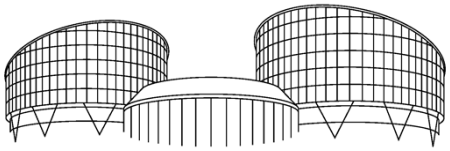

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF R.V. AND OTHERS v. ITALY

(Application no. 37748/13)

JUDGMENT

STRASBOURG

18 July 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of R.V. and Others v. Italy,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 37748/13) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French and Italian national, R. V. ("the first applicant"), and two Italian nationals, D. ("the second applicant"), and T. ("the third applicant"), on 29 April 2013. The President of the Section decided not to have the applicants' names disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants were represented by Ms R. Aiello, a lawyer practising in S. The Italian Government ("the Government") were represented by their former Agent, Mrs E. Spatafora, and their co-Agent, Mrs M. L. Aversano.

3. The applicants alleged that measures placing the first and second applicants in care and the implementation of those measures had violated their rights under Article 8 of the Convention.

4. On 2 June 2016 the Government were given notice of the complaints concerning Article 8 of the Convention, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The French Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are all resident in Italy.

A. Care measures and domestic proceedings

7. The first applicant married S.M. and they had two sons: D., born in 2002, and T., born in 2004.

8. On 26 September 2005 S.M. and the first applicant's mother went to the local health authority's family advice and support centre (*consultorio familiare*), with a view to seeking assistance in dealing with the first applicant and the children.

9. On the same day social services from the local health authority filed a report with the public prosecutor of the G. Youth Court, which contained a record of the meeting with S.M. and the first applicant's mother. It is apparent from the report that the first applicant's mother and S. were concerned about the first applicant's recent behaviour. They stated that the first applicant stayed out late at night and sometimes took the children with her without telling S.M. where they were going, and did not take adequate care of the children. S.M. stated that the first applicant displayed an aggressive attitude towards him. They voiced suspicions that the first applicant might be bulimic. The first applicant's mother expressed her concern over fights that had been taking place between the first applicant and S.M. in front of the children. She further asserted that the first applicant did not want to send the eldest child to nursery school. S.M. stated that he had talked with the first applicant about the possibility of legally separating, but was concerned about the fact that the first applicant had apparently expressed a wish to gain custody of the children.

10. On 3 October 2005 the public prosecutor filed an application with the G. Youth Court, seeking interim measures to protect the children pending a decision by the competent judicial authority.

11. By a decision of 7 November 2005 the G. Youth Court placed the children in the care of the S. Municipality on a temporary and emergency basis. The relevant parts of the decision read:

> "Having considered submissions to the effect that the mother's condition has worsened (erratic behaviour, the appearance of conduct which may be associated with bulimia, increased aggressiveness in family relationships);
>
> [And considering] that such behaviour on the mother's part appears to be seriously prejudicial to the young children: the minors are reportedly exposed to displays of aggressiveness to which they react, they are reportedly not being taken care of, or are taken by the mother to places not known to the father. D. does not attend nursery school;
>
> [And considering] that the father does not appear to be able to cope with the critical situation;
>
> [And considering] that, in order to protect the minors, it appears necessary to place them in the care of social services, with a view to ensuring the most appropriate temporary placement – preferably within their own family, but in the event that this is not practicable, outside their family – for such time as is necessary in order to carry out an assessment of the situation and of parental resources;

...

[THE COURT] ORDERS:

That D. and T. be placed in the care of the S. Municipality, which, in coordination with social services, shall: immediately arrange the most appropriate protective placement, preferably within the children's family, but in the event that this is not practicable, outside their family; implement the most appropriate support package for the parents and the children; assess parental capabilities and identify existing problems, while providing advice to the parents on necessary therapeutic interventions or other support as required;

Submit a report by 30 November 2005, [or] immediately if necessary;

..."

12. From the material in the case file, it is apparent that the children were temporarily placed with the first applicant, albeit in her mother's home.

13. On an unspecified date the first applicant and S.M decided to legally separate, and judicial proceedings to this effect were initiated before the S. District Court.

14. A hearing before the G. Youth Court was held on 7 December 2005. The first applicant expressed the wish that her children be placed with her, in her own home, and stated that she was prepared to be supervised by social services. She complained that nobody had spoken to the children and, for this reason, questioned the reliability of the conclusion to the effect that they were not being appropriately taken care of. The first applicant's mother expressed the opinion that the first applicant was capable of being a mother and could stay with the children in her (the first applicant's) home with the assistance of social services. She added that she was experiencing difficulties in managing the situation as it stood. On the same date, the judge forwarded the hearing transcripts to social services, asking them to assess the most appropriate solutions for the care and placement of the children in the light of the parties' statements.

15. On an unspecified date social services identified the placement of the first applicant and the children in a supervised residential unit (*comunità*) as a temporary solution. The unit would provide support and supervision with regard to the children's care.

16. On an unspecified date the first applicant started having psychotherapy sessions.

17. On 16 December 2005 the first applicant and the children moved to the supervised residential unit.

18. On 20 February 2006, in the context of the separation proceedings before the S. District Court, the first applicant and S.M. made an application for the children to be placed with S.'s mother.

19. On 27 February 2006 the S. District Court issued a decision in in which it acknowledged the decision by the G. Youth Court of 7 November 2005, and observed that no assessments had been carried out by social

services ("*i servizi*"). Owing to the lack of such assessments, it concluded that it had no choice but to confirm the decision of the G. Youth Court. The court further ordered social services to issue a report on the children's situation and the possibility of placing them with their paternal grandmother. It appointed an investigating judge and set a hearing date for 4 May 2006.

20. On 6 April 2006 the first applicant left the supervised residential unit, where the children remained.

21. On 5 May 2006 the investigating judge of the S. District Court dismissed the parents' application for the children to be placed with S.'s mother until such time as the necessary assessments by social services had been carried out.

22. At a hearing held on 22 June 2006 before the S. District Court, the first applicant reported that the children were experiencing problems in the supervised residential unit, as D. was suffering from alopecia and T. was experiencing difficulties in sleeping. She further complained of shortcomings on the part of the supervised residential unit's staff, and complained that the staff were not providing the children with adequate care. The latter concerns were shared by S.M.

23. On an unspecified date the children were placed with their paternal grandmother.

24. On 20 June 2006 the mental health unit of the S. local health authority issued a certificate attesting to the fact that, as advised by social services, the first applicant had been attending psychotherapy sessions at the unit until May 2006. It was further certified that she was not receiving psychiatric care because no "psychopathological elements worthy of note" had been diagnosed.

25. On 23 June 2006 the investigating judge of the S. District Court appointed a psychologist, Dr L., to perform an independent expert assessment of the parents' capacity to perform their role, determine the best placement for the children, and submit a report within ninety days.

26. On 23 January 2007 the paternal grandmother formally withdrew her agreement to having the children placed with her, although she stated that she was willing to keep them in her home until another solution could be found.

27. The expert report was delivered on 23 April 2007. The expert found, *inter alia*, that the first applicant's emotional sphere was characterised by egocentrism and narcissism, and that an overall immaturity in her emotions and relationships "partially impaired her parenting capacity".

According to the expert, the children were experiencing psychological harm, which could expose them to a risk of developing psychopathological disorders. She also found that D.'s relationship with his mother was "privileged and all-encompassing", and that this led to regressive behaviour, anxiety and insecurity on the child's part. D. was also found to be suffering

from a separation anxiety disorder. With regard to T., the expert found that his psychological suffering stemmed primarily from the first applicant's "fusional relationship" with her older son D.

The expert further considered that nobody in the children's close family had adequate resources which would allow for an appropriate placement of the children within the family. She therefore recommended that the children be placed with a foster family without delay, and that all contact with the parents be supervised. She recommended that a contact schedule be put in place, but only after the children had settled into the new family environment, and that the children's parents undergo relevant psychotherapy.

28. On an unspecified date the S. District Court forwarded the report to the G. Youth Court.

29. On 27 April 2007 the G. Youth Court issued an urgent decision, ordering the immediate suspension of all contact between the parents and the children (both direct and indirect). The court considered that such restrictions were necessary, owing to the possibility that the parents could react negatively to the findings of the independent expert and that this could, in turn, impact negatively upon the children during contact sessions. The court further requested that the paternal grandmother comply with the order and cooperate fully with social services. The duration of the suspension of contact was not specified in the decision.

30. On 5 May 2007 the S. District Court, having examined the report of the court-appointed expert, confirmed the order placing the children in the care of the S. Municipality, and decided that the children should be temporarily placed in the supervised residential unit where they had previously stayed. It confirmed the order suspending all contact with their parents. It affirmed that the latter measure, while painful for all the parties involved, was conducive to the children's placement with a foster family. The duration of the suspension of contact rights was not specified in the decision.

As advised by the court-appointed expert, the court further considered that the children's placement with a foster family could no longer be postponed, and forwarded its order to the G. Youth Court.

31. On 1 August 2007 the children were placed with a family in G.

32. On 29 September 2008 the first applicant lodged an urgent application (*istanza urgente di revoca*) with the G. Youth Court, seeking revocation of the care order. She sought custody of the children and requested a new independent expert assessment. She complained that the decision limiting her parental rights had been unfair, in that it had been based solely on the submissions made by her mother and S.M., and no investigation had taken place with a view to ascertaining the situation of the children. She further complained that, since the children's placement in foster care, the contact sessions which were meant to take place on a weekly

basis did not take place with such frequency, but rather at the discretion of social services.

33. On 19 January 2009 the G. Youth Court appointed Dr L. as an independent expert, the same psychologist who had completed the assessment for the S. District Court.

34. The expert's report was submitted on 23 January 2010. With regard to the mother's mental functioning, the expert confirmed that it was characterised by "some traits of a paranoid, antisocial, narcissistic and histrionic personality", which she classified as a "personality disorder not otherwise specified", which partially impaired the mother's parenting capacity. With regard to the children, she found that they had settled into the foster family and their overall condition was improving, as they were receiving a steady flow of attention and affection. D., however, still experienced difficulties in emotional relationships and struggled with abandonment issues, and T. displayed insecurity and regressive behaviour.

The expert recommended that the children remain in the care of the S. Municipality and placed with the foster family. She further recommended that contact sessions with the parents take place every three weeks under the supervision of social services. She also recommended that meetings be organised between the children's parents and the foster family, and advised that the first applicant should continue her psychotherapy.

35. On 1 June 2010 the first applicant submitted to the G. Youth Court an expert report by a psychologist whom she had instructed independently. The report contested Dr L.'s conclusions. Amongst other things, the expert argued that Dr L. had drawn a direct link between her assessment of the first applicant's mental functioning and the impairment of the first applicant's parenting capacity. The expert also stated that the children had been repeatedly subjected to abrupt separations from emotional reference points, with serious consequences. She expressed concerns regarding the fact that the children had not seen their parents for over five months, and found that the suspension of all contact exacerbate their feelings of anxiety and insecurity. She advised that there should be frequent contact sessions between the children and their biological parents.

36. By a decision of 15 June 2010 the G. Youth Court scheduled a contact session between the parents and the children for 18 June 2010, to take place in the court-appointed expert's office and in her presence. The court ordered that another contact session like this should be scheduled for the month of July.

37. A hearing was held on 17 September 2010 before the G. Youth Court. Dr L. confirmed the conclusions in her report of 23 January 2010 and submitted a report in reply to the assessment by the first applicant's independently instructed expert. She also submitted a report by a psychiatrist who had examined the children's parents at her request, and

reiterated her ability to host the supervised contact sessions between the parents and children in her office.

At the same hearing the first applicant reiterated her request concerning the revocation of the care and placement order and the temporary placement of the children with a foster family. She further requested that steps be taken towards reunification, with a view to facilitating the children's return to her. S. also sought revocation of the care order, and stated that he had no objection to the children returning to the first applicant on the condition that his contact rights be guaranteed.

38. On 30 April 2011 the first applicant lodged a complaint against Dr L. with the Regional Board of Psychologists.

39. By a decision of 7 December 2011 the G. Youth Court confirmed the children's placement with the foster family with whom they were already living. In reaching the conclusion that such a measure was still necessary, the court referred to the findings of the court-appointed expert.

With regard to the parents' contact rights, the G. Youth Court decided that supervised contact sessions would provisionally take place every three weeks, last two hours, and take place in a neutral environment. The practical arrangements regarding the sessions were entrusted to S. social services, acting in cooperation with G. social services. Any decision concerning the sessions was subject to the prior agreement of the court-appointed expert, Dr L. The court also decided that, until social services finalised the necessary arrangements for the contact sessions, they would take place on a monthly basis in accordance with instructions issued by Dr L.

40. On 1 June 2012 the first applicant lodged an appeal (*reclamo*) against the decision of the G. Youth Court with the G. Court of Appeal. Amongst other things, her arguments were as follows:

(a) The decision to take the children into care had not been supported by sufficient reasons.

(b) The duration of the order placing the children in care had been excessive, as it had been in place since 2005. In this regard, she also contested the legal basis of the placement with the foster family – which was sometimes referred to by the courts as a "host family" (*famiglia d'accoglienza*), a vague term – as the relevant decisions had not been based on legal provisions pertaining to foster placement, but rather issued by means of provisions pertaining to emergency measures. She argued that placement in care should be a temporary solution to assist parents encountering difficulties, and that if the situation were irreversible, or if the children involved were deemed to be in a state of abandonment, then adoption proceedings should be initiated. She argued that placement in care for an indefinite period, as in the present case, was unlawful.

(c) The proceedings had been characterised by excessive delays. For example, the first applicant's urgent application for revocation, lodged in September 2008, had been decided by the G. Youth Court only in

December 2011. The proceedings had also been characterised by the late submission of reports by the court-appointed expert, in the absence of applications for extensions.

(d) The children had been placed in G., a city far away from her place of residence, and contact had been suspended at the discretion of social services without court orders to this effect (for example, from December 2009 to June 2010). She also sought an increase in the number of contact sessions she could have.

(e) The children had not been heard by the Youth Court.

41. On 31 October 2012 the G. Court of Appeal dismissed the first applicant's appeal. Referring to Dr L.'s report of 14 January 2010, the court considered that the first applicant had not overcome her personal problems and those concerning her relationship with the children, and noted that the first applicant displayed "some traits of a paranoid, antisocial and narcissistic personality", which partially impaired her parenting capacity. The court noted that the first applicant moved between S. and another city, where she conducted a professional activity which the court deemed to be incompatible with full-time parenting. The court noted that, based on a report by social services issued on 12 December 2012, the children had settled well into the foster family, were in good health, and had at least in part overcome the difficulties reported by Dr L. The court further dismissed the first applicant's application to increase the number of contact sessions she had with her sons on the same grounds, and remitted any further decision on the matter to the G. Youth Court, the judicial organ entrusted with the task of continuously monitoring the evolution of the situation.

42. On an unspecified date the first applicant's lawyer requested an expert opinion (*pro veritate*) from a team of psychologists. The opinion was delivered on 12 September 2013 and forwarded to the G. Youth Court. Amongst other things, the recommendations contained in the report were as follows:

(a) That telephone contact between the first applicant and the children be immediately reinstated.

(b) That a weekly contact session lasting from 10 a.m. to 7 p.m. be introduced, during which the first applicant could spend the day with the children without supervision.

(c) That after a few months the children be allowed to stay at the first applicant's home for one day during the weekend (from 10 a.m. to 7 p.m.), and that after some time an overnight stay be introduced.

(d) That the applicant gradually have increased involvement in decisions concerning her children (those relating to education, health, sports, recreation, and so on).

(e) That contact sessions lasting seven to fourteen consecutive days be planned, during which the children would spend time with the first applicant at her home or on holiday.

The psychologists also recommended the eventual transfer of the children to the mother, with contact rights granted to the foster family. They further recommended that the entire process be closely monitored by social services, and that psychological support for all the involved parties, including the foster family, be ensured.

43. In 2014 D.'s school sent a letter to the S. social services, expressing concerns for D.'s well-being, as he was experiencing panic attacks and hyperventilation, and was vomiting before tests. It also reported that D. had run away from school and had thrown himself into oncoming traffic, notwithstanding a teacher's efforts to stop him.

44. On 5 August 2014 the first applicant lodged another application with the G. Youth Court, seeking the revocation of the care order. She reiterated many of the complaints contained in her application of September 2008. She also complained, amongst other things, that in the nine years that the children had been placed in the care of the S. Municipality, and in the seven years that they had been placed with the foster family, the authorities had never put in place any sort of plan for her reunification with them. In addition, they had never changed the contact schedule, which had been in place for over seven years and had "crystallised" into a schedule allowing two hours of supervised contact every three weeks. The first applicant expressly argued that her rights under Article 8 of the Convention had been violated. According to the latest information received by the Court, in July 2017, a judicial decision on this application had not been issued.

45. On 26 February 2015, the first applicant's lawyer filed a motion with the G. Youth Court seeking that the children be heard by the court.

46. On 2 April 2015 the G. Youth Court granted the motion and set a hearing date for 5 June 2015. The court decided that the children were to be heard in the absence of their parents and their parents' lawyers.

47. On 14 May 2015 the first applicant's lawyer requested that the parties' lawyers be allowed to observe the hearing from behind a one-way mirror, so that they could avoid being seen by the children, but nonetheless be present.

48. On 29 May 2015 the G. Court adjourned the hearing to an unspecified date in the future, as the court building did not have a room with the necessary equipment (a one-way mirror and an audio system) to conduct the hearing in accordance with the first applicant's application. The court also adjourned the hearing where the parents would be heard (*comparizione dei genitori*) to an unspecified date.

49. On 29 June 2015 the first applicant's lawyer filed a motion with the G. Court, requesting that a new date for the hearing where the children would be heard be set without any further delay. She also requested that a date be set for the parents' hearing. She highlighted that time was of the essence in cases involving children who were separated from their biological parents, and called not only for a speedy scheduling of the

hearings, but also a speedy conclusion of the excessively lengthy childcare proceedings.

50. On 21 September 2015 the G. Court set the date for the children's hearing for 14 October 2015. Both children were to be heard simultaneously. It specified that the parents' lawyers and the public prosecutor had the opportunity to submit a list of proposed topics to be discussed with the children.

51. On 2 October 2015 the first applicant's representative submitted a list of proposed topics for discussion, and made an application for the children to be heard separately, so as to ensure their freedom and spontaneity.

52. On 13 October 2015 the G. Court dismissed the application to hear the children separately, on the grounds that a simultaneous hearing would "minimise stress" for them.

53. The hearing took place as scheduled on 14 October 2015. According to the summary report of the hearing, prepared by the G. Youth Court and submitted by the Government in their observations, the children told the judge, amongst other things, that they were happy to be living with the foster family.

B. Contact sessions between the first applicant and her children

54. According to the report by the S. social services furnished by the Government in their observations, from April 2006 to August 2006 supervised sessions were scheduled twice a week and took place in the residential unit (*comunità*).

55. Following the suspension of all contact in May 2007 ordered by the domestic courts (see paragraphs 29 and 30 above), two supervised sessions were organised, one in October and one in December 2007.

56. According to the report by the S. social services mentioned in paragraph 54, on their own initiative, social services once again suspended contact sessions from January to May 2008, as they reported that the children had not reacted positively to the previous two sessions with the parents. Supervised sessions resumed once again and took place on a monthly basis from June 2008 to March 2009 in the S. Municipality's youth office, and from April 2009 the monthly sessions took place in the court-appointed expert's office. The report does not specify the duration of the monthly sessions.

57. According to the same report, from January to May 2010 all contact sessions were once again suspended. According to the reporting officer, this was due to the ongoing expert assessment and judicial proceedings. Supervised monthly sessions resumed from June 2010 onwards and took place in the S. Municipality's youth office.

58. According to the contact report provided by the Government in their observations, from March 2012 to 2016 sessions took place once every three weeks, for two hours, under the supervision of caseworkers from a social cooperative to which social services had delegated responsibility.

C. Involvement of the Regional Independent Authority for the Rights of Children and Adolescents

59. On an unspecified date the first applicant lodged a complaint with the National Independent Authority for Children and Adolescents (*Autorità Garante per l'Infanzia e l'Adolescenza*). On 11 September 2014 the authority forwarded the complaint to the relevant Regional Independent Authority for the Rights of Children and Adolescents (*Garante Regionale dei Diritti dell'Infanzia e dell'Adolescenza*, hereafter "the Regional Independent Authority"), requesting that it conduct an investigation into the case and report back.

60. On 16 January 2015 the children were heard by two representatives from the Regional Independent Authority. The children described how they spent their days, what sports they did, schoolwork and how the sessions with their biological parents were going. The interviewers remarked that the children displayed no difficulties in accepting how their current living situation had developed. The transcript of the meeting was forwarded to the G. Youth Court for information.

61. On 29 June 2015 the Regional Independent Authority issued a report on the case.

62. As a preliminary remark, the report highlighted the lack of cooperation from the S. social services, which had refused to provide information and had not replied to letters requesting meetings in order to obtain their viewpoint (*ascolto delle parti*) with a view to carrying out a thorough assessment of the case. The representative from the Regional Independent Authority had reportedly been accused by one of the social workers of "interfering" with the case.

63. The report then reviewed reports by the social workers entrusted with the task of supervising the contact sessions with the parents, and quoted an extract indicating evidence of the children's strong attachment to the "host family".

64. Amongst other things, the report highlighted the following concerns:

(a) The placement of the children in care, which should have been a temporary measure, had evolved into a *de facto* permanent placement. On the basis of the documents before the Regional Independent Authority, and in the reporting officers' experience, the placement with the "host family" had acquired the characteristics of an adoption.

(b) The biological parents were allowed only sporadic contact with the children, and were prohibited from having any contact with the children for long stretches of time.

(c) The children had been placed in a city 140 km away from the biological parents' place of residence.

(d) The judicial proceedings had been characterised by delays and the court-appointed expert had been late in filing various reports, in the absence of any documented reasons for such delays.

(e) There were inconsistencies between the reports by social services and those submitted by the contact supervisors (*educatori*) regarding the mother's behaviour during contact sessions.

The report described the situation which had come into existence as a problem "with apparently no solution". The Regional Independent Authority stressed the temporary nature of foster care, noting that the placement with the "host family" had not been implemented under foster care provisions, and pointed to the situation of uncertainty this had generated. The reporting officers commented that living with another family for many years did not generate a right of "adverse possession" as with immovable goods.

Among the conclusions drawn in the report, the Regional Independent Authority expressed the opinion that a gradual rapprochement between the first applicant and her sons was in the children's best interests. The recommendations expressed in the report include those enumerated in the *pro veritate* opinion (see paragraph 42 above), which the Regional Independent Authority declared to endorse.

II. DOMESTIC LAW AND PRACTICE

A. The Civil Code

65. Article 330 of the Civil Code provides:

> "The court may declare parental rights forfeit if the parents do not perform or neglect the obligations inherent in their parental role or abuse the powers related thereto, causing serious detriment to the child.
>
> In such an eventuality, the court may, if there are serious grounds for so doing, order the child's removal from the family home."

66. Article 332 of the Civil Code reads:

> "The judge may restore parental authority when the reasons justifying its forfeiture have ceased to exist and there is no risk of harm to the child."

67. Law no. 149 of 28 March 2001 has amended certain provisions of Book I, Part VIII, of the Civil Code and Law no. 184/1983.

68. Article 333 of the Civil Code, as amended by section 37(2) of Law no. 149/2001 provides:

"Where the conduct of one or both parents is not such as to give rise to their parental rights being declared forfeit under Article 330, but is nonetheless detrimental to the child, the court may adopt any measure that is appropriate in the circumstances and may even order the child's removal from the family home or the removal of the parent or partner who has been ill-treating or abusing the child. These measures may be revoked at any time."

69. Article 336 of the Civil Code, as amended by section 37(3) of the same Law, provides:

"The measures indicated in the preceding Articles shall be adopted following an application by the other parent, a family member or the public prosecutor and, where prior decisions are being revoked, also by the parent concerned. The court shall deliberate in [a] private session and give a reasoned decision after gathering information and hearing representations from the prosecutor's office. If the measure is being sought against one of the parents, that parent must be heard. In cases of urgent necessity, the court may adopt, even of its own motion, temporary measures in the interests of the child.

In respect of the decisions referred to in the preceding paragraphs, the parents and the child shall be assisted by a lawyer, remunerated by the State in cases provided for by law."

B. National Independent Authority for Children and Adolescents

70. The National Independent Authority for Children and Adolescents (*Autorità garante per l'infanzia e l'adolescenza*) was established by Law No. 112 of 12 July 2011. Its mandate is to protect and promote the rights of children and adolescents according to the provisions of the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and other international instruments. The authority has various functions, one of which entails examining and investigating complaints submitted for its attention.

III. INTERNATIONAL LAW AND PRACTICE

71. An extract from the United Nations Guidelines for the Alternative Care of Children, adopted by the United Nations General Assembly resolution 64/142 of 24 February 2010, reads as follows:

"14. Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

72. The first applicant, who purported to be acting on behalf of her children as well, complained that the care measures and the implementation of those measures had infringed their right to respect for their family life enshrined in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

73. The Government contested that argument.

A. Admissibility

74. The Court observes at the outset that nothing prevents the first applicant from acting on behalf of her children as well. The Court has indeed already accepted on several occasions that parents who did not have parental rights could apply to it on behalf of their minor children (see *Lambert and Others v. France* [GC], no. 46043/14, § 94 and references therein, ECHR 2015 (extracts)).

75. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

76. The applicants submitted that the impugned measures had infringed their rights under Article 8 on several grounds, which may be summarised as follows:

(a) the decision to take the children into care had not been supported by sufficient reasons and no investigation had been conducted;

(b) the placement of the children in care, which should have been a temporary measure, had been extended indefinitely and had lasted over ten years;

(c) the measures taken by the authorities had been inconsistent with the aim of reuniting the mother and the children, and no steps towards reunification had been taken;

(d) the domestic proceedings had not been conducted in a diligent manner, they had lasted a long time, and the interests of the mother and the children had not been taken into account; and

(e) the contact restrictions, which had not been lifted or varied in ten years, had not been proportionate – contact had sometimes been suspended entirely and at other times had been scheduled in an irregular manner, and sometimes its organisation had been left to the discretion of social services and the court-appointed expert.

77. The first applicant further stressed that children's placement in the care of third parties ought to be a measure of last resort adopted only when the biological family was unfit to perform its duties, as the dissolution of a family might have detrimental and traumatic consequences for the children. She contested the findings made by the independent expert appointed by the domestic courts as regards her fitness to parent, and noted that the second report by the expert had been submitted after a delay of one year, although the report was mere confirmation of the previously submitted report.

78. The first applicant further complained about the numerous contact restrictions, and enumerated instances when contact had been completely suspended, arguing that the constant interruptions in contact had had a detrimental effect on her relationship with the children, as well as on the children's psychological well-being. She stressed that the sessions with her children had always been supervised by social workers, and that this had raised a barrier in the mother-children relationship.

(b) The Government

79. The Government contested the first applicant's submissions. They argued firstly that the domestic authorities had assessed and struck a delicate balance between the competing interests in the case. Citing the Court's judgment in *Scozzari and Giunta v. Italy* ([GC], nos. 39221/98 and 41963/98, ECHR 2000-VIII), they contended that, considering what the children had suffered as a result of the particular circumstances of the case, all decisions had been taken in their best interests to prevent harm to their health and growth, which had ultimately led to solutions not coinciding with the mother's interests.

80. Relying on the case of *T.P. and K.M. v. the United Kingdom* ([GC], no. 28945/95, ECHR 2001-V (extracts)), the Government argued that the impugned measures had been necessary within the meaning of the Court's case-law. As regards the decisions concerning the children's placement in care, including the placement with the foster family, they argued that those decisions had all been taken following a thorough assessment of the case, and bearing in mind the first applicant's unresolved psychological

problems. The Government also stressed that different types of placements had been contemplated before the children had been placed with alternative carers, but such placements had failed, owing to the unavailability of the parties involved.

81. As to contact restrictions, the Government contended that decisions in this sphere had all been taken in the best interests of the children. They pointed out that on one occasion a session had been organised between the children, the biological parents and the foster family without the supervision of social services, and that in the future some positive development might be detected, which could possibly lead to an increase in the number of sessions.

82. The Government highlighted the temporary nature of the care measures, stressing in particular that they had been issued and implemented in accordance with what they referred to as a "flexible" procedure under Articles 333 and 336 of the Italian Civil Code, whereby care decisions might be reviewed at any time if the conditions which had led to the measures being issued changed. They further emphasised that the first applicant had never been permanently divested of her parental authority.

83. The Government further contended that the childcare proceedings had been conducted expeditiously and with the highest regard for the needs of both the children and the parents. They noted in particular that the decision of the G. Court of Appeal had been issued in a timely fashion, and that the G. Youth Court had promptly dealt with the first applicant's application in 2015 for the children to be heard.

84. With particular regard to the delays in the expert submitting her reports, the Government stressed that the expert had had to take "a certain [amount of] time" owing to the complexity of the case and the "wide spectrum of aspects" characterising it.

85. The Government also stated that the children had integrated well into the foster family and had been enjoying a balanced lifestyle and appropriate care and education. They cited the independent expert's finding in 2010 to the effect that the children's overall conditions had improved owing to the "continuity of affection" provided by the foster family. The decision to keep the children with the foster family had been confirmed by the G. Youth Court in 2011 on the basis that the children's conditions had improved and the placement had had positive consequences, and the Government reported that in 2012 the G. Court of Appeal had found that the children were in good health, serene, and had partially overcome their problems. They contended that the children's statements during the closed hearing before the G. Youth Court in October 2015 provided further evidence of the children being happy with the foster family and not wanting to have their situation altered. Additional confirmation could be found in the interview conducted by the Regional Independent Authority. Such a positive outcome for the children could, in the Government's view, be interpreted as evidence

of the "effectiveness and appropriateness" of the decisions taken by the authorities.

2. The Court's assessment

(a) Whether there was an interference with the applicants' right to respect for their family life

86. The Court takes the view that the care measures at issue in the present case, which entailed the children's continued placement in care, under different arrangements, for over ten years, and the restrictions imposed on contact between the applicants, amounted to an "interference" with their right to respect for their family life.

(b) Whether the interference was justified

87. The Court reiterates that an interference with the right to respect for family life entails a violation of Article 8 unless it is "in accordance with the law", has an aim or aims that is or are legitimate under Article 8 § 2, and is "necessary in a democratic society" to achieve the aforesaid aim or aims.

(i) In accordance with the law

88. The applicants made general assertions as to the improper use of domestic legislative provisions which allowed for the indefinite extension of temporary care measures. The Court notes that the impugned care measures were based on the provisions set out in Articles 333 and 336 of the Civil Code (see paragraphs 65 to 69). While the Court expresses some concerns with respect to that legal framework (see paragraph 107 below), in the light of the manner in which the applicants' complaints were articulated it can accept, for the purposes of the present case, that the interference with the applicants' rights had been "in accordance with the law".

(ii) Legitimate aim

89. In the Court's view, the impugned measures might be considered as aiming to protect the "health or morals" and the "rights and freedoms" of the children. Accordingly, it is satisfied that they pursued legitimate aims within the meaning of paragraph 2 of Article 8.

(iii) Necessary in a democratic society

(α) Relevant principles

90. Turning to the necessity of the impugned interference, the relevant principles were recently summarised in *Jansen v. Norway*, no. 2822/16, §§ 88-95, 6 September 2018.

91. In particular, the Court reiterates that the placement of a child in care should normally be regarded as a temporary measure to be discontinued as

soon as circumstances permit, and any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and child (see *Covezzi and Morselli v. Italy*, no. 52763/99, § 118, 9 May 2003, and *R.M.S. v. Spain*, no. 28775/12, § 89, 18 June 2013). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*Kutzner v. Germany*, no. 46544/99, § 76, ECHR 2002-I). When a considerable period of time has passed since the child was first placed in care, the child's interest in not undergoing further *de facto* changes to its family situation may prevail over the parents' interest in seeing the family reunited (see *K.A. v. Finland*, no. 27751/95, § 138, 14 January 2003).

92. In addition, the Court has previously considered that decisions taken by courts in the field of child welfare may become irreversible. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see, for example, *N.P. v. the Republic of Moldova*, no. 58455/13, § 67, 6 October 2015).

93. The Court further reiterates that, whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8 (see *W. v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, p. 29, § 64, and *Cincimino v. Italy*, no. 68884/13, § 64, 28 April 2016). In this connection, the Court may have regard to the length of the local authority's decision-making process and any related judicial proceedings (see *W. v. the United Kingdom*, cited above, § 65). Effective respect for family life requires that future relations between a parent and child be determined solely in the light of all relevant considerations, and not by the mere passage of time (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, ECHR 2000-I; *D'Alconzo v. Italy*, no. 64297/12, § 64, 23 February 2017; and *Barnea and Caldararu v. Italy*, no. 37931/15, § 86, 22 June 2017). If they are not, there will be a failure to respect their family life, and the interference resulting from the decision will not be capable of being regarded as "necessary" within the meaning of Article 8. In this connection, the Court has further clarified that in cases concerning a parent's relationship with his or her child, there is a duty to act swiftly and exercise exceptional diligence, in view of the risk that the passage of time may result in a *de facto* determination of the matter (see, *mutatis mutandis*, *Kautzor v. Germany*, no. 23338/09, § 81, 22 March 2012 and, in the context of contact rights, *Endrizzi v. Italy*, no. 71660/14, § 48, 23 March 2017, and *Improta v. Italy*, no. 66396/14, § 45, 4 May 2017).

(β) Application to the case

94. For the purposes of the present analysis, the Court finds it useful to recapitulate the care measures at issue. The children were placed in the care of the S. Municipality in November 2005, with a view to ensuring their temporary protective placement, for such time as necessary in order to carry out an assessment of the family situation (see paragraph 11 above). From this date onwards social services tried out several temporary placement solutions, including the children's placement with grandparents and placement in a supervised residential unit with the mother (see paragraphs 15 and 23 above). In May 2007 the initial care order was made more stringent, as the court confirmed the need to formally separate the children from the biological parents and place them with a family of alternative carers (see paragraph 30 above). The children were placed with the alternative carers in August 2007 (see paragraph 31 above). From this date onwards the care measure was coupled with restrictions on contact between the children and their biological parents. During certain periods of time all contact with the parents was suspended (see paragraphs 29, 30 and 57) and during other periods contact was limited to sessions every month or every three weeks (see paragraphs 54-58 above).

95. The Court is mindful that decisions issued by the Youth Court within the applicable legal framework do not become final in the sense that they may be modified or revoked at any time on the grounds of changes in the underlying circumstances (see, in the context of contact rights, *D'Alconzo v. Italy*, no. 64297/12, § 47, 23 February 2017). The Court notes that in the context of such a legal framework, in the present case the care measures themselves were envisaged as temporary, as they were grounded on a legal basis foreseen for temporary measures which may be taken in cases of urgent necessity (see paragraphs 65-69 above). The temporary character of the measures was also stressed by the Government in their submissions. The Court further notes that the domestic decisions do not indicate that there was any expectation of long-term care outside the family, nor do they indicate that there was separation with a view to ultimately placing the children for adoption. The fact that the first applicant was never definitely divested of her parental authority, as also emphasised by the Government, constitutes additional evidence of the temporary nature of those measures. The Court notes, in addition, that in the November 2005 decision, which set the care process into motion, the G. Youth Court left it up to the Municipality, in coordination with social services, to decide on the most appropriate kind of placement for the children, and whether such a placement should be made within the family context or outside the family (see paragraph 11 above). The Court notes with concern that this element of delegation discloses the wide latitude afforded to social services by the G. Youth Court in the present case.

96. Despite the measures being of a temporary nature, the Court observes that in practice the children have been in the care of the S. Municipality uninterruptedly since 2005, thus for over ten years, according to the latest information received by the Court in July 2017. When the second and third applicants were placed with the alternative carers in 2007 they were five and three years of age respectively, thus they have spent a large part of their childhood with those carers. With the passage of time, the chances of the applicants being reunited as a family have, in the Court's view, progressively diminished.

97. Against this backdrop, the Court will need to assess whether extending the care measures in such a way for over ten years may be considered to have been "necessary" under Article 8. Given the facts of the case under scrutiny, what will be particularly relevant to the Court's determination is whether the domestic authorities acted swiftly and with the "exceptional diligence" that has to be exercised in cases involving child welfare (see paragraph 93 above and the cases cited therein). In conducting its assessment, the Court will have to satisfy itself that parent-child relations in the instant case have been determined solely in the light of all relevant considerations, and not by the mere passage of time (*ibid*.).

98. Turning to the facts of the case, the Court reiterates at the outset that the decision which set the entire care process in motion was the decision of the G. Youth Court of 7 November 2005 (see paragraph 11 above). The initial decision of November 2005 did not take a position as regards the existence of actual harm or danger to the children, but considered that the problems reported by the first applicant's mother and S. were allegations warranting precautionary action, and highlighted that a further assessment of the situation was required (see paragraph 11 above). The Court notes that, in the context of the parallel proceedings concerning the legal separation of the first applicant and S., in February 2006 the S. District Court stated that assessments by social services had not been carried out, and that for that reason it had to confirm the November 2005 order (see 19 above). The Court finds the confirmation and consequent extension in time of the care order on such a basis problematic, especially in the light of the seriousness of the – until then uncorroborated – allegations regarding the first applicant's conduct.

99. The Court further notes that following the S. District Court's February 2006 decision, one year and two months elapsed before another judicial decision confirming the order was delivered on 5 May 2007 (see paragraph 30 above). Moreover, the Court notes that this decision, which was delivered one year and five months following the issuing of the 2005 care order, was the first one in the entire care process confirming the 2005 order on the basis of an independent psychological assessment of the parents.

100. The Court further notes that the proceedings were also characterised by the untimely submission of expert evaluations, upon which decisions by the courts depended. In this connection, the Court notes that on 23 June 2006 the investigating judge nominated by the S. District Court appointed an independent expert to carry out an assessment of the parents' capacity to perform their role, and gave the expert a time frame of ninety days (see paragraph 25 above). The report was submitted following a considerable delay, that is ten months after the expert's appointment and six months after the deadline had passed. The Court does not call into question the need to suspend proceedings in order to obtain an expert opinion. Nor does it doubt the need for the expert in the instant case to take "a certain [amount of] time", as contended by the Government, due to the "wide spectrum of aspects" characterising the case. Nevertheless, it is not entirely persuaded by the Government's arguments in this regard, as the fact that the domestic court gave a ninety-day time frame for the submission of the report appears, in the Court's view, to be significant and indicative of the urgency of the matter being considered. The Court further notes that concerns over the delays in submitting expert reports and the lack of documented reasons for such delays were also expressed by the Regional Independent Authority in their assessment of the case (see paragraph 64 above).

101. The foregoing considerations already suffice to cast some doubts on the decision-making process, from the moment the care measures were introduced in November 2005 to their confirmation in May 2007, both in terms of speed and diligence. The Court reiterates that as of August 2007 the children were placed with the alternative carers (see paragraph 31 above). In the Court's view, managing the proceedings swiftly and with exceptional diligence was even more crucial from this moment onwards, given the physical removal of the children from the biological parents and the possibility of the children forming bonds with their alternative carers. Such a possibility, with its potentially far-reaching repercussions on the applicants' family life, was even more concrete in the light of the children's young age when placed with the alternative carers, coupled with the limitations on contact with the biological parents (see paragraph 94 above, *in fine*).

102. The Court observes that in September 2008 the first applicant lodged an urgent application with the G. Youth Court seeking, *inter alia*, the revocation of the care measures (see paragraph 32 above). After six months the G. Youth Court decided that a new independent expert assessment was necessary and subsequently appointed the same expert who had been nominated by the S. District Court (see paragraph 33 above). The G. Youth Court issued its decision rejecting the first applicant's application and confirming the care order and the children's placement with the alternative carers on 7 December 2011, that is almost three years after the application

seeking the revocation of the measures had been lodged. The Court by no means wishes to underestimate the complexity of the situation faced by the domestic authorities and the challenges inherent in balancing the conflicting interests at stake in the present case. It further appreciates the complexity of the childcare proceedings at issue, as highlighted by the Government. Nevertheless, the Court considers that three years – during which the young children remained with their alternative carers – to reach a judicial decision dismissing an urgent application in the context of temporary measures does not appear to be a reasonable time frame.

103. The Court reiterates that in the context of the latter proceedings before the G. Youth Court another expert assessment was requested and was once again submitted after a considerable delay. The expert's report was filed on 23 January 2010, approximately eleven months after the date on which it had been formally ordered by the court, notwithstanding the fact that the court had given the expert a ninety-day time frame for submitting the report (see paragraph 34 above). The Court notes that the assessment was carried out by the same independent expert who had dealt with the case previously. She was asked to submit a fresh opinion in a matter which was no doubt complex, but certainly not new to her. The delay must therefore be considered particularly long.

104. The Court observes that on 5 August 2014 the first applicant lodged another application with the G. Youth Court, once again seeking the revocation of the care order (see paragraph 44 above). According to the information provided by the parties, at the time the Government were given notice of the case, that is in June 2016, almost two years after the application had been lodged, no judicial decision had been issued by the Youth Court. During this time, the Court highlights that the children remained with the alternative carers and contact limitations remained in place (see paragraph 94 above, *in fine*).

105. In addition to highlighting, once again, the extended time frames characterising the proceedings, the Court's observations in the foregoing paragraph also disclose the fact that that in almost ten years from the confirmation of the care measures in May 2007, according to the information provided by the parties, there has been only one judicial decision by the court entrusted with the task of monitoring the evolution of the situation, the G. Youth Court, ruling on the merits of the care measures and the need to keep those measures in place or lift them.

106. In view of all the above elements, the Court is not persuaded that the conduct of the domestic authorities may be reconciled with the requirements of expedition and "exceptional diligence" that have to be exercised in cases involving child welfare. The considerations in the foregoing paragraphs also reinforce the Court's conclusion that the passage of time – fuelled by the extended time frames characterising the domestic decision-making process – was an influential factor in the determination of

the relations between the first applicant and the children. From this perspective, the Government's emphasis on the ultimately positive outcome for the children is not in itself sufficient to detract from the importance of speed and diligence in the decision-making process and preventing the passage of time from having an undue impact on the parent-child relationship.

107. Lastly, as an overarching consideration, the Court expresses its concerns over a system which the Government praises for its flexibility (see paragraph 82 above), but which also makes it possible, as demonstrated by the facts of the case, for placement into public care under legislation providing for "temporary measures" which may be taken in response to a situation of "urgent necessity" to be protracted indefinitely, with no time-limits being set for the duration of the measures or for their judicial review, with extensive delegation by the courts in favour of social services, and without parental rights being ultimately determined.

108. In view of the above, and in particular with regard to the various delays identified, the Court finds the decision-making process, which resulted in the children's uninterrupted placement in care for over ten years, incompatible with the requirements of Article 8. There has accordingly been a violation of this provision of the Convention.

109. Having regard to this conclusion, it is not necessary for the Court to examine the applicants' further complaints separately.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicants claimed a total of 28,000,000 euros (EUR) in respect of non-pecuniary damage, with EUR 8,000,000 to be awarded to the first applicant and EUR 10,000,000 each to the second and third applicants.

112. The first applicant further stated that she had developed health issues, including chronic thyroiditis, and that she lived in a state of profound sadness and unhappiness, with severe repercussions on her personal, family and social life, as a consequence of the emotional stress she had been subjected to. She also submitted that the situation complained of had had psychologically damaging effects on the children.

113. The Government responded that the claim was excessive. They further argued that no evidence had been submitted demonstrating a causal

link between the situation complained of and the health issues allegedly suffered by the first applicant.

114. While the Court finds the applicants' claims excessive, it accepts that they must have suffered some degree of distress and emotional hardship which cannot be compensated for solely by the finding of a violation. Making an assessment on an equitable basis, the Court finds it appropriate to award the applicants EUR 33,000, jointly, in respect of non-pecuniary damage.

B. Costs and expenses

115. The first applicant also claimed EUR 34,614.18 for the costs and expenses incurred, without providing further details, and invited the Court to examine the bills and invoices enclosed with the observations.

116. The Government contested that amount and stated that the first applicant's claim was not sufficiently detailed as required by the Court.

117. 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 have been 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 17,000 covering costs for the domestic proceedings. As no specific claim was made in connection with the costs incurred before the Court, no award is made under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay, 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 33,000 (thirty-three thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 17,000 (seventeen thousand euros) to the first applicant, plus any tax that may be chargeable, 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.

Done in English, and notified in writing on 18 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Ksenija Turković President