information on him/her from the State data bank (Article 29).

**(h) Government's Decree no. 654 of 4 November 2006 on Activity of Foreign States' Agencies and Organisations on [Carrying out] Adoption of Children in the Territory of the Russian Federation and Control over its Exercise**

The Decree contains provisions on opening, functioning and discontinuation of activities of foreign adoption agencies' representative offices in Russia. Article 2 of the Decree authorises the Ministry of Education and Science to issue permissions to open a representative office. Under Article 20 of the Decree representative offices of foreign adoption agencies may carry out in Russia the following activities:

(1) submit an application to find a child for adoption to an executive agency or the Ministry of Education and Science and an application for adoption to a court;

(2) receive information about the child on the basis of prospective adoptive parents' application;

(3) issue invitations and provide visa support for prospective adoptive parents;

(4) arrange accommodation for prospective adoptive parents and assist them with the adoption procedure;

(5) participate in court hearings on adoption cases, receive judicial decisions on adoption and assist adoptive parents in obtaining birth certificate and a passport for the child to enable the latter travel outside Russia;

(6) carry out within the Russian territory other lawful activity related to representation of adoptive parents' and prospective adoptive parents' interests.

Under Article 14 the representative office of a foreign adoption agency which received a decision on either suspension or discontinuation of its activity must cease its activity related to adoption.

**(i) Decree of the Ministry of Education and Sciences no. 347 of 12 November 2008 on Approval of the Administrative Rules on Exercise of the Function of Federal Operator of the State Data Bank of Children Left without Parental Care and on Issuance of Preliminary Permissions on Adoption**

The Rules adopted by the Decree govern the activity of the Ministry of Education and Science in so far as it concerns its functions of the federal operator of the State data bank.

2. *Specific provisions on adoption of children – nationals of the Russian Federation by nationals of the United States of America*

(a) **Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children of 13 July 2011**

The Bilateral Agreement on Adoption was signed in Washington, DC on 13 July 2011. It was ratified by the Russian State Duma on 28 July 2012 (Federal Law no. 150-FZ) and entered into force on 1 November 2012.

The Bilateral Agreement on Adoption sets out the procedure to be followed for adoption of children who are nationals of the United States by Russian nationals and for adoption of children that are nationals of Russia by nationals of the United States. It provides, in particular, that adoption of a child from Russia shall occur only with the assistance of an authorised organisation, except for adoption by the child's relatives (Article 4 §§ 4 and 5). The authorised organisation is an entity from the United States authorised to perform activities in the field of intercountry adoption in accordance with the domestic laws of the United States and authorised to perform such activities in the Russian territory in accordance with Russian domestic laws and the Bilateral Agreement on Adoption (Article 1 § 5).

The Bilateral Agreement on Adoption further provides that the prospective adoptive parents shall obtain written conclusions about their living conditions and their suitability and eligibility to adopt a child issued by competent authorities of the receiving country, that is the country where the child will reside after his or her adoption (Article 8 § 1). The procedure for the prospective adoptive parents or an authorised organisation to submit an application to adopt a child to the competent authority of the country of origin (the country of which the child is a citizen and where he or she habitually resides before the adoption) is determined by the country of origin's domestic laws (Article 9 § 1). After the prospective adoptive parents have personally become acquainted with the child and have expressed their consent, the competent authority of the receiving country, if required by the domestic laws of either party, shall:

(a) review the documentation submitted by the prospective adoptive parents that indicates that

(i) the adoption and transfer are being carried out with the assistance of an authorised organisation;

(ii) the prospective adoptive parents have been duly informed of the requirements for completing the process of adoption in accordance with the domestic laws of the country of origin;

(b) confirm that the prospective adoptive parents have received information and undergone all required psycho-social preparation with the assistance of the authorised organisation or the competent authority; and that the conclusion regarding the suitability and eligibility of the prospective adoptive parents to adopt a child remains legally valid based on consideration of all the information available about the child matched with the prospective adoptive parents, including the child's social situation and medical history, his or her special needs, the child's availability to be placed for adoption and a detailed conclusion concerning his or her current state of health;

(c) issue a preliminary conclusion about the eligibility of the prospective adoptive parents to transfer the child who is being adopted from the country of origin to the receiving country (Article 10 § 1).

The Bilateral Agreement on Adoption also contains the following provisions concerning its purposes, scope, applicable law and termination:

#### Article 3

“1. This Agreement is concluded for the purposes of ensuring that adoption of children from the United States of America to the Russian Federation and from the Russian Federation to the United States of America takes place with a view to ensuring the protection of the rights and best interests of the child.

2. The Parties shall cooperate with the goal of ensuring that adoption of children in accordance with this Agreement is based on the voluntary actions of the individuals involved in accordance with the Parties’ domestic laws.

3. The Parties shall take appropriate measures provided for by their domestic laws to prevent and suppress illegal activities involving children being adopted ...

4. The Parties proceed from the premise that this Agreement covers adoptions where the Country of Origin decides, in accordance with its domestic laws, that it is not possible to arrange for the upbringing of the children in their birth families and:

for the adoption of a child from the United States of America – when due consideration has been given to the possibilities for placement of the child with a family in the United States of America in accordance with its domestic law;

for the adoption of a child from the Russian Federation – when it does not appear to be possible to settle him or her for upbringing or place him or her with a family that could provide for his or her upbringing or adoption in the Russian Federation in accordance with its domestic law.”

#### Article 6

“1. The adoption and transfer of a child under this Agreement shall be carried out in accordance with the domestic laws of the Parties and the provisions of this Agreement. The requirements for prospective adoptive parents shall be determined by the domestic laws of the Parties and the provisions of this Agreement.

2. The conditions under which a child may be adopted, the list of persons, organizations or bodies whose consent is required for the adoption, and also the form of such consent shall be determined by the domestic laws of the Country of Origin.

3. The decision regarding adoption of a child shall be made by the Country of Origin’s Competent Authority that makes a decision regarding adoption.”

#### Article 17

“... 4. Prospective adoptive parents whose documents were registered at a Regional Authority of the Country of Origin at the time of entry into force of this Agreement shall have the right to complete the adoption procedure in accordance with the procedure which was in place prior to the entry into force of this Agreement. ...”

5. This Agreement shall remain in force until one year from the date that one of the Parties informs the other Party through diplomatic channels of its intention to terminate this Agreement. ...

#### **(b) Federal Law no. 272-FZ of 28 December 2012 on Measures in respect of Persons Involved in a Breach of Fundamental Human Rights and Freedoms, Rights and Freedoms of Nationals of the Russian Federation**

Law no. 272-FZ was adopted by the State Duma on 21 December 2012, approved by the Senate on 26 December 2012 and signed by the President on 28 December 2012. It entered into force on 1 January 2013. Section 1 § 1

lists activities that constitute a breach of Russian nationals' rights and freedoms, which include:

- a) involvement in abuse of fundamental human rights and freedoms;
- b) involvement in crimes against Russian nationals abroad;
- c) actions or omissions which led to exemption from responsibility of persons involved in crimes against Russian nationals;
- d) taking decisions that exempted from responsibility persons involved in crimes against Russian nationals;
- e) involvement in kidnapping and arbitrary imprisonment of Russian nationals;
- f) delivery of arbitrary and biased convictions in respect of Russian nationals;
- g) arbitrary prosecution of Russian nationals;
- h) taking arbitrary decisions violating the rights and legitimate interests of Russian nationals.

Sections 1 and 2 of the law provide for a ban to enter Russia and for a seizure of assets owned by the United States' nationals involved in such activities and for a ban on carrying out any transactions involving their property and investments. Under Section 2 § 1 an executive authority shall draw up a list of persons subject to such measures.

Section 3 § 1 further bans activity of non-commercial organisations involved in political life in Russia if they receive any assets from the United States' nationals or entities free of charge; or if they carry out within the Russian territory projects, programmes or other activities which pose a threat to the interests of the Russian Federation. Under Section 3 § 2 a Russian national who is also a national of the United States may not be a member or a head of a non-commercial organisation or its branch, or a branch of an international or foreign organisation if it participates in the political life in Russia.

The law contains the following provisions concerning adoption of Russian children by the United States nationals:

#### **Article 4**

“1. It is forbidden to transfer children who are nationals of the Russian Federation for adoption by nationals of the United States of America; the operation of agencies and organisations aimed at selecting and transferring children who are nationals of the Russian Federation for adoption by nationals of the United States of America wishing to adopt such children [is also prohibited] on the territory of the Russian Federation.

2. Due to the prohibition established in paragraph 1 of the present Section on transfer of children who are nationals of the Russian Federation for adoption by the nationals of the United States of America, the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children of 13 July 2011 shall be terminated by the Russian Federation.”

#### **(e) Letter of the Russian Supreme Court no. 7-VS-224/13 of 22 January 2013**

In the letter the Supreme Court provided the lower courts with the following instructions concerning the application of Law no. 272-FZ:

“In accordance with Article 125 § 3 of the Family Code of the Russian Federation and Article 274 § 2 of the Code of Civil Procedure of the Russian Federation in cases where the application for adoption is granted, the rights and obligations of the adoptive parent(s) and the adopted child become established on the date of entry into force of the court decision concerning the adoption.



Therefore, in cases where decisions concerning the adoption of children who are nationals of the Russian Federation by nationals of the United States of America were taken by the courts before 1 January 2013 and entered into force (including after 1 January 2013), the children should be transferred to the adoptive parents.”

**(d) Decree of the Ministry of Education and Science no. 82 of 13 February 2013 On Rectification of Breaches of the Legislation of the Russian Federation when Forming, Keeping and Using the State Data bank on Children left without Parental Care**

The Decree provides, *inter alia*, that regional operators should ensure that transfer of children for adoption into families of foreign nationals must be carried out in accordance with the provisions of Law no. 272-FZ (Article 3.4.3).

**(e) Letter of the Ministry of Education and Science no. DL-88/07 of 16 April 2013**

The letter states that, taking into account the ban on adoption of Russian children by the nationals of the United States introduced by Law no. 272-FZ, a regional operator of the State data bank should not issue referrals to visit a child to the United States nationals who were provided with the information on the prospective adoptee.

Furthermore, in accordance with Section 9 § 2 of the Law on the State Data Bank, the information about a prospective adoptive parent may be removed from the State data bank, in particular, if the circumstances which allowed the person to accept a child for upbringing into his or her family have changed. In view of the impossibility of adoption of Russian children by the United States nationals the regional operators should remove the information about the prospective adoptive parents – nationals of the United States and inform the latter accordingly.

Children left without parental care in respect of whom a referral for a visit was issued to the United States nationals and/or a consent for adoption in respect of whom was given by the United States nationals, are subject to transfer for upbringing into families of other persons (excluding the United States nationals) as provided by the Family Code and the Law on the State Data Bank.

When exercising their activity, the custody and guardianship authorities as well as regional operators should take into account the Decree of the Ministry of Education and Science no. 82 of 13 February 2013. In particular, priority should be given to transfer of children for adoption into families of Russian nationals permanently living in Russia.

## COMPLAINTS

1. The applicants complain under Article 8 of the Convention that, given that they were at advanced stages of the adoption procedure and a bond had been already formed between the prospective adoptive parents and children, the introduction and application to them of the ban on adoption of children – Russian nationals by nationals of the United States provided by Law no. 272-FZ constituted an unlawful and disproportionate interference with their family life.

2. The applicants also complain that by virtue of Law no. 272-FZ they were subjected to discrimination on the ground of the US applicants' nationality in breach of Article 14 of the Convention in conjunction with Article 8.
  
3. The applicants contend that most children applicants are in need of special medical care that would only be available to them in the United States and complain that depriving them of such medical assistance amounts to treatment prohibited by Article 3 of the Convention.

## QUESTIONS

With regard to cases nos. 6033/13, 8927/13, 9417/13, 10490/13, 10549/13, 11327/13, 11672/13, 12275/13, 23879/13, 23890/13, 26309/13, 27161/13, 29191/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42289/13, 42340/13, 42403/13:

1. The parties are requested to inform the Court on the latest steps taken by the applicants within the adoption proceedings and on the latest decision of the executive or judicial authorities in this respect. The parties are requested to provide copies of the relevant documents.
2. The Government are requested to inform the Court on the current situation of the prospective adoptive children in the present cases: whether they remain in an orphanage, including the address of the orphanage, and whether the transfer to a different foster family is pending and, if so, at what stage; or whether they have been transferred to a different foster family.
3. Given that the adoption procedure was not finalised, do the adult applicants have the authority to bring the applications before the Court on behalf of the children applicants? (See *S.D., D.P., and T v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996, unpublished, Commission report of 11 April 1997, DR 89-A, p. 31.)
4. Given the advanced stage of the adoption procedure, did the relations between the prospective adoptive parents and children constitute “family life” or “private life” within the meaning of Article 8 of the Convention?

In particular, as regards cases nos. 23890/13 and 42340/13, has there been “family life” or “private life” within the meaning of Article 8 of the Convention taking into account that the prospective adoptive parents and children met and formed a relationship prior to the initiation of the adoption procedure and, as regards case no. 37173/13, taking into account that the child the prospective adoptive parents are seeking to adopt is a sibling of their previously adopted daughter?

5. Having regard to the Federal Law no. 272-FZ of 28 December 2012 on Measures in respect of Persons Involved in a Breach of Fundamental Human Rights and Freedoms, Rights and Freedoms of Nationals of the Russian Federation (Law no. 272-FZ), has there been an interference with the applicants’ right to respect for their private and/or family life, within the meaning of Article 8 § 1 of the Convention?
6. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?
7. If the relations between the prospective adoptive parents and children did not constitute “family life” or “private life” within the meaning of Article 8 of the Convention, do they fall within the ambit of that provision for the

purposes of Article 14 of the Convention? (See *E.B. v. France* [GC], no. 43546/02, §§ 41, 45 and 47, 22 January 2008).

In particular:

(i) What is the date of termination of the Bilateral Agreement on Adoption between the United States and Russia of 13 July 2011 (the Bilateral Agreement on Adoption)?

(ii) If the Bilateral Agreement on Adoption remains in force throughout 2013, has the ban on adoption of children – nationals of the Russian Federation by nationals of the United States introduced by Law no. 272-FZ – become effective as from 1 January 2013? If so, how is the application of the ban in the present cases compatible with the Bilateral Agreement on Adoption?

(iii) What are the modalities of application of the ban on adoption introduced by Law no. 272-FZ to the applicants, given that they had initiated the adoption procedure prior to its entry into force?

8. Have the applicants suffered discrimination in the enjoyment of their Convention rights on the ground of the adult applicants' nationality, contrary to Article 14 of the Convention read in conjunction with Article 8? In particular, were they subjected to differential treatment and, if so, was it justified by objective and reasonable grounds?

9. Do the prospective adoptive children in the present cases require medical treatment that would only be available to them in the United States? If such treatment is unavailable in Russia, have the children applicants been subjected to treatment in breach of Article 3 of the Convention?

**List of applications**

1. 6033/13 A.H. AND OTHERS v. Russia
2. 8927/13 J.J. AND OTHERS v. Russia
3. 9417/13 M.L. AND OTHERS v. Russia
4. 10490/13 V. and K. v. Russia
5. 10549/13 J.L. AND OTHERS v. Russia
6. 11327/13 A.N. AND OTHERS v. Russia
7. 11672/13 C.H. AND OTHERS v. Russia
8. 12275/13 M.S.P. AND OTHERS v. Russia
9. 23879/13 L.C. AND OTHERS v. Russia
10. 23890/13 M.V. AND OTHERS v. Russia
11. 26309/13 C.Z. AND OTHERS v. Russia
12. 27161/13 S.S. AND OTHERS v. Russia
13. 29191/13 A.M. AND OTHERS v. Russia
14. 29197/13 C.S. AND OTHERS v. Russia
15. 32224/13 R.K.B. AND OTHERS v. Russia
16. 32331/13 D.M.L. AND OTHERS v. Russia
17. 32351/13 J.F.B. AND M.V.I. v. Russia
18. 32368/13 L.A.P. AND OTHERS v. Russia
19. 37173/13 J.W.H. AND OTHERS v. Russia
20. 38490/13 B. A. AND Ye.L. v. Russia
21. 42289/13 M.P. AND R.R. v. Russia
22. 42340/13 M.B. AND OTHERS v. Russia
23. 42403/13 M.M. AND OTHERS v. Russia