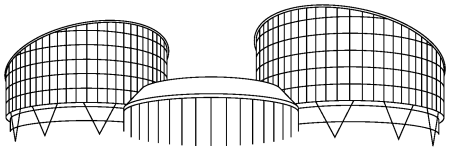

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.H. AND OTHERS v. RUSSIA

(Applications nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13)

JUDGMENT

STRASBOURG

17 January 2017

FINAL

03/07/2017

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

In the case of A.H. and Others v. Russia,

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

Luis López Guerra, *President*,
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 13 December 2016,

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

PROCEDURE

1. The cases originated in sixteen applications (nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by forty-five nationals of the United States of America on their own behalf and on behalf of twenty-seven children who are Russian nationals ("the applicants"). The President of the Section acceded to the applicants' request not to have their names disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants in cases nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13 were represented before the Court by lawyers from the International Protection Centre based in Moscow, Russia. The applicants in case no. 27161/13 were represented before the Court by Irina O'Rear, a lawyer practising in Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained about the application to them of the ban on the adoption of Russian children by US nationals of provided in Law no. 272-FZ.

4. Between 13 March and 4 July 2013 the President decided to grant the cases priority under Rule 41 of the Rules of Court, confidentiality under Rule 33 § 3 of the Rules of Court, and anonymity under Rule 47 § 4 of the Rules of Court.

5. On 4 November 2013 the applications were communicated to the Government.

6. Leave to intervene in the written proceedings (Article 36 § 2 of the Convention and Rule 44 § 2) was given to the Harvard Law School's Child Advocacy Program.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. General background

(a) Adoption procedure

7. The US nationals ("the US applicants") started proceedings for the adoption of children from Russia between 2010 and 2012. They had complied with the requirements set by the United States authorities, having obtained favourable appraisals of their living and financial conditions and their suitability to adopt a child. Some of the applicants had had to comply with additional requirements laid down in 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 competent Russian authorities who, except in those cases where the adoption proceedings had focussed on a particular child from the outset, provided them with information concerning the children who were available for adoption.

8. In most cases the US applicants received a positive decision from the Russian authorities regarding both the impossibility of placing the child in a Russian family and their suitability to become adoptive parents. As part of the adoption procedure, they obtained a referral to visit the child concerned, which enabled them to spend several days with him or her at the respective orphanage. They visited the children and reaffirmed their formal agreement to adopt them. In some cases, according to the US applicants, they had formed a bond with the child even before initiating the adoption procedure, and one case concerned the adoption of the brother of a previously adopted girl (cases nos. 23890/13, 37173/13 and 42340/13 respectively; see the specific circumstances below). In such cases the adoption procedure referred to a particular child from the outset. Many of the prospective adoptive children suffer from serious health issues and require specialist medical care.

9. By the end of 2012 most of the US applicants had completed all the requisite steps of the adoption procedure prior to submitting the adoption

application 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.

10. Adoption proceedings were halted in respect of those US applicants who had not submitted an adoption application to a court before the entry into force of Law no. 272-FZ.

11. In respect of those US applicants who had submitted an adoption application to a court but had not attended a hearing before the entry into force of Law no. 272-FZ, the courts discontinued the adoption proceedings, relying on Law no. 272-FZ. Some of the applicants appealed. Their appeals were dismissed.

12. Applications for adoption submitted by US nationals after 1 January 2013 were rejected on procedural grounds, with similar reference to Law no. 272-FZ. Where an application had been submitted on behalf of the US applicants by an adoption agency, it was rejected on the grounds that the agency could not submit an application to the court because the activities of such agencies had been banned. Where the application had been submitted by some other kind of representative, it was rejected because it should have been submitted by such an adoption agency only.

13. The US applicants were subsequently removed from the State databank containing information on prospective adoptive parents, meaning that they could no longer be considered as such.

14. After spring 2013 some of the prospective adoptive children were transferred for adoption by different families or placed in foster families.

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

15. 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.

16. On 21 December 2012 the Russian State Duma adopted Law no. 272-FZ – which was signed by the President on 28 December 2012 – also known as the "Anti-Magnitsky Law" or the "Dima Yakovlev Law" due to the circumstances underlying its adoption. 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 US President on 14 December 2012 (the "Magnitsky Act"). The Magnitsky Act imposed sanctions on the Russian officials who were thought to be

responsible for the death of Sergei Magnitsky, a lawyer who had exposed alleged large-scale tax fraud involving State officials and subsequently died in custody. The Magnitsky Act prohibited the Russian officials from entering the United States and using the United States' banking system. The list of the eighteen individuals concerned was made public by the Administration of the President of the United States.

17. The Russian authorities' response involved the passing of a similar act in respect of 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 the adoption of Russian children by United States nationals. The introduction of that provision was prompted by the death in 2008 of Dima Yakovlev, a Russian toddler adopted by United States nationals. He was left alone for nine hours strapped in his adoptive father's car after the latter forgot to take him to his day-care centre. The father was eventually acquitted of involuntary manslaughter. This news created a stir in the Russian media and resulted in the highlighting of a number of abuse cases involving Russian children adopted by United States nationals, leading to calls from certain Russian authorities to restrict or end adoptions by US nationals.

18. 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."

19. On 1 January 2013 Law no. 272-FZ entered into force. On the same date the Russian Ministry of Foreign Affairs informed the US Embassy in Moscow that, pursuant to Section 4 § 2 of Law no. 272-FZ, Russia was terminating the Bilateral Agreement on Adoption. Pursuant to Article 17 of the Bilateral Agreement on Adoption, it should have remained in force until one year from the date on which one of the States Parties informed the other Party of its intention to terminate the Agreement, and this move therefore caused confusion regarding the validity of the agreement and the outcome of the pending adoption cases involving prospective adoptive parents from the United States.

20. During a briefing on 8 January 2013, a United States Department of State spokesperson announced that Russia had informed the United States of its intention to suspend the Bilateral Adoption Agreement.

21. On 10 January 2013 news agencies including the BBC and RIA Novosti reported that the Russian President's Press Secretary had stated that the Bilateral Agreement on Adoption was still in force on that date and that it would remain valid until 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 not merely suspended the Bilateral Agreement on Adoption but had terminated it, and that a communication to this effect had been handed over to the United States Embassy in Moscow on 1 January 2013.

22. On 13 January 2013 about twenty thousand people gathered on the streets of Moscow to take part in an action called March Against Scoundrels to protest against Law no. 272-FZ.

23. 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*, *The Economist* and *The Guardian*. Most of the critical commentators argued that the law was politically motivated and detrimental to the children's interests.

24. 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 families who were in the final stages of the adoption procedure and invited Russia to re-join the Bilateral Agreement on Adoption.

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

26. Proceedings in all cases involving prospective adoptive parents from the United States in which a decision on adoption had not been delivered before 1 January 2013 were halted, irrespective of the status of the proceedings.

27. On 2 July 2013 the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a Resolution on Intercountry Adoption in which it called on 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" see paragraph 301 below). Although Russia was not specifically referred to in the Resolution, it was introduced by US Senator Roger Wicker in direct response to the ban on adoptions by United States nationals.

28. According to a news report by RIA Novosti of 5 July 2013, the Russian Ministry of External Affairs dismissed as futile any attempts by 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

(a) Application no. 6033/13

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

(i) First group of applicants

30. 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.

31. D.M. suffers, in particular, from Down syndrome, delayed psychological and speech development, congenital heart disease and insufficient blood flow. He was born prematurely.

32. Having completed the necessary steps for intercountry adoption within the United States, the US applicants were registered in the Russian State databank as prospective adoptive parents on 6 August 2012. They were assisted by the authorised adoption agency "Hand in Hand".

33. On 24 September 2012 the US applicants obtained a referral to visit D.M. from the Ministry of Education and Science. They visited him every day between 24 and 28 September 2012 and again between 10 and 13 January 2013. Each visit lasted between an hour and an hour and a half.

34. On 27 September 2012 the US applicants formally agreed to adopt D.M.

35. On 15 November 2012 the adoption application was submitted to the Moscow Regional Court. The hearing initially scheduled for 21 December 2012 was rescheduled for 15 January 2013 at the applicants' request.

36. On 10 January 2013 the US applicants arrived in Russia and visited D.M. every day between 10 and 14 January 2013.

37. On 15 January 2013 the US applicants appeared before the court. However, the hearing was adjourned at the request of the Ministry of Education of the Moscow Region, which cited a lack of guidance from the Supreme Court of Russia on the application of Law no. 272-FZ. A new hearing was scheduled for 21 January 2013.

38. On 21 January 2013 the US applicants appeared before the court. However, the Moscow Regional Court postponed the hearing until 11 February 2013 in response to a similar request from the Ministry of Education of the Moscow Region.

39. On 22 January 2013 the US applicants left for the United States. They booked a flight for 9 February 2013 in order to be present at the next hearing.

40. On 23 January 2013 the US applicants' representative, Z., was informed that the hearing had been rescheduled for an earlier date, namely 30 January 2013. This left the US applicants insufficient time to reschedule their trip to Russia, and they were unable to be present at the hearing.

41. On 30 January 2013 the Moscow Regional Court discontinued the adoption procedure on the grounds that under Law no. 272-FZ the US applicants had no right to adopt D.M. The US applicants appealed.

42. On 14 May 2013 the Moscow Regional Court upheld the decision of 30 January 2013. The US applicants lodged cassation appeal.

43. On 26 August 2013 the Moscow Regional Court refused leave to have the cassation appeal examined by the Presidium.

44. According to the Government, D.M. has been placed with a foster family.

(ii) Second group of applicants

45. G.D.C., born on 14 August 1980 and who 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.

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

47. The US applicant initiated the adoption procedure in December 2011. Having completed the necessary steps for intercountry adoption within the United States, the US applicant was registered in the Russian State databank as a prospective adoptive parent on 8 November 2012. She was assisted by the authorised adoption agency "Hand in Hand".

48. On 28 November 2012 the US applicant obtained a referral to visit E.G. from the Ministry of Education and Science. She visited her every day between 28 November and 1 December 2012. Each visit lasted approximately two hours.

49. On 3 December 2012 the US applicant formally agreed to adopt E.G.

50. On 11 February 2013 the adoption application was submitted to the St. Petersburg City Court.

51. On 13 February 2013 the St. Petersburg City Court rejected the application on the grounds that G.D.C. could not be represented by her representative, E.F., because an application of this kind could only be submitted by an authorised agency. The US applicant appealed.

52. On 5 March 2013 the US applicant tried to visit E.G. at the orphanage but was denied access.

53. On 12 March 2013 the US applicant resubmitted the application through another representative, O.T.

54. On 21 March 2013 the second application was rejected for the same reasons. The US applicant appealed.

55. On 2 and 12 April 2013 the St. Petersburg City Court dismissed the appeals against its decisions of 13 February and 21 March 2013 respectively.

56. On 31 May 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

57. According to the Government, E.G. has been placed with a foster family.

(iii) Third group of applicants

58. 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.

59. 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.

60. The US applicants, who have two biological children and one adopted child, initiated the procedure to adopt another child in March 2012. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 17 August 2012. They were assisted by the authorised adoption agency "Hand in Hand".

61. On 1 October 2012 the US applicants obtained a referral to visit V.T. from the Ministry of Education and Science. They visited him every day between 1 and 5 October 2012 and again between 17 and 21 January 2013. Each visit lasted four hours.

62. On 3 October 2012 the US applicants formally agreed to adopt V.T.

63. On 30 November 2012 the adoption application was submitted to the Moscow Regional Court. The hearing initially scheduled for 22 January 2013 was rescheduled for 12 February 2013 at the request of the Ministry of Education. However, on the same date the prosecutor requested that the proceedings be speeded up due to the uncertainty over the child's fate. Eventually the hearing was rescheduled for 31 January 2013.

64. On 31 January 2013 the Moscow Regional Court discontinued the adoption procedure on the grounds that under Law no. 272-FZ the US applicants had no right to adopt V.T. The US applicants appealed.

65. On 14 May 2013 the Moscow Regional Court upheld the decision of 31 January 2013 on appeal. The US applicants lodged cassation appeal.

66. On 10 December 2013 the Moscow Regional Court refused leave to have the cassation appeal examined by the Presidium.

67. On 22 April 2013 the US applicants were removed from the State databank as prospective adoptive parents, an action of which they were not informed until 26 April 2013.

68. According to the Government, V.T. is still available for adoption, and the competent authorities provide prospective adoptive parents looking for a child with information about him.

(b) Application no. 8927/13

69. Application no. 8927/13 was 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.

70. A.M. is HIV positive and suffers from developmental disorders, strabismus and enuresis.

71. The US applicants initiated the adoption procedure in March 2012. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 16 November 2012. They were assisted by the authorised adoption agency "Hand in Hand".

72. On 26 November 2012 the US applicants obtained a referral to visit A.M. from the Ministry of Education and Science. They visited her every day between 27 and 30 November 2012. Each visit lasted two to three hours.

73. On 28 December 2012 the adoption application was submitted to the Moscow Regional Court. The hearing was first scheduled for 8 February 2013, but then rescheduled for 31 January 2013. As it left the US applicants insufficient time to reschedule their trip to Russia, they asked the court to postpone the hearing.

74. On 31 January 2013 the Moscow Regional Court rejected the request to postpone the hearing and discontinued the adoption procedure on the grounds that under Law no. 272-FZ the US applicants had no right to adopt V.T. The US applicants appealed.

75. On 14 May 2013 the Moscow Regional Court upheld the decision of 31 January 2013 on appeal.

76. On 22 April 2013 the US applicants were removed from the State databank as prospective adoptive parents.

77. According to the Government, A.M. has been placed with a foster family.

(c) Application no. 10549/13

78. Application no. 10549/13 was 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.

79. S.T. had prenatal contact with HIV and hepatitis C and suffers from a developmental disorder.

80. The US applicants initiated the adoption procedure in December 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 13 June 2012. They were assisted by the authorised adoption agency "Christian World Adoptions, Inc.".

81. On 23 October 2012 the US applicants obtained a referral to visit S.T. from the Ministry of Education and Science. They visited her twice a day between 24 and 29 October 2012. Each visit lasted two hours.

82. On 3 December 2012 the adoption application was submitted to the Volgograd Regional Court.

83. On 1 February 2013 the adoption procedure was discontinued on the grounds that under Law no. 272-FZ the US applicants had no right to adopt S.T.

84. 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. On 3 April 2013 the appeal statement was returned to the US applicants. On 25 April 2013 they resubmitted the appeal. On 7 May 2013 the Volgograd Regional Court extended the time-limit for appeal.

85. On 20 June 2013 the Volgograd Regional Court upheld the decision of 1 February 2013.

86. On 14 February 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

87. S.T. has been adopted by a different adoptive family.

(d) Application no. 12275/13

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

(i) First group of applicants

89. 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.

90. A.A. suffers from Down syndrome, moderate mental deficiency, delay in physical development, strabismus, planovalgus deformity, and hyperbilirubinemia.

91. The US applicants initiated the adoption procedure in August 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 6 September 2012. They were assisted by the authorised adoption agency "Hand in Hand".

92. On 8 October 2012 the US applicants obtained a referral to visit A.A. from the Committee on Social Policy of the St. Petersburg Administration. They visited her on three days in October 2012. Each visit lasted between one and a half and two hours.

93. On 20 December 2012 the adoption application was submitted to the St. Petersburg City court.

94. On 24 December 2012 the application was returned to the US applicants' representative, E.F. In the court's ruling, it was stated that it had been returned at E.F.'s request. According to the US applicants, they did not ask E.F. to withdraw the application, and she did not apply to the court to have it withdrawn. Rather, the court asked her to take it back. The US applicants were not informed of this ruling, but having learned about it, they filed a complaint against it, 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. On 4 June 2013 the St. Petersburg City Court set aside the ruling of 24 December 2012. It appears that no further decisions were taken in the case.

95. On 31 May 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

96. According to the Government, A.A. is still available for adoption, and the competent authorities provide prospective adoptive parents looking for a child with information about her.

(ii) Second group of applicants

97. D.S.G., born on 29 May 1974 and who 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.

98. O.N. suffers from a mixed developmental disorder, atopic dermatitis, food allergies and hypermetria of both eyes with astigmatism.

99. The US applicant initiated the adoption procedure in December 2011. Having completed the necessary steps for intercountry adoption within the United States, she was registered in the Russian State databank as a prospective adoptive parent on 9 October 2012. She was assisted by the authorised adoption agency "International Assistance Group, Inc.".

100. On 24 December 2012 the US applicant obtained a referral to visit O.N. from the Committee on Social Policy of the St Petersburg Administration. She visited her twice a day between 24 and 28 December 2012. Each visit lasted two hours.

101. On 28 December 2012 the US applicant formally agreed to adopt O.N.

102. On 11 February 2013 the adoption application was submitted to the St. Petersburg City Court by the adoption agency.

103. On 13 February 2013 the St. Petersburg City Court rejected the application on the grounds that as of 1 January 2013 the agency's activity had been banned in Russia pursuant to Law no. 272-FZ. On 4 March 2013 the US applicant appealed.

104. On 25 March 2013 the appeal statement was returned to the US applicant without examination on the grounds that it had been lodged outside the applicable time-limit.

105. On 31 May 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

106. According to the Government, O.N. has been adopted by a different adoptive family.

(iii) Third group of applicants

107. 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.

108. A.R. was abandoned by her parents, who suffered from substance addictions, at the age of eleven months. She is hepatitis C positive and suffers from a mixed developmental disorder and planovalgus deformity.

109. The US applicants had two children, a son and a daughter. After their daughter died of paediatric cancer at the age of twelve, they decided to adopt a child, since their son did not wish to be an only child. The US applicants initiated the adoption procedure in February 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 18 October 2012. They were assisted by the authorised adoption agency "International Assistance Group, Inc.".

110. On 28 November 2012 the US applicants obtained a referral to visit A.R. from the Committee on Social Policy of the St Petersburg Administration. They visited her twice a day between 27 and 30 November 2012. Each visit lasted two hours.

111. On 3 December 2012 the US applicants formally agreed to adopt A.R.

112. On 10 February 2013 the adoption application was submitted to the St. Petersburg City Court by the adoption agency.

113. On 13 February 2013 the St. Petersburg City Court rejected the application on the grounds that, as of 1 January 2013, the agency's activity had been banned in Russia pursuant to Law no. 272-FZ.

114. On 31 May 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

115. According to the Government, A.R. has been adopted by a different adoptive family.

(iv) Fourth group of applicants

116. T.L.B.-S., born on 21 June 1968 and who lives in Oldtown, Maryland, United States (the US applicant), and V.O., who was born on 7 August 2005 and lives in St. Petersburg.

117. V.O. suffers from Down syndrome, mental deficiency, umbilical hernia, planovalgus deformity, atopic dermatitis and hypermetria of a light degree.

118. The US applicant has two biological children and a son adopted from Russia. She decided to adopt another child and, having completed the necessary steps for intercountry adoption within the United States, she was registered in the Russian State databank as a prospective adoptive parent on 1 November 2012. The US applicant was assisted by the authorised adoption agency "Small World Adoption Foundation of Missouri Inc.".

119. On 12 November 2012 the US applicant obtained a referral to visit V.O. from the Committee on Social Policy of the St Petersburg Administration. She visited her daily on several days in November 2012. Each visit lasted between one and a half and two hours.

120. On 19 November 2012 the US applicant formally agreed to adopt V.O.

121. According to the US applicant, she did not have sufficient time to prepare all the necessary documents in order to be able to submit the adoption application to a court before the entry into force of Law no. 272-FZ. After its entry into force she realised that this would be futile, although she remained willing to adopt V.O.

122. On 31 May 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

123. According to the Government, V.O. is still available for adoption, and the competent authorities provide prospective adoptive parents looking for a child with information about her.

(v) Fifth group of applicants

124. 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.

125. V.G. suffers from Down syndrome, moderate mental deficiency, strabismus and hypermetria.

126. Having completed the necessary steps for intercountry adoption within the United States, the US applicants were registered in the Russian State databank as prospective adoptive parents on 9 February 2012. They were assisted by the authorised adoption agency "Hand in Hand".

127. On 18 July 2012 the US applicants obtained a referral to visit V.G. They visited her every day between 18 and 20 July 2012. Each visit lasted three hours.

128. On 25 July 2012 the US applicants formally agreed to adopt V.G.

129. On 26 November 2012 the adoption application was submitted to a court by the US applicants' representative E.F. from the adoption agency.

130. According to the Government, on 30 November 2013 the St. Petersburg City Court stayed the proceedings and instructed the US applicants to rectify certain shortcomings by 30 December 2013. In particular, they were asked to corroborate the powers of their representative to act as such in matters concerning adoption in view of the fact that the power of attorney had been issued to E.F. as a private person, whereas pursuant to Article 4 § 4 of the Bilateral Agreement on Adoption only authorised agencies could act as representatives. On 9 January 2013 the application was returned to E.F. on the grounds that the shortcomings had not been rectified.

131. According to the US applicants, they were never informed of any alleged shortcomings in their adoption application. Furthermore, several days before 1 January 2013 a judge had called E.F. and had 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 had been "lost" and the only record of submission was a note in the court's register.

132. The US applicants also allege that on 11 January 2012 the head of a branch of adoption agency "Hand in Hand" had asked the Chairman of the St. Petersburg Committee on Social Policy for permission to continue its activity as an adoption agency in St. Petersburg through its legal representatives E.F. and I.Z. The permission was granted, and on 11 January 2012 the adoption agency "Hand in Hand" issued E.F. with a power of attorney valid for three years to represent the interests of adoptive parents before the courts of St. Petersburg.

133. According to the Government, the St. Petersburg Committee on Social Policy did not have the competence to authorise the activity of an adoption agency. The matter fell within the exclusive competence of the Ministry of Education. E.F. and I.Z. were registered at the Ministry of Education as employees of the adoption agency "Hand in Hand" during the period 2009-11.

134. According to the US applicants, on 12 and 28 March and 3 April 2013 their representative O.T. requested a copy of the St. Petersburg City Court's ruling on their application. However, the file was not in the registry

and she was not presented with a copy. 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.

135. According to the Government, O.T.'s request was refused as there were no procedural means whereby to provide persons acting as intermediaries in adoption proceedings with copies of documents.

136. On 31 May 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

137. According to the Government, V.G. is still available for adoption, and the competent authorities provide prospective adoptive parents looking for a child with information about her.

(vi) Sixth group of applicants

138. 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.

139. D.K. suffers from Down syndrome, psychomotor development delay, anomaly in heart development, partial atrophy of optic discs, astigmatism and cytomegalovirus infection.

140. The US applicants initiated the adoption procedure in July 2012. Having completed the necessary steps for intercountry adoption within the United States, the US applicants were registered in the Russian State databank as prospective adoptive parents on 11 December 2012. They were assisted by the authorised adoption agency "Global Adoption Services Inc.".

141. On 19 December 2012 the US applicants obtained a referral to visit D.K. They visited her twice a day between 19 and 21 December 2012. Each visit lasted approximately two hours.

142. On 21 December 2012 the US applicants formally agreed to adopt D.K.

143. The adoption application was not submitted to the court. According to the US applicants, it would have been submitted if it had not been for the entry into force of Law no. 272-FZ.

144. According to the Government, on 24 April 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents. According to the US applicants, they were never informed of this fact.

145. According to the Government, D.K. has been placed with a foster family.

(vii) Seventh group of applicants

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

147. K.R. suffers from a mixed developmental disorder, planovalgus deformity, adenoids, hypertrophy of palatine tonsils, hepatosplenomegaly and physiological phimosis.

148. The US applicant has already adopted a girl from Russia. She decided to adopt another child and initiated the adoption procedure in May 2012. Having completed the necessary steps for intercountry adoption within the United States, the US applicant was registered in the Russian State databank as a prospective adoptive parent on 9 October 2012. The US applicant was assisted by the authorised adoption agency "International Assistance Group Inc.".

149. On 21 November 2012 the US applicant obtained a referral to visit K.R. from the Committee on Social Policy of the St Petersburg Administration. She visited her every day between 21 and 23 November 2012. Each visit lasted two hours.

150. On 27 November 2012 the US applicant formally agreed to adopt K.R.

151. On 11 February 2013 the adoption application was submitted to the St. Petersburg City Court by T. from the adoption agency.

152. On 13 February 2013 the court returned the application on the grounds that the activity of the adoption agency had been banned pursuant to Law no. 272-FZ. The US applicant appealed.

153. On 27 March 2013 the appeal statement was returned on the grounds that it had been submitted in breach of procedural rules. In particular, it failed to state whether the US applicant had been provided with a translation of the ruling and her signature had not been certified by a notary. The US applicant filed a complaint against this ruling.

154. On 20 June 2013 the complaint was returned without examination.

155. On 31 May 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

156. According to the Government, K.R. has been adopted by a different adoptive family.

(viii) Eighth group of applicants

157. 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.

158. A.E.A. suffers from delay of psychomotor and speech development delay, anomaly in heart development, umbilical hernia and had prenatal contact with HIV.

159. The US applicants initiated the adoption procedure in May 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 6 February 2012. They were assisted by the authorised adoption agency "Adopt a Child".

160. On 19 November 2012 the US applicants obtained a referral to visit A.E.A. They visited her twice a day between 19 and 23 November 2012. Each visit lasted between one and a half and two hours.

161. The adoption application was not submitted to a court. According to the US applicants, after their visit to Russia in November 2012 they had to amend a number of documents in their adoption file so as to make it conform with the Bilateral Agreement on Adoption. However, Law no. 272-FZ left them no time to submit the adoption application to a court before its entry into force.

162. On 24 April 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

163. According to the Government, A.E.A. has been placed with a foster family.

(ix) Ninth group of applicants

164. 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.

165. On 4 April 2014 the US applicants' representative informed the Court that they wished to withdraw the application.

(e) Application no. 23890/13

166. Application no. 23890/13 was 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.

167. M.K. was born prematurely. He suffers, in particular, from Russell-Silver syndrome, light cognitive disorder, delay of neurological and behavioural development and chronic gastritis.

168. Between 2001 and 2012 the US applicants were involved in charity work in the Chelyabinsk Region. In particular, they helped with the renovation of an orphanage, where in 2008 they met M.K.

169. According to the US applicants, having developed a close relationship with M.K., in the winter of 2011-2012 they decided to adopt him and initiated the adoption procedure. They contacted about forty adoption agencies asking for assistance with the procedure. However, their attempts were unsuccessful as no adoption agency worked with the Chelyabinsk Region. For this reason they decided to proceed on their own,

although the adoption agency Beacon House Adoption Services agreed to provide them with advice on the procedure.

170. In March 2012, during a consultation at the Ministry of Social Relations of the Chelyabinsk Region, the US applicants expressed their wish to adopt M.K. According to the US applicants, the ministry confirmed that there were no authorised adoption agencies operating in the Chelyabinsk Region and stated that the US applicants could proceed on their own. At the same time their adoption file was rejected on the grounds that the apostille on certain documents was incorrect and some additional documents were required.

171. In March 2012 the US applicants twice visited M.K. at the orphanage, with each meeting lasting three hours.

172. On 30 July 2012 the US applicants submitted to the Ministry of Social Relations of the Chelyabinsk Region a corrected set of documents for the adoption of M.K.

173. However, on 8 August 2012 the Minister of Social Relations of the Chelyabinsk Region informed the US applicants that, since the Bilateral Agreement on Adoption had been ratified, with effect from 10 August 2012 individual applications for adoption could not be accepted. For this reason he returned their application for non-compliance with the requirements set by Government Decree no. 654 of 4 November 2006 (see paragraph 318 below).

174. On 17 August 2012 the US applicants contacted the Head of the State databank, who wrongly informed them that the Bilateral Agreement on Adoption had not been ratified and that they could proceed with the adoption procedure on their own.

175. In a telephone conversation on 20 August 2012 the US applicants told the Ministry of Social Relations of the Chelyabinsk Region about the information received from the Head of the State databank. According to the ministry, it was awaiting official clarifications from the Head of the State databank to this effect.

176. On 22 August 2012 the US applicants again contacted the Ministry of Social Relations of the Chelyabinsk Region by telephone and were told that they could proceed with the adoption on their own.

177. On 22 August 2012 according to the US applicants and on 4 September 2012 according to the Government, the adoption file was resubmitted to the Ministry of Social Relations of the Chelyabinsk Region.

178. On 19 September 2012 the adoption file was returned and the US applicants were requested to amend certain documents and to enclose some additional documents.

179. On 3 December 2012, having amended the adoption file, the US applicants again resubmitted the application. By that time the Bilateral Agreement on Adoption – including a provision stating that an adoption

application might only be submitted through an authorised agency – had entered into force.

180. On 11 December 2012 the Ministry of Social Relations of the Chelyabinsk Region rejected the application on the grounds that it had been submitted by the US applicants directly and not by an authorised adoption agency. It was recommended that the US applicants re-apply via an agency.

181. According to the applicants, the adoption procedure was eventually halted by the entry into force of Law no. 272-FZ.

182. The US applicants were never registered in the State databank as prospective adoptive parents.

183. According to the Government, since 1 September 2014 M.K. has been attending the South Urals Vocational School (*Южно-Уральский многопрофильный колледж*) and lives in the school dormitory.

(f) Application no. 26309/13

184. Application no. 26309/13 was 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.

185. A.K. suffers from psychological developmental disorder, speech development delay, enuresis and dysarthria. A.K. was taken from his home by social workers in August 2011 as he had been neglected and possibly abused by his parents.

186. The US applicants have previously adopted a boy from Russia. They initiated the procedure for adoption of another child in April 2012. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents. They were assisted by the authorised adoption agency "Adoption Associates Inc.".

187. On 15 October 2012 the US applicants obtained a referral to visit A.K. from the Ministry of Education of the Kaliningrad Region. They visited him twice a day between 15 and 19 October 2012. They spent four to five hours per day with A.K.

188. On 19 October 2012 the US applicants formally agreed to adopt A.K.

189. According to the Government, the US applicants never made an application to a court for A.K.'s adoption.

190. According to the US applicants, they submitted the adoption application 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 Law no. 272-FZ.

191. On 30 April 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

192. According to the Government, A.K. has been adopted by a different adoptive family.

(g) Application no. 27161/13

193. Application no. 27161/13 was 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.

194. E.O. is HIV positive. She suffers from speech development delay, slight anomaly in heart development, atopic dermatitis, vegetative dysfunction of the Keith-Flack node and planovalgus deformity.

195. The US applicants initiated the adoption procedure in March 2012. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 6 September 2012.

196. On 6 September 2012 the US applicants obtained a referral to visit E.O. from the Ministry of Education of the Perm Region. They visited her twice a day between 6 and 12 September 2012. Each visit lasted approximately two hours.

197. On 10 September 2012 the US applicants formally agreed to adopt E.O. They were not assisted by any adoption agencies.

198. According to the Government, no adoption application was ever submitted to a court.

199. According to the US applicants, the adoption application had been finalised by 28 December 2012. However, the procedure was halted by the entry into force of Law no. 272-FZ.

200. On 24 April 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

201. According to the Government, E.O. has been adopted by a different adoptive family. According to the US applicants, her adoptive parents are not Russian nationals either, and in 2013 E.O. was taken to Ireland.

(h) Application no. 29197/13

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

203. At birth A.N.’s umbilical cord was wrapped around his neck, which led to a number of complications. He suffers from congenital heart disease, open foramen oval; congenital renal disease, pyelectasis; mixed psychological development disorder and motor and speech development delay.

204. The US applicant initiated the adoption procedure in early 2012. Having completed the necessary steps for intercountry adoption within the

United States, the US applicant was registered in the Russian State databank as a prospective adoptive parent on 15 November 2012. The US applicant was assisted by the authorised adoption agency "Adopt a Child Inc.".

205. On 19 December 2012 the US applicant obtained a referral to visit A.N. from the Committee on Social Policy of the St Petersburg Administration. She visited him twice a day between 19 and 21 December 2012. Each visit lasted between an hour and an hour and a half.

206. On 26 December 2012 the US applicant formally agreed to adopt A.N.

207. On 18 February 2013 an adoption application dated 9 January 2012 was submitted to the St. Petersburg City Court by D. acting on the basis of a power of attorney.

208. On 19 February 2013 the St. Petersburg City Court returned the application without examination on the grounds that the power of attorney had been issued to D. as a private person whereas, pursuant to Article 4 § 4 of the Bilateral Agreement on Adoption, only authorised agencies were permitted to act as representatives. No appeal was lodged against the ruling.

209. On 31 May 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

210. According to the Government, A.N. has been adopted by a different adoptive family.

(i) Application no. 32224/13

211. Application no. 32224/13 was 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.

212. V.B. suffers from a motor dysfunction, psychological development disorder, heart defects such as open oval window and lesion of the mitral valve, and had prenatal contact with hepatitis C.

213. The US applicants have previously adopted a girl from Kazakhstan. In September 2011 they initiated the procedure to adopt another child from Russia. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 27 June 2012. They were assisted by the authorised adoption agency "Christian World Adoption Inc.".

214. On 13 December 2012 the US applicants obtained a referral to visit V.B. from the Ministry of Education of the Volgograd Region. They visited her twice daily between 14 and 20 December 2012. Each visit lasted approximately two hours.

215. On 20 December 2012 the US applicants formally agreed to adopt V.B.

216. The adoption application was never submitted to a court. According to the US applicants, the adoption procedure was halted by the entry into force of Law no. 272-FZ.

217. On 30 January 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

218. According to the Government, V.B. has been adopted by a different adoptive family.

(j) Application no. 32331/13

219. Application no. 32331/13 was 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.

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

221. The US applicants initiated the adoption procedure in January 2012. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 20 November 2012. They were assisted by the authorised adoption agency "Beacon House Adoption Services, Inc.".

222. On 17 December 2012 the US applicants obtained a referral to visit R.P. They visited him daily between 17 and 21 December 2012. Each visit lasted between an hour and an hour and a half.

223. The US applicants formally agreed to adopt R.P. However, according to the Government, they had not signed the statement confirming that they had studied his medical file. Therefore, the subsequent steps set out in Government Decree no. 217 of 4 April 2002 prior to submission of an adoption application to a court were not taken. In particular, no confirmation was received from the State databank that the child was available for adoption.

224. The adoption application was never submitted to a court.

225. On 31 July 2013 the US applicants were removed from the State databank as prospective adoptive parents.

226. On 31 October 2013 the US applicants filed a complaint against the Directorate of Education and Science of the Primorye Region and the Administration of the Primorye Region to the Leninskiy District Court of Vladivostok. They claimed that the defendants had prevented them from finalising the adoption procedure.

227. On 5 November 2013 the complaint was returned without examination on the grounds of lack of territorial jurisdiction.

228. On 18 November 2013 the US applicants' representative D. resubmitted the complaint to the Frunzenskiy District Court of Vladivostok.

229. On 19 December 2013 the Frunzenskiy District Court of Vladivostok dismissed the complaint, having found that the US applicants' removal from the State databank as prospective adoptive parents was compliant with Law no. 272-FZ. The US applicants appealed.

230. On 3 April 2014 the Primorye Regional Court upheld the decision of 19 December 2013.

231. According to the Government, R.P. has been adopted by a different adoptive family.

(k) Application no. 32351/13

232. Application no. 32351/13 was lodged on 16 May 2013 by J.F.B., born on 24 October 1966 and who 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.

233. M.I. was born prematurely and suffers from speech and psychomotor development delay, internal hydrocephalus, and a congenital heart defect.

234. The US applicant initiated the adoption procedure in July 2011. Having completed the necessary steps for intercountry adoption within the United States, she was registered in the Russian State databank as a prospective adoptive parent on 19 September 2012. The US applicant was assisted by the authorised adoption agency "Adopt a Child Inc.".

235. On 8 October 2012 the US applicant obtained a referral to visit M.I. She visited her every day between 8 and 12 October 2012. Each visit lasted between an hour and a half and two hours.

236. On 9 October 2012 according to the US applicant and on 11 October 2012 according to the Government, the US applicant formally agreed to adopt M.I.

237. On 19 December 2012 the US applicant submitted the adoption application to the Leningrad Regional Court.

238. On 25 December 2012 the Leningrad Regional Court stayed the proceedings due to certain shortcomings in the documents submitted. In particular, on the certificate confirming that the US applicant had undergone the requisite training for prospective adoptive parents, her middle name was not indicated, causing the court to express doubts as to whether the certificate had actually been issued to her. In addition, the validity of the certificate confirming her living conditions had expired on 7 November 2012 and she therefore needed to renew it. Moreover, the application did not contain any information about M.I.'s father and siblings, if any; the medical certificate detailing M.I.'s state of health failed to include the opinions of certain doctors; information about the US applicant's income was not accurate; and a document corroborating the US applicant's housing rights

was not attached. The court instructed the US applicant to rectify the shortcomings by 28 February 2013. According to the Government, the above decision was not appealed against and became final on 2 February 2013.

239. On 17 January 2013 the Leningrad Regional Court discontinued the adoption proceedings and returned the application without examination on the grounds that, pursuant to Law no. 272-FZ, the US applicant did not have a right to adopt M.I. According to the US applicant, she appealed. It is not clear whether the appeal was examined.

240. On 15 February 2013 the US applicant was removed from the State databank as a prospective adoptive parent. According to the Government, she was informed of this on 30 May 2013. According to the US applicant, she never received any information to this effect.

241. According to the Government, M.I. has been adopted by a different adoptive family. According to the US applicant, M.I.'s adoptive parents are not Russian nationals either.

(l) Application no. 32368/13

242. Application no. 32368/13 was 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.

243. K.K. was abandoned at birth by her mother, who was a drug addict. She suffers from mixed psychological disorders and hypotrophy of the first degree.

244. The US applicants initiated the adoption procedure in 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 16 August 2012. They were assisted by the authorised adoption agency "New Hope Christian Services".

245. On 20 February 2012 the US applicants obtained a referral to visit K.K. from the Committee on Social Policy of the St Petersburg Administration. They visited her every day between 21 and 23 February 2012. Each visit lasted approximately two hours.

246. On 29 February 2012 the US applicants formally agreed to adopt K.K.

247. On 8 November 2012 the adoption application was submitted to the St. Petersburg City Court.

248. On 12 November 2012 the St. Petersburg City Court stayed the proceedings on the grounds that certain documents were not enclosed and instructed the US applicants to submit them by 11 December 2012. At the US applicants' request, the deadline was subsequently extended to 15 January 2013. According to the US applicants, after the entry into force of the Bilateral Agreement on Adoption, they 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 Hurricane Sandy, which hit the north-eastern United States in October 2012.

249. On 15 January 2013 the St. Petersburg City Court returned the application without examination on the grounds that the additional documents submitted by the applicants were not complete. In particular, the section of the report on the US applicants' living conditions containing the date and signature had not been translated. A photograph of the child's room was not informative. Moreover, there were no photographs of the US applicants with K.K., and a document confirming that the US applicants had undergone the requisite training for prospective adoptive parents had not been enclosed. No appeal was lodged against this ruling.

250. On 22 May 2013 the US applicants' representative S. resubmitted the adoption application.

251. On 23 May 2013 St. Petersburg City Court returned the application without examination on the grounds that it had been submitted by a private person acting on the US applicants' behalf, whereas pursuant to virtue of Article 4 § 4 of the Bilateral Agreement on Adoption it could only be submitted by an authorised agency. The US applicants appealed.

252. On 20 June 2013 St. Petersburg City Court returned the appeal statement without examination, making reference to Law no. 272-FZ.

253. On 31 May 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

254. According to the Government, K.K. has been adopted by a different adoptive family.

(m) Application no. 37173/13

255. Application no. 37173/13 was 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., born on 3 December 2008, who live in Smartsville, California, United States, and V.B., who was born on 14 November 2001 and lives in Prokopyevsk.

256. V.B. suffers from light mental development delay, light speech development delay and a mixed form of dysgraphia and dyslexia.

257. 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 about her siblings had not been included in the State databank.

258. According to the Government, the information regarding G.N.Y.H.'s brother, V.B., had been included in G.N.Y.H.'s file, however, and the US applicants had studied this in March 2010.

259. In the decision of the Kemerovo Region Court of 5 July 2010 on G.N.Y.H.'s adoption it was stated that although G.N.Y.H. had an elder brother, V.B., the court considered it possible for G.N.Y.H. to be adopted alone because the children were being placed in different institutions, their

family relations had been interrupted, and the adoption was in the interests of G.N.Y.H.

260. According to the US applicants, having learned that G.N.Y.H. had a brother, they started corresponding with V.B. and sent him letters, photos and parcels. They also started making enquiries with a view to adopting V.B. as well. In a letter of 29 April 2011 the prosecutor's office of the Kemerovo Region advised the US applicants that, as they had been registered as the prospective adoptive parents in respect of one particular child, they would have to reapply to the competent authorities and resubmit documents amended accordingly should they wish to adopt another child. In a letter of 15 June 2011 the same prosecutor's office acknowledged that the information on G.N.Y.H.'s siblings had not been included in the State databank as a result of a clerical mistake. It noted, however, that the information about V.B. had been included in G.N.Y.H.'s personal file, which the US applicants had studied on 24 March 2010. The prosecutor's office also confirmed that V.B. was available for adoption and that it was open to the US applicants to apply to the competent authorities for his adoption. The US applicants then initiated the adoption procedure.

261. On 12 May 2012 "Hand in Hand", an authorised adoption agency acting on behalf of the US applicants, filed an application for V.B.'s adoption with the Directorate of Education and Science of the Kemerovo Region. On the same date the US applicants were registered in the State databank as prospective adoptive parents.

262. According to the Government, the US applicants had initially intended to visit V.B. in June 2012, but they asked if they might change the dates of their visit to October 2012. However, they did not reapply for a later visit. Accordingly, they were never issued with a referral to visit V.B. and never met him.

263. According to the US applicants, at the relevant time they had also applied to adopt another child from Russia, X., and they had accepted a referral to visit her in June 2012. They then also received a referral to visit V.B. in June 2012. Although they were willing to meet both children, they were advised that it was necessary to finalise the adoption of X. first. Accordingly, they asked for permission to visit V.B. in October 2012. However, they were subsequently advised that in July 2012 the regional authorities had banned the adoption of children by US nationals following an incident of ill-treatment of a child from the Kemerovo Region by his adoptive parents from the United States.

264. In December 2012, when the US applicants went to Russia to finalise the adoption of X., they learned that the regional ban on adoption of children by US nationals had been lifted. However, the US applicants were unable to proceed with the adoption of V.B. due to the entry into force of the Law no. 272-FZ.

265. According to the Government, V.B. is living in an orphanage.

(n) Application no. 38490/13

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

267. Ye.L. was born prematurely. He suffers from hearing loss, speech development delay and respiratory ailments.

268. The US applicant initiated the adoption procedure in 2008. As the adoption agency's licence was later revoked, she had to restart the procedure in 2011. Having completed the necessary steps for intercountry adoption within the United States, the US applicant was registered in the Russian State databank as a prospective adoptive parent on 25 June 2012.

269. On 19 July 2012 the US applicant obtained a referral to visit Ye.L. She visited him on four consecutive days in July 2012.

270. On 22 July 2012 the US applicant formally agreed to adopt Ye.L.

271. According to the US applicant, preparation of an adoption file took more time after the entry into force of the Bilateral Agreement on Adoption, which stipulated a number of additional requirements. The adoption application was ultimately not submitted to a court due to the entry into force of Law no. 272-FZ.

272. On 10 June 2013 the US applicant was informed that she had been removed from the State databank as a prospective adoptive parent.

273. According to the Government, Ye.L. has been placed with a foster family.

(o) Application no. 42340/13

274. Application no. 42340/13 was 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.

275. K.S. suffers from psychological development delay, atopic dermatitis, planovalgus deformity and a phonematic disorder.

276. Between 13 December 2010 and 17 January 2011 K.S. stayed at the US applicants' home as a part of the orphan-hosting programme "New Horizons for Children".

277. As soon as K.S. had left, the US applicants started making enquiries about adoption. In March 2011 they started the adoption procedure.

278. On 20 February 2012 the US applicants were registered in the State databank as prospective adoptive parents.

279. After 2011, the US applicants met with K.S. on three occasions. Each time they came to St. Petersburg for a week and visited K.S. daily. Each visit lasted from two to three hours.

280. According to the Government, on 13 December 2011 the US applicants submitted the application for K.S.'s adoption to the St. Petersburg City Court. As certain documents were not enclosed, the proceedings were stayed and the US applicants were instructed to submit the documents requested by 10 January 2012. The term was then extended to 9 February 2012. As the US applicants failed to submit the documents, on the latter date the adoption application was returned to them without examination. No appeal was lodged against this ruling.

281. According to the US applicants, in November-December 2011 and February-March 2012 they had travelled to Russia as they wished to adopt K.S. and her younger brother. It transpired that they were unable to go ahead with the adoption because, although K.S.'s mother's parental rights had been revoked, the revocation of her father's parental rights was pending but not yet finalised. This issue was resolved in March 2012. However, in April 2012 the US applicants were informed that K.S.'s biological mother had had a baby girl, and that K.S. thus had two siblings. In May 2012 they amended the adoption file so as to apply for adoption of three children: K.S. and both her brother and sister. In September 2012 they were obliged to comply with additional requirements introduced by the Bilateral Agreement on Adoption, which included additional training courses. The adoption procedure was ultimately halted by the entry into force of Law no. 272-FZ.

282. According to the Government, K.S. is still available for adoption, and the competent authorities provide prospective adoptive parents looking for a child with information about her.

(p) Application no. 42403/13

283. Application no. 42403/13 was 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.

284. A.M. and D.T. are not related. Their parents have been stripped of parental rights. D.T. suffers from mitral heart prolapse, residual encephalopathy, mixed disorder of psychological development and gallbladder anomaly. A.M. had been adopted at the age of five years old but was then returned to the orphanage. She suffers from a mixed disorder of psychological development and light myopia.

285. The US applicants initiated the adoption procedure in 2011. Having completed the necessary steps for intercountry adoption within the United States, they were registered in the Russian State databank as prospective adoptive parents on 11 April 2012. They were assisted by the authorised adoption agency "Hand in Hand".

286. On 13 September 2012 the US applicants obtained a referral to visit both A.M. and D.T. from the Department of Social Security of the Ivanovo

Region so as to choose between the two girls. They visited D.T. twice and A.M. three times in September 2012 and eventually decided to adopt both girls.

287. On 27 September 2012 the US applicants formally agreed to adopt A.M. and D.T. According to the US applicants, A.M. and D.T. met and bonded.

288. On 31 October 2012 the adoption application was submitted to the Ivanovo Regional Court.

289. On 6 November 2012 the Ivanovo Regional Court stayed the proceedings on the grounds that certain documents, such as confirmation of the US applicants' registration in the State databank and the girls' entry permits for the United States, were not enclosed. It instructed the US applicants to submit the documents requested by 27 November 2012.

290. According to the US applicants, on 27 November 2012 they provided the documents in question.

291. On 4 December 2012 the Ivanovo Regional Court returned the adoption application without examination on the grounds that the US applicants had failed to provide the documents requested.

292. On 14 December 2012 the US applicants resubmitted the adoption application.

293. On 18 December 2012 the Ivanovo Regional Court stayed the proceedings on the grounds that some of the enclosed documents did not satisfy the procedural requirements. In particular, (i) although the US applicants had submitted a property certificate concerning a plot of land, it did not provide sufficient information about their dwelling; (ii) the attestation of the US applicants' suitability to become adoptive parents had been issued more than a year previously and was therefore outdated; and (iii) medical opinion concerning the US applicants' state of health did not satisfy the Ministry of Health requirements. The US applicants were instructed to rectify these shortcomings by 10 January 2013.

294. On 9 January 2013 the Ivanovo Regional Court rejected the application on the grounds 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.

295. On 4 February 2013 the Ivanovo Regional Court upheld the ruling of 9 January 2013 on appeal. The US applicants lodged an appeal on points of law.

296. On 17 April 2013 the Presidium of the Ivanovo Regional Court rejected the appeal on points of law.

297. On 25 April 2013 the US applicants were informed that they had been removed from the State databank as prospective adoptive parents.

298. According to the Government, A.M. is still available for adoption, and the competent authorities provide prospective adoptive parents looking

for a child with information about them. D.T. has been placed with a foster family.

II. RELEVANT DOMESTIC LAW

1. General provisions on adoption

(a) International instruments

299. Russia signed the Convention on the 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 yet been ratified. Russia is not a party to the European Convention on the Adoption of Children, which opened for signature in Strasbourg on 24 April 1967.

300. 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; ..."

301. 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

302. Article 6 § 3 of the Constitution of the Russian Federation provides:

"Foreign nationals and stateless persons have in the Russian Federation the same rights and obligations as nationals of the Russian Federation except as provided in a federal law or an international treaty of the Russian Federation."

303. Article 15 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 rules other than those provided for by the law, the rules of the international treaty shall apply."

(c) Code of Civil Procedure

304. Article 269 (2) of the Code provides that nationals of the Russian Federation permanently living abroad, foreign nationals and stateless

persons may submit an adoption application to a court according to the place of residence or whereabouts of the child they are seeking to adopt.

305. Pursuant to Article 270, the adoption application 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 that is the candidate for adoption together with clarification as to whether he/she has any siblings; reasons for the application; a request, if any, to change the child's name or date of birth.

306. Article 271 provides a list of documents to be submitted with the adoption application, including:

(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 income;

(6) a document either confirming title to a property 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 the requisite training for prospective adoptive parents.

307. Article 271 (1.1-2) further provides that nationals of the Russian Federation permanently living abroad, foreign nationals and stateless persons should enclose with their application, in addition to the documents listed above, an attestation from the competent agency in the applicant's home State (or of the Russian national's permanent place of residence) as to their living conditions and suitability to become adoptive parents, as well as a permit from that State authorising the child's entry and subsequent permanent residence in the State.

308. Article 272 (1) states that in the course of its preparation for the hearing, the court must obtain an opinion from the custody and guardianship office concerning the prospective adoption. Pursuant to Article 272 (2), in cases involving the adoption by nationals of the Russian Federation permanently living abroad, foreign nationals and stateless persons, a document attesting to the impossibility of placing the child in the care of Russian nationals or of the child's relatives – irrespective of their nationality and place of residence – should be enclosed with the opinion.

309. Pursuant to Article 273, the adoption application is examined by a court in camera in the mandatory presence of the adoptive parent(s), a

representative from the custody and guardianship office, the prosecutor, and the child if the latter is over fourteen years old; the presence of the child's parents, other interested parties and the child – if aged between ten and fourteen years old – can also be required if deemed necessary.

310. Pursuant to Article 274, if the court grants the adoption application, 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

311. Pursuant to Article 126 of the Code, Russian local executive agencies must keep a register of foreign nationals and stateless persons wishing to adopt a child.

312. 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, the general provisions of Russian law concerning adoption and the provisions of the relevant international treaties should also be complied with.

(e) Government Decree no. 275 of 29 March 2000 on Adoption of the Rules for the Transfer of Children for Adoption and Exercise of Control over the Conditions of their Living and Upbringing in Adoptive 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

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

314. The Decree further provides that an adoption agency specifically 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 the State Databank of Children Left without Parental Care

315. The law governs the functioning of the State databank of children left without parental care ("the State databank"). According to the law, the State databank should also contain information about persons wishing to adopt a child, including that person's nationality (Section 7). Information about a person may be removed from the State databank, in particular, if the circumstances allowing that person to accept a child into his or her family

have changed (Section 9 § 2). The law uses the terms "federal operator" of the State databank for a federal executive agency and "regional operator" for an executive agency of a subject of the Russian Federation, which carries out the placement in families of children left without parental care (Section 1).

(g) Government Decree no. 217 of 4 April 2002 on the State Databank of Children Left without Parental Care and the Exercise of Control over its Formation and Use

316. 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, with which they must comply prior to submitting an adoption application to a court. Article 20 of the Decree sets out the list of documents that must be submitted to the operator of the State databank of children left without parental care by Russian nationals permanently living abroad, foreign nationals or stateless persons wishing to adopt a child. They include:

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

(2) a completed application form;

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

(4) an undertaking to allow inspection of the adopted child's living conditions;

(5) a copy of an identity document;

(6) an attestation by the competent agency in the person's home State as to his or her living conditions and suitability to become an adoptive parent;

(7) an undertaking by the competent agency in the person's home State to monitor the adopted child's living conditions and upbringing in the adoptive parents' family;

(8) an undertaking by the competent agency in the person's home State to ensure that the adopted child is registered with a Russian consulate abroad;

(9) a copy of the licence or other document confirming the authority of the competent agency in the person's home State referred to in (6) above.

317. All the above documents should be notarised and a certified Russian translation of foreign language documents should be provided (Article 23). Upon receipt of the documents, the operator of the State databank will provide the foreign applicant with information about candidate children who correspond to the applicant's wishes or will return the documents with a written refusal to provide the information requested, indicating the reasons for the refusal (Article 24). If the outcome is favourable, the operator will provide the applicant with a referral to visit the child (Article 25). The referral is valid for a period of ten days, which can be extended by the operator. The applicant must visit the child and

subsequently inform the operator whether he/she wishes to continue the adoption procedure (Article 16). Within ten days of receipt of the foreign applicant's request to adopt a child, the regional operator will transmit the information about the applicant and the child to the federal operator. Within a further ten days the latter will confirm the child's inclusion in the State databank and the impossibility of placing the child in the care of Russian nationals permanently residing in Russia (Article 28). Within another ten days the foreign applicant should inform the operator in writing (a) that the adoption application has been submitted to a court; (b) of the court's decision in this respect; (c) of the applicant's decision to abandon his or her efforts to find a child for adoption and the removal of the information about him/her from the State databank (Article 29).

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

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

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

(2) obtain information about the child on the basis of the 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 a birth certificate and a passport for the child to enable the latter travel outside Russia;

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

319. Pursuant to Article 14 of the Decree, the representative office of a foreign adoption agency which has received a decision ordering either the suspension or discontinuation of its activity must cease its adoption-related activity.

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

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

(j) Presidential Decree no. 1688 of 28 December 2012 on Certain Measures for the Realisation of State Policy in the Area of the Protection of Orphaned Children and Children Left without Parental Care

321. The Decree contains instructions on measures to be taken with a view to encouraging adoption by Russian nationals. They include, in particular, simplification of the adoption procedure, improvement of the medical care offered to orphaned children and children left without parental care, and an increase in social benefits. The Decree also instructs the Supreme Court to provide clarifications for the lower courts on the application of Law 272-FZ.

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

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

322. The purpose of the Bilateral Agreement on Adoption was explained in a Joint Statement by the Presidents of the United States of America and the Russian Federation Concerning Intercountry Adoption released on 24 June 2010. The Statement reads as follows:

> "We are convinced that all children have the right to grow up in a family environment, in an atmosphere of happiness, love and understanding. Many children throughout the world are deprived of this natural right.
>
> Every year, tens of thousands of children find loving parents through adoptions, including international adoptions. We honor those who have the generosity to welcome adopted children, in particular from other countries, into their families.
>
> However, tragic incidents involving children adopted between our countries caused by the adoptive parents underscore the importance of ensuring reliable protections for the rights, safety, and well-being of adopted children. We are committed to doing everything in our power to achieve this.
>
> In this regard, we have come to the conclusion that it is necessary to conclude a legally binding bilateral agreement on cooperation in the field of intercountry adoption. At our direction, experts from the United States and Russia have already been actively working on a draft, and they have informed us that they have made considerable progress in fulfilling this difficult task.

> We will work together so that entry into force of this agreement as soon as possible would create an even stronger legal basis for adoption in the interests of children and families of both our countries."

323. 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.

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

325. The Bilateral Agreement on Adoption further provides that the prospective adoptive parents must obtain written appraisals of their living conditions and their suitability and eligibility to adopt a child, which must be issued by the competent authorities in the receiving country, that is to say in 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 for submitting an adoption application to the competent authority of the country of origin (the country of which the child is a citizen and where he or she is habitually resident prior to the adoption) is determined by the domestic laws of the country of origin (Article 9 § 1). After the prospective adoptive parents have become personally acquainted with the child and have given their formal agreement, 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 indicating 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 the information and undergone all the requisite psycho-social preparation with the assistance of the authorised organisation or the competent authority; and that the appraisal regarding the prospective adoptive parents' suitability and eligibility to adopt a child remains legally valid on the basis of all the

available information about the child matched against the prospective adoptive parents, including the child's social situation and medical history, his or her special needs, his or her availability for adoption and a detailed conclusion concerning his or her current state of health;

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

326. 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

327. 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 leading to exemption from responsibility of persons involved in crimes against Russian nationals;

(d) taking decisions resulting in the exemption from responsibility of 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.

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

329. Section 3 § 1 also bans activity by non-commercial organisations involved in political life in Russia if they have received free of charge any assets from United States nationals or entities, or if they carry out on Russian territory projects, programmes or other activities which represent a threat to the interests of the Russian Federation. Under Section 3 § 2 a Russian national who is also a United States national may be neither a member nor the head of a non-commercial organisation or of a branch thereof, or of a branch of an international or foreign organisation if that organisation participates in political life in Russia.

330. The law contains the following provisions concerning the adoption of Russian children by 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 is to be terminated by the Russian Federation."

(c) Memorandum no. 7-VS-224/13 of 22 January 2013 issued by the Russian Supreme Court

331. 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 an adoption application is granted, the rights and obligations of the adoptive parent(s) and the adopted child become established on the date on which the court decision concerning the adoption enters into force.

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 duly entered into force (even if 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 Legislation of the Russian Federation when Forming, Keeping and Using the State Databank on Children left without Parental Care

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

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

333. The memorandum states that, taking into account the ban on the adoption of Russian children by United States nationals introduced by Law no. 272-FZ, regional operators of the State databank should not issue a referral to visit a child to United States nationals who have been provided with information concerning the prospective adoptee.

334. Furthermore, in accordance with Section 9 § 2 of the Law on the State Databank, information about a prospective adoptive parent may be removed from the State databank, in particular, if the circumstances enabling the person to accept the child into his or her family for future upbringing have changed. Since the adoption of Russian children by United States nationals has become impossible, regional operators should remove information about prospective adoptive parents who are United States nationals and inform the latter accordingly.

335. Children left without parental care in respect of whom a referral for a visit has been issued to United States nationals, and/or in respect of whose adoption the said United States nationals have given their formal agreement, may be transferred to other families (excluding those of United States nationals) for future upbringing, as provided by the Family Code and the Law on the State Databank.

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

THE LAW

I. JOINDER OF THE APPLICATIONS

337. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. REQUEST FOR WITHDRAWAL

338. In a letter dated 4 April 2014, applicants J.R.V. and M.L.V., application no. 12275/13, informed the Court of their wish to withdraw their complaints.

339. In the light of the foregoing, and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue examination of the complaints.

340. It follows that this part of application no. 12275/13 must be struck out of the list in accordance with Article 37 § 1 (a) of the Convention.

III. VICTIM STATUS

341. Having regard to case no. 37173/13, the Court notes that G.N.Y.H., the US applicants' previously adopted daughter, was not a party to the adoption proceedings in the present case. Accordingly, she cannot claim to be a victim of the alleged violations of the Convention.

342. It follows that this part of application no. 37173/13 is incompatible with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Six months

343. The Government contended that application no. 42340/13 had been lodged outside the six-month time-limit provided for in Article 35 § 1 of the Convention, the St. Petersburg City Court having returned the adoption application to the US applicants on 9 February 2012, and the application before the Court having not been lodged until 30 June 2013.

344. The Court notes that the applicants in the case concerned did not complain about the St. Petersburg City Court ruling of 9 February 2012, whereby their adoption application was returned to them without examination. The subject of their complaint is the entry into force of Law no. 272-FZ, which occurred on 1 January 2013, and their application was lodged on 30 June 2013, that is to say within six months of the date in question. Accordingly, the Government's objection must be dismissed.

B. Non-exhaustion

1. The parties' submissions

345. The Government further argued that the US applicants had failed to exhaust the available domestic remedies, in particular: (i) the US applicants in case no. 23890/13 were neither registered in the Russian State databank as prospective adoptive parents, nor were they assisted by an authorised adoption agency; (ii) the US applicants in cases nos. 23890/13 and 37173/13 had never obtained a referral from the Russian competent authorities to visit the children in question; (iii) the US applicants T.L.B.-S., Q.S., W.S., C.B. and T.B. in case no. 12275/13 and the US applicants in cases nos. 23890/13, 26309/13, 27161/13, 32224/13, 32331/13, 37173/13 and 38490/13 had not submitted an adoption application to a Russian court; (iv) the US applicant G.D.C. in case no. 6033/13, the US applicants M.S.P., A.N.P., S.M., K.M., J.R.V. and M.L.V. in case no. 12275/13, and the US applicants in cases nos. 29197/13 and 32368/13 had failed to comply with Article 4 § 4 of the Bilateral Agreement on Adoption, which provides that adoption of a child from Russia may take place only with the assistance of an authorised organisation; (v) the US applicant G.D.C. in case no. 6033/13, the US applicants D.S.G., B.C., J.W.S., and S.A.K. in case no. 12275/13 and the US applicant in case no. 29197/13 had submitted their adoption

applications to a Russian court only after the entry into force of Law no. 272-FZ, being aware that adoption of Russian children by nationals of the United States was forbidden; and (vi) most of the US applicants had failed to appeal against the last judicial decision in their case and none of them had applied for supervisory review.

346. The applicants submitted the following with regard to the plea of non-exhaustion raised by the Government. As regards the first and third groups of applicants in case no. 6033/13, their leave to have the cassation appeal examined by the Presidium had been refused. Supervisory review not being an effective remedy for the purposes of Article 35 § 1 of the Convention, the applicants had therefore exhausted all available domestic remedies. As for cases nos. 8927/13 and 10549/13, where the applications for adoption were dismissed by the first-instance courts and the dismissals were upheld on appeal, in the applicants' view, lodging a cassation appeal would be ineffective for the purposes of the above provision. In case no. 6033/13 in the part relating to the second group of applicants, case no. 12275/13 in the part related to the first, second, third, fifth and seventh groups of applicants, and cases nos. 23890/13, 26309/13, 29197/13, 32351/13, 32368/13, 42340/13 and 42403/13, the adoption applications had not been accepted by the courts for various reasons, but mostly on the grounds of inadequate representation. Where the applicants submitted the application themselves or through another individual, it had been rejected on the grounds that it could only be submitted through an authorised agency. Where it was submitted through an adoption agency, it was rejected on the grounds that the agency's activity had been banned pursuant to Law no. 272-FZ. The applicants therefore had no possibility of submitting their adoption application to a domestic court. As for case no. 12275/13 in the part relating to the fourth, sixth and eighth groups of applicants, and cases nos. 27161/13, 32224/13, 32331/13, 37173/13 and 38490/13, the applicants had been unable to submit the adoption application to a court before the entry into force of Law no. 272-FZ, which rendered any such application futile. Overall, the applicants maintain that they had no effective domestic remedies in the situation at hand as, irrespective of whether or not they lodged the adoption application with a court, and whether or not they filed any subsequent appeals, a negative outcome was pre-determined by virtue of the ban on adoption by US nationals introduced by Law no. 272-FZ (see *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports of Judgments and Decisions* 1996-IV).

2. The Court's assessment

347. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available both in theory and in practice at the relevant time,

that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

348. The Court notes that the US applicants' complaints concern the impossibility of completing the adoption procedure initiated in respect of the Russian children due to the entry into force of the ban on adoption introduced by Law no. 272-FZ. It further observes that where the US applicants had submitted an adoption application to a Russian court before the entry into force of Law no. 272-FZ, the application had invariably been rejected by the courts without examination on the merits on one of three grounds: either because the application had not been submitted by an authorised adoption agency, or because it had been submitted by such an agency but the functioning of such agencies in Russia had been banned as a consequence of Law no. 272-FZ, or because the US applicants were not eligible to adopt a Russian child pursuant to Law no. 272-FZ. In cases where the US applicants appealed, the higher courts had invariably upheld the reasoning of the lower courts.

349. Accordingly, the Court finds that after the entry into force of Law no. 272-FZ, the US applicants had no possibility of having their adoption applications examined on the merits by a Russian court, and that any such application would have been futile on account of the ban on adoption introduced in the domestic legislation.

350. For this reason the Court dismisses the Government's objection with regard to those cases where the adoption application was submitted to a Russian court without the assistance of an authorised adoption agency, where the US applicants did not submit an adoption application to a Russian court, where such an application was submitted after the entry into force of Law no. 272-FZ, and where the applicants had no recourse to further remedies.

351. As regards cases nos. 23890/13 and 37173/13, where the US applicants did not complete certain requisite procedural steps prior to the submission of an adoption application to a court, the subject of the applicants' complaint is precisely the fact that the adoption procedure was brought to a halt by the introduction of the adoption ban and they were therefore unable to complete the process. Accordingly, the Government's objection should be dismissed in this part as well.

C. The right to petition the Court on behalf of the children

1. The parties' submissions

352. The Government maintained that the US applicants had no right to lodge applications on behalf of the children they sought to adopt with the Court. In the first place, they argued that under Article 52 of the Code of Civil Procedure, persons who do not possess full legal capacity can be represented before a court by their parents, adoptive parents, guardians, trustees or other persons so authorised by federal law. Pursuant to Article 35 § 4 of the Civil Code and Article 155.2 § 2 of the Family Code, protection of the interests of orphaned children and children left without parental care is the responsibility of the competent institutions into whose care the children have been placed. As the adoption procedure had not been completed in any of the cases at hand, the US applicants had not acquired the right to act as the children's representatives. In the Government's view, their attempt to introduce complaints before the Court on behalf of the children they sought to adopt constituted an interference with the competence of the organisations who are the children's only representatives, as well as with the sovereignty and public order of the Russian Federation and the exclusive competence of the domestic courts in the matters of international adoption.

353. The Government further referred, in particular, to the case of *Moretti and Benedetti v. Italy*, no. 16318/07, § 33, 27 April 2010, where the Court found that the applicants who were prospective adoptive parents had no right to bring proceedings before the Court on behalf of the child they wished to adopt. The Government also noted that in the case of *S.D., D.P., and A.T. v. the United Kingdom*, no. 23715/94, Commission decision of 20 May 1996, the Commission had decided that the application could be brought on behalf of the three child applicants by the party who had acted in the domestic child-care proceedings as the solicitor appointed to protect their interests, even though he did not have specific powers to represent them before the Court. They pointed out, however, that in that case the object of the application had been limited to complaints that the child-care proceedings had not complied with the Convention requirements and had not sought to examine the substantive decisions reached as regards the children's welfare or the exercise of the local authority's supervisory responsibility. In the Government's opinion, the cases at hand were substantially different from the case of *S.D., D.P., and A.T.*, cited above, precisely because they concerned substantive issues concerning the custody of the children. In their view, no bond had been formed between the US applicants and the children in question, and to hold that the former could represent the latter before the Court would conflict with the exclusive competence of the institutions into whose care the children had been placed.

354. The US applicants argued that they needed to have the right to lodge applications on behalf of the Russian children with the Court as the latters' interests would otherwise never be brought to the Court's attention and they would be deprived of the effective protection of their rights under the Convention. The applicants pointed out that the Convention organs had acknowledged that the position of the children required careful consideration as "children must generally rely on other persons to present their claims and represent their interests and may not be of an age or capacity to authorise steps to be taken on their behalf in any real sense" and refused to apply a restrictive or technical approach with regard to the issue of the children's representation (see *S.D., D.P., and A.T.*, cited above). In particular, the Commission accepted the application lodged on the children's behalf by a person who was not specifically authorised to represent them before the Convention organs, having acknowledged the "growing recognition of the vulnerability of children and the need to provide them with specific protection of their interests" (see ibid).

355. The applicants further noted that in *P., C. and S. v. the United Kingdom*, (dec.), no. 56547/00, 11 December 2001, the Court had also recognised that biological parents stripped of their parental rights could introduce an application before the Court on behalf of a child after the latter has been adopted by a different family. In that case the Court noted, in particular, that the key consideration was that any serious issues concerning respect for a child's rights should be examined, and that "in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention" (ibid).

356. The applicants also noted that in cases nos. 23890/13 and 37173/13 the child applicants had themselves authorised Ms. Moskalenko, a lawyer from the International Protection Centre, to represent their interests before the Court.

2. The Court's assessment

357. The Court considers that the Government's objection raises issues of family ties which are closely linked to the merits of the complaints. The Court thus finds it necessary to join the Government's objection to the merits of the applicants' complaints.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

358. The applicants complained that pursuant to Law no. 272-FZ they had been subjected to discrimination on the grounds of the US applicants'

nationality in breach of Article 14 of the Convention in conjunction with Article 8. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. Arguments of the parties

(a) The Government's submissions

359. The Government contested the applicants' argument. They submitted, firstly, that the complaint was incompatible *ratione materiae* with the provisions of the Convention. In their view, the relations between the US applicants and the children they sought to adopt constituted neither "family life" nor "private life" within the meaning of Article 8 of the Convention and did not fall within the ambit of that provision for the purposes of Article 14 either. The Government pointed out that the right to adopt is not, as such, included among the rights guaranteed by the Convention and that Article 8 does not oblige States to grant a person the status of adoptive parent or adopted child (see *X v. Belgium and Netherlands*, no. 6482/74, Commission decision of 10 July 1975, and *Di Lazarro v. Italy*, no. 31924/96, Commission decision of 10 July 1997). Furthermore, according to the Court's case law, the right to respect for family life presupposes the existence of a family and does not safeguard the mere desire to found a family (see *Fretté v. France*, no. 36515/97, § 32, ECHR 2002-I).

360. The Government also noted that, in deciding whether "family life" exists, the Convention organs have "taken into account whether, for instance, persons in fact lived together and whether they were financially dependent on one another" (see *X and Y v. the United Kingdom*, no. 7229/75, Commission decision of 15 December 1977).

361. The Government argued that the relations between the US applicants and the children they sought to adopt constituted neither "family life" nor "private life" within the meaning of Article 8 of the Convention for the following reasons: (i) not only was the adoption procedure not at an "advanced stage", but in cases nos. 23890/13 and 37173/13 it had not even been started in accordance with the Russian domestic procedure; (ii) the children were not financially dependent on the US applicants and were fully provided for by the Russian Federation; and (iii) taking into account the children's age and the psycho-neurological disorders that most of them suffer from, and in view of the fact that meetings with the US applicants took place on a few days only and always in the presence of orphanage

staff, it was not possible to ascertain the existence of stable psycho-emotional "family links" between the children and the US applicants. The Government relied in this regard on the expert opinions of A.M., Director of the Charity Fund for Prevention of Social Orphanhood (*Благотворительный фонд профилактики социального сиротства*), and Dr G.S., the Head of the Laboratory for the Management of Social Systems for the Protection of Childhood at the Metropolitan Academy of Finance and Humanitarian Sciences (*Столичная финансово-гуманитарная академия*).

362. A.M. stated, in particular, that whereas a child must have experience of a close continuous relationship with one or several adults for his or her normal development, orphanages traditionally function in a way that prevents a child's emotional attachment to a particular person. For this reason children placed in orphanages express "undiscriminating friendliness" towards any adult that visits the orphanage, are eager to call anyone "mummy" and give a hug to a stranger. When such children are placed in a family, it takes a long time spent together with the adults in a family environment for the attachment to their new parents to form. For this reason, in cases where the adopted child is under seven years old, the adoptive parents are generally recommended to take time off work immediately after the adoption in order to spend it with the child, and not to place him or her in a nursery or kindergarten straight away. Accordingly, just a few days, let alone hours, spent together are clearly an insufficient basis for a child to form an attachment to an adult. This would require a much longer period and a deeper relationship.

363. Dr G.S. likewise stated that an attachment between a child and an adult cannot not be formed as a result of just a few meetings but requires a much longer and more stable contact. The enthusiastic emotional reaction of a child towards the prospective adoptive parents is a response to individual attention. She also submitted that in Russia the family was recognised as the best place for a child's upbringing and that current policy was aimed at placing children in families and minimising their stay in orphanages.

364. As regards case no. 23890/13, the Government submitted that after having been involved in charity work in Chelyabinsk for a number of years, in March 2012 the US applicants had expressed their wish to adopt M.K. However, they had never started the official procedure for adoption and were not registered as prospective adoptive parents in the State databank, having failed to submit the requisite documents. Furthermore, on 23 December 2013 a panel of teachers and psychologists from the orphanage questioned M.K. with a view to establishing his feelings towards the US applicants. They found that, although M.K. had warm feelings towards the US applicants, was glad when they visited him and considered the possibility of living with them, he also talked about the fear of moving to a different country and of the possible development of his relationship

with the US applicants. The panel concluded that relations between the US applicants and M.K. were friendly, but that it would be premature to describe them as family relations.

365. As regards case no. 42340/13, the Government submitted that K.S. had stayed with the US applicants from 13 December 2010 and 17 January 2011 as part of a hosting programme whose aim was to allow children left without parental care to spend holidays with a Christian family in another country. The Government referred to the case *Giusto, Bornacin and V. v. Italy* (dec.), no. 38972/06, 15 May 2007, where the Court found that links between the Italian applicant and a girl from Belarus they sought to adopt – who had stayed with them on several occasions as part of a programme that allowed the children affected by the Chernobyl nuclear accident to spend holidays in Italy – were not close enough to be considered to constitute "family life" within the meaning of Article 8. In the Government's view, similar logic applied to the case at hand.

366. As regards case no. 37173/13, the Government submitted that, although the US applicants had become aware of V.B.'s existence in 2010, they had not applied for his adoption until 2012. Furthermore, they had never obtained a referral to visit and had consequently never met him. Therefore, there were no "family relations" between the US applicants and V.B., irrespective of the fact that he was a biological brother of G.N.Y.H., whom they had adopted earlier.

(b) The applicants' submissions

367. The applicants argued that the relationship between the prospective adoptive parents and the children constituted "family life" within the meaning of Article 8. They pointed out that the Court did not require a biological link between the persons involved in order to find that a relationship constituted "family life", but relied on the factual existence of close personal ties (*K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII). Nor did the Court find that cohabitation was a requirement *sine qua non* for the recognition of "family ties" (see *Kopf and Liberda v. Austria*, no. 1598/06, § 35, 17 January 2012). Furthermore, the protection under Article 8 also extended to cover intended family life (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 62, Series A no. 94).

368. They also maintained that the Russian system of international adoption at least allows – if it does not actually require – the prospective adoptive parents and child to develop a relationship before the adoption is finalised through a court order. Firstly, prospective adoptive parents are encouraged to communicate with the children and send photographs so as to introduce the children to their families and homes. Then they must travel to Russia to meet the child in person and bond with him or her. During such visits, which take place over the course of several days, the child spends

considerable time with the prospective adoptive parents and engages in various activities. This essentially allows the adults and the child to enjoy their first family experience. After these visits such children often feel uneasy parting from the prospective adoptive parents, fearing that they will not come back. In support of the above submissions the applicants relied on the US applicants' personal experience and a written statement concerning the procedure of Russian international adoption provided by Ms L., the founder and director of the Stork Adoption Agency, which specialised in international adoptions in Russia from 1994 to 2013.

369. The applicants also contested the Government's submissions on several points. Firstly, they stated that the time spent together by the prospective adoptive parents and children must be sufficient to form a family bond. In particular, the duration of such visits had been agreed with the Russian authorities, who considered it sufficient to subsequently allow the Russian children to be taken to the United States. Secondly, the age of the children was not the most important factor for establishing family ties, as the existence of a family bond between a mother and a new-born child was hardly in dispute. Thirdly, they considered discriminatory the Government's statement to the effect that it was impossible to ascertain the existence of "family links" between the children and the US applicants on account of the children's state of health.

370. In the applicants' view, due to (i) the very nature of the Russian international adoption system, (ii) the advanced stage of the adoption procedure and (iii) the efforts made by the prospective adoptive parents to complete the procedure, the prospective adoptive parents and children did develop family ties amounting to family life and, therefore, their relationships deserve the protection of "family life" under Article 8 of the Convention.

371. As regards case no. 23890/13, the applicants maintain that since 2008 the US applicants and M.K. have become very close. They have always stayed in touch, and since November 2011 they have communicated with each other by different means on a daily basis. M.K. addressed the US applicants as "Mom and Dad". In the applicants' view, their relationship amounts to "family life" within the meaning of Article 8.

372. As regards case no. 42430/13, the US applicants decided to adopt K.S. immediately after her five-week stay with them in December 2010 and January 2011. Afterwards they visited her in Russia on three occasions, and K.S. told other children in the orphanage that she was being visited by her family. The US applicants stayed in touch with her, phoning at least once a month with the help of an interpreter. The phone calls had to cease in September 2013, when K.S. was transferred to a different institution. They developed a close relationship over the course of almost three years which, according to the applicants, amounted to "family life" within the meaning of Article 8. They also pointed out that, in contrast to *Giusto, Bornacin*

and V. v. Italy, cited above, the US applicants' adoption application had not been refused by a court, but rather the proceedings had been brought to a halt because of the entry into force of Law no. 272-FZ.

373. As regards case no. 37173/13, according to the applicants, the most important factor endorsing the existence of family life in this case was the biological link between the child applicants, G.N.Y.H. and V.B., who were brother and sister. As soon as the US applicants learned of V.B.'s existence, they cared about him and formed a bond with him through correspondence and phone calls. V.B. specifically expressed his wish to join his sister in the US applicants' family in a letter dated 30 April 2013 addressed to G.N.Y.H. In the applicants' view, their relationship undoubtedly amounted to "family life" within the meaning of Article 8.

374. The applicants argued that the relationships between the prospective adoptive parents and children in the present cases in any event constituted "private life" within the meaning of Article 8. They referred, in particular, to *X v. Iceland*, (dec.) no. 6825/74, 18 May 1976; *Wakefield v. United Kingdom*, (dec.) no. 15817/89, 1 October 1990; and *Balogun v. the United Kingdom*, no. 60286/09, § 47, 10 April 2012.

375. The applicants submitted that, even assuming that the relationships between the prospective adoptive parents and the children did not constitute "family life" or "private life" within the meaning of Article 8, they still fell within the ambit of Article 8 for the purposes of Article 14. In their view, having adopted the Bilateral Agreement on Adoption, Russia provided rights extending beyond those expressly guaranteed by the Convention. The Court held that the protection from discrimination enshrined in Article 14 extended to such additional rights, in particular in the context of adoption (see *E.B. v. France* [GC], no. 43546/02, §§ 47-51, 22 January 2008). The applicants contested the Government's argument that the cases at hand were substantially different from *E.B.*, cited above, and *Fretté*, cited above. They maintained that both *E.B.* and *Fretté* related to discrimination in the matter of adoption, and the fact that they concerned discrimination on the grounds of sexual orientation whilst the present cases concerned discrimination on grounds of nationality was immaterial, since the latter was likewise prohibited by the Convention (see *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports* 1996-IV). Accordingly, the present cases fell within the ambit of Article 8 for the purposes of Article 14.

2. The Court's assessment

376. The Court reiterates at the outset that Article 14 merely complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions (see, among many other authorities, *Sahin v. Germany* [GC], no. 30943/96, § 85, ECHR 2003-VIII). The application of Article 14

does not necessarily presuppose the violation of one of the substantive rights protected by the Convention. It is necessary – but also sufficient – for the facts of the case to fall "within the ambit" of one or more of the Articles of the Convention (see *Abdulaziz, Cabales and Balkandali*, cited above, § 71; *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, § 22; *Petrovic v. Austria*, judgment of 27 March 1998, *Reports* 1998-II, § 22; and *Biao v. Denmark* [GC], no. 38590/10, § 88, ECHR 2016).

377. Given that the applicants in the present case relied on Article 14 in conjunction with Article 8 of the Convention, the Court further reiterates that the provisions of Article 8 do not guarantee either the right to found a family or the right to adopt (see *Fretté*, cited above, § 32 and *E.B.*, cited above, § 41). Neither party contests this. The right to respect for "family life" does not safeguard the mere desire to found a family; it presupposes the existence of a family (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, § 31), or at the very least the potential relationship between a child born out of wedlock and his or her natural father, for example, (see *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI), or the relationship that arises from a genuine marriage, even if family life has not yet been fully established (see *Abdulaziz, Cabales and Balkandali*, cited above, § 62), or the relationship that arises from a lawful and genuine adoption (see *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, § 148, ECHR 2004-V).

378. A right to adopt is likewise not provided for by domestic law or other international instruments such as the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, or the Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of International Adoption (see *E.B.*, cited above, § 42 and paragraphs 299-300 above).

379. At the same time, the Court has held the notion of "private life" within the meaning of Article 8 of the Convention to be a broad concept which encompasses, *inter alia*, the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, p. 33, § 29), the right to "personal development" (see *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I) or the right to self-determination as such (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). It encompasses elements such as gender identification, sexual orientation and sexual life, which fall within the personal sphere protected by Article 8 (see, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, pp. 18-19, § 41), and the right to respect for both the decisions to have and not to have a child (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-I), including the right of a couple to conceive a child and to make use of medically assisted reproduction for that

purpose (see *S.H. and Others v. Austria* ([GC], no. 57813/00, § 82, ECHR 2011.

380. The Court also reiterates that the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide. This principle is well entrenched in the Court's case-law (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X, and *E.B.*, cited above, § 48).

381. The Court has previously found Article 14 applicable in the cases of *E.B.* and *Fretté*, cited above, which concerned proceedings for authorisation to adopt a child, and where the applicants claimed to have been discriminated against on the grounds of their avowed homosexuality (see *E.B.*, cited above, §§ 41-52, and *Fretté*, cited above, §§ 31-33). The Court stated, in particular, that it was not called upon to rule whether the right to adopt, having regard to the fact that the Convention is a living instrument to be interpreted in the light of present-day conditions, should or should not fall within the ambit of Article 8 of the Convention taken alone, since French legislation expressly granted single persons the right to apply for authorisation to adopt and established a procedure to that end. It further held that where the State had gone beyond its obligations under Article 8 in creating such a right – a possibility open to it under Article 53 of the Convention – it could not, in applying that right, take discriminatory measures within the meaning of Article 14 (see *E.B.*, cited above, §§ 44-49).

382. The cases at hand concern proceedings for the intercountry adoption of Russian children by the US applicants. The US applicants claimed that, as a consequence of the ban on the adoption of Russian children by United States nationals subsequently introduced into Russian law, they had been prevented from completing the adoption procedure, and had thus been discriminated against on the grounds of their nationality, resulting in a violation of the provisions of Article 14 of the Convention taken in conjunction with Article 8.

383. The Court observes that the US applicants had a genuine intention to become parents by applying for intercountry adoption at the time when Russian law still provided for such a right. Therefore, what is at issue in the present cases is the US applicants' decision to become parents (see *S.H. and Others v. Austria*, cited above, § 82), and their personal development through the role of parents that they wished to assume *vis-à-vis* the children. Accordingly, the Court considers that the additional right to apply for adoption and subsequently have a fair treatment of the respective application, granted by Russia at the relevant time, which the US applicants sought to exercise, falls within the general scope of Article 8 of the Convention as pertaining to their "private life".

384. The Court further notes that in the cases in question the US applicants alleged that they had been discriminated against in the exercise of this right on the grounds of their nationality. The latter is a concept covered by Article 14 of the Convention (see *Gaygusuz*, cited above, § 42, and *Biao*, cited above, § 89).

385. Having regard to the foregoing, the Court finds that the facts of the cases fall within the ambit of Article 8 of the Convention, and that Article 14 of the Convention taken in conjunction with Article 8 is applicable in the present case insofar as the complaint concerns the US applicants. Accordingly, the Court dismisses the preliminary objection raised by the Government with respect to the inapplicability of Article 14 in this part.

386. The Court further observes that, insofar as the complaint is raised on behalf of the children the US applicants sought to adopt, the ban on adoption was imposed only with regard to the nationality of the prospective adoptive parents. The application of the ban was not based on any of the grounds for discrimination covered by Article 14 of the Convention with respect to the children. Accordingly, the Court finds that the complaints under this provision concern only the US applicants, and holds that Article 14 is inapplicable with regard to the complaint made on behalf of the children the US applicants sought to adopt.

387. The Court also reiterates that the preliminary objection raised by the Government with respect to the authority of the US applicants to represent the children they sought to adopt in proceedings before the Court was linked to the merits of the complaints (see paragraph 357 above). However, the Court is not called upon to decide on this issue with regard to Article 14 as it has found this provision applicable only insofar as the complaint concerns the US applicants.

388. In the light of the parties' submissions, the Court finds that this complaint raises complex issues of fact and law which cannot be resolved at this stage in the examination of the application but require examination on the merits. It follows that this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government's submissions

389. Firstly, as regards the legal framework of the ban on adoption and the relationship between the Bilateral Agreement on Adoption and Law 272-FZ, the Government submitted the following. The Bilateral Agreement

on Adoption was only applicable insofar as the domestic laws of the States Parties allowed adoption. In particular, under Article 6 § 2 of the agreement, the conditions under which a child might be adopted were to be determined by the domestic laws of the Country of Origin, that is to say, in the event of the adoption of a Russian child, by Russian laws (see paragraph 326 above). Accordingly, the Bilateral Agreement on Adoption did not contain and could not have contained provisions that would impose on the Russian Federation a duty to transfer Russian children for adoption to the United States of America.

390. The Government further submitted that, after the Russian Federation informed the United States on 1 January 2013 that it was intending to terminate the Bilateral Agreement on Adoption, the latter remained in force until 1 January 2014. Effectively, throughout 2013 the agreement applied only in the part relating to the monitoring of the children's wellbeing in the adoptive families. This did not create any conflict with Law no. 272-FZ as the Bilateral Agreement on Adoption did not provide for an obligation on the part of the Russian Federation to transfer Russian children to the United States for adoption without a Russian court decision to this effect.

391. The Government also referred to the instructions that the Supreme Court issued in its letter no. 7-VS-224/13 of 22 January 2013 (see paragraph 331 above). They submitted that, although the instructions state that in cases where decisions concerning the adoption were taken by the courts before 1 January 2013 children should be transferred to the adoptive parents, in practice the instructions of the Supreme Court also meant that – despite the fact that the Bilateral Agreement on Adoption remained in force for a further year – Russian courts with the competence to examine adoption cases should apply Law no. 272-FZ, which provided for a ban on the adoption of Russian children by United States nationals with effect from 1 January 2013.

392. As regards compliance with Article 14 of the Convention, the Government submitted that the ban on the adoption of Russian children by US nationals did not constitute discrimination on the grounds of nationality but was based on objective and reasonable grounds and the children's best interests. Referring to *Schwizgebel v. Switzerland*, no. 25762/07, § 93, ECHR 2010 (extracts), they argued that the State enjoyed a wide margin of appreciation in matters concerning adoption. In the Government's view, the cases at hand were different from *Fretté* and *E.B.* cited above, in that those cases were concerned with discrimination on the grounds of sexual orientation, while in the cases at hand the US applicants were not discriminated against on the grounds of either their sex or their sexual orientation. Nor did they belong to any vulnerable group. Furthermore, whereas those two cases were concerned with adoption within the State of the applicants' nationality and residence, the cases at hand involved

intercountry adoption. Unlike the applicants in *Fretté* and *E.B.*, who were refused licences to be adoptive parents and consequently were not permitted to adopt a child as a matter of principle, the US applicants have the possibility of seeking to adopt a child in other States that permit intercountry adoption.

393. The Government also argued that States had wide discretion in matters of international adoption. They pointed out that some States joined the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption as receiving States only, meaning that they had no intention of transferring children who were nationals of that State for adoption to other States. Furthermore, there were numerous instances when a particular State had suspended intercountry adoption either as a whole or with respect to particular States. The Government referred, in particular, to the ban on adoption from Cambodia introduced by the United Kingdom in 2005; the ban on intercountry adoption of Romanian children introduced by Romania in 2001, which remained in force until Romania's accession to the European Union; the ban on intercountry adoption introduced by Guatemala in 2007; and the ban on adoption of Vietnamese children by the US nationals introduced by Vietnam in 2008. The Government also referred to the legislative provisions of a number of countries which either permitted intercountry adoption in exceptional cases only or made it subject to a number of strict requirements, which usually included the impossibility of finding an adoptive family for the child within the State.

394. The Government also stated that, according to information from the Ministry of Education and Science, over the course of the past three years adoptive parents from the United States had failed to provide reports about the wellbeing of 653 children adopted from Russia in 1,136 instances. Furthermore, whereas between 1992 and 2012 US nationals had adopted 61,625 Russian children, on 1 January 2013 only 37,438 adopted children from Russia had been registered with the competent Russian agencies abroad, as required under the terms of the adoption agreements.

395. The Government pointed out that States also enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 72, *Reports*, 1996-IV). They maintained that in the cases at hand the difference in treatment pursued a legitimate aim, namely the protection of children's rights, and was based on objective and reasonable grounds. They submitted, in particular, that – according to the assessment of some NGOs – there was a hidden "epidemic of violence" in the United States in respect of minors. On average, five children died every day because of abuse or negligence perpetrated by adults (in 80% of cases biological or adoptive parents). According to a report by the Administration for Children and Families of

the US Department of Health and Human Services (DHHS), in 2012 approximately 1,640 children died for the above reasons, that is to say 2.2 children per 100,000 residents. According to the DHHS information, every year the guardianship agencies receive approximately 3,000,000 reports concerning the improper treatment of approximately 6,000,000 minors. According to information from the NGO the National Alliance for Children, in 2012 the US social services provided medical, psychological and other assistance to 286,500 child victims, of whom 198,000 were victims of sexual abuse, 49,000 were victims of physical abuse and 17,500 were victims of negligence. Sometimes it was social workers who were the perpetrators. At the same time, due to insufficient funding, the social services could not cope with the growing number of instances of cruel or negligent treatment of children. For example, an examination of the child protection social service in the State of Illinois revealed that over 6,500 reports of child abuse remained uninvestigated. The Government referred to an opinion by unnamed experts who believed the situation in other US states to be similar.

396. The Government further submitted that, although no official statistics were available, the Russian Embassy in the United States had cognisance of at least twenty children adopted from Russia who had been killed by their American adoptive parents. In the course of the previous five years Russian agencies in the United States had provided legal and other assistance to approximately 500 Russian minors who had been victims of mistreatment by their adoptive parents. Systematic violations of minors' rights were revealed in the course of two visits by Russian consular staff to an orphanage for adopted Russian children called the "Ranch for Kids" in the State of Montana, where 400 children were placed in 2006. At least twenty-six Russians were listed as victims of an underground internet-based market for the re-adoption of American and foreign children, an activity which was being investigated by Reuters.

397. According to the Government, one of the factors that contributes to the inadequate legal protection offered to children adopted from Russia is the discrimination inherent in the American judicial system. None of the adoptive parents responsible for the deaths of the twenty Russian children was sentenced to either capital punishment or a life sentence of the type often applied for this type of crime. Furthermore, while the average term of imprisonment of those found guilty of murdering American children was thirteen years – not taking into account life sentences – in respect of the adoptive parents of Russian children it was only eight and a half years, and many of them received suspended sentences or were exempted from punishment altogether. The Government provided information concerning the deaths of nineteen Russian children who had been adopted by US nationals between 1996 and 2013. In fifteen cases their adoptive parents had been found responsible for their deaths and sentenced to terms of

imprisonment ranging from sixteen months to thirty-five years. In two cases they were acquitted and in two cases the investigation is still pending. According to the Government, they also obtained information about ten cases in which adopted Russian children had been subjected to abuse or cruel treatment by their US adoptive parents. Criminal proceedings against the parents had been instituted by the Russian Investigative Committee in respect of some of these cases, together with several others – thirteen altogether.

398. The Government commented that the Russian authorities had encountered very poor cooperation on the part of the US authorities whenever they had been made aware of any breach of the rights of children adopted from Russia. The US authorities had regularly failed to provide prompt information concerning such incidents or to arrange access to the children for Russian consular staff and had generally been reluctant to help. Attempts to improve the situation, even during the period of two months when the Bilateral Agreement on Adoption was in force, had proved futile. In particular, certain initiatives on the part of Russia, such as setting up a database of Russian children adopted by US nationals, had been rejected by the United States. Furthermore, the United States Department of State, the interlocutor under the Bilateral Agreement on Adoption, regularly failed to provide comprehensive information in response to queries from the Russian authorities with respect to situations where harm had been caused to the life or health of Russian adopted children, citing the fact that each State had its own laws and procedures. According to the Government, the Russian authorities had not encountered such problems with any other State in the context of international adoption. Accordingly, the ban on the adoption of Russian children by US nationals did not constitute discrimination but was a measure of last resort prompted by (i) the statistics recording instances of death, injury, sexual abuse and neglect caused to Russian children adopted in the United States and (ii) lack of proper cooperation on the part of the United States that would help to ensure the safety and psychological well-being of Russian children. In the Government's view, the fact that in the United States there are good medical and educational programmes for children with special needs cannot serve as a reason for renewing intercountry adoptions between Russia and the United States. They also pointed out that the provision of medical treatment to disabled children abroad is subject to regulation by other laws and has not been suspended.

399. Finally, the Government submitted that the laws and international treaties of the Russian Federation embraced the principle behind the 1989 United Nations Convention on the Rights of the Child, whereby intercountry adoption may be considered if the child cannot be placed in an adoptive family in the child's country of origin (see paragraph 300 above). At the current time Russia was taking measures to encourage adoption by Russian nationals, as reflected in Presidential Decree no. 1688 of

28 December 2012 (see paragraph 321 above), and consequently to reduce the number of children in need of intercountry adoption. As a result of such efforts, in the recent years there had been a 13% increase in the number of children placed in foster families (76% in 2001 and 86% in 2013), whereas the number of children placed in foreign families decreased (from 29.6% in 2009 to 18% in 2013). At the same time there had been a 100% increase in the number of Russian families willing to adopt a child.

400. The Government also provided the following information. In 2013 fifty-three Russian children were transferred to adoptive parents in the United States on the basis of court decisions delivered in 2012 prior to the entry into force of the adoption ban. As regards the request from the United States to allow the adoption procedure to continue in 259 cases where the prospective adoptive parents had allegedly met the Russian children they were seeking to adopt, the Russian Ministry of Education and Science conducted a check which produced the following results: (i) 164 children had been placed for adoption into Russian families; (ii) the biological mother's parental authority was restored in respect of one child; (iii) in ninety-four cases the assertions made by the American party in the case were found not to correspond to the actual circumstances, in particular as regard contact between the prospective adoptive parents and children. The request was refused with respect to twenty-two cases, and in thirty-one cases the information provided by the American party was incomplete as it contained neither the child's surname nor place of residence.

(b) The applicants' submissions

401. The applicants argued that the ban on adoption introduced by Law no. 272-FZ was in breach of the Bilateral Agreement on Adoption. In their view, it was contrary to the agreement's object and purpose as it rendered meaningless the procedural requirements enshrined therein and thereby prevented decisions being taken in the best interests of the child (see Article 3 § 1 of the Bilateral Agreement on Adoption in paragraph 326 above).

402. The applicants contended that by excluding only US nationals from its international adoption programme, the Russian authorities were subjecting US applicants to differential treatment based on their nationality in breach of the Convention. Before December 2012 the US applicants had had the right to adopt children from Russia on an equal footing with other foreigners. They had started the procedure in compliance with the requirements of both the US and Russian authorities. However, the procedure had been cut short by the introduction of the ban on adoption which only extended to the US nationals and was devoid of any objective and reasonable justification.

403. As regards the Government's reference to instances involving the abuse and neglect of Russian adoptees in the United States, the applicants

submitted that, apart from the fact that they constituted a tiny proportion of the overall number of Russian children adopted by US nationals in the course of the past fifteen years, the Government had provided neither any evidence that the situation was better with regard to other countries whose nationals were still eligible for adoption of Russian children, nor any information concerning the treatment of children in Russian orphanages. Furthermore, not only had most of the incidents occurred before the entry into force of the Bilateral Agreement on Adoption, but – according to the Joint Statement by the Presidents of the United States of America and the Russian Federation Concerning Intercountry Adoption released on 24 June 2010 (see paragraph 322 above) – they constituted the main reason for its adoption. In the applicants' view, the circumstances could not have changed so drastically as to compel the Russian Federation to unilaterally terminate the Bilateral Agreement on Adoption less than two months after its entry into force on account of precisely those incidents in respect of which the treaty came about.

404. As regards the Government's argument that the aim behind the ban on the adoption of Russian children by US nationals was to encourage the adoption of Russian children by Russian families, the applicants submitted that Article 24 of Government Decree no. 275 of 29 March 2000 in fact allowed adoption by foreign nationals only when it appeared to be impossible to place the children into the care of Russian nationals permanently residing in Russia (see paragraph 313 above). The Bilateral Agreement on Adoption fully respected this provision (see Article 3 § 4 in paragraph 326 above). In the applicants' view, the total ban on intercountry adoptions by the US nationals could not, on the one hand, encourage Russian nationals to adopt Russian children in principle. On the other hand, even if it could, such a measure would not be sufficient for this purpose as long as other foreigners could still adopt Russian children.

405. Finally, the applicants contended that the ban on adoption, even assuming that it pursued the aims stated by the Government, constituted a disproportionate measure. By contrast to the Bilateral Agreement on Adoption, which in their view represented a reasonable and constructive response to the incidents of child abuse in adoptive families, the ban on adoption was a disproportionate reaction which ignored the best interests of the children. By excluding an entire category of potentially loving parents for children for whom no adoptive family could be found in Russia, or even by delaying the adoption pending the search for a Russian family despite the availability of a suitable American family, the ban was jeopardising the wellbeing of those children.

406. For the above reasons the applicants contended that Law no. 272-FZ and its application to the adoption proceedings in the present cases constituted discrimination on the grounds of nationality in breach of Article 14 in conjunction with Article 8.

2. The Court's assessment

(a) General principles

407. It is the Court's established case-law that in order for an issue to arise under Article 14 there must be a difference in the treatment of individuals in relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *Schalk and Kopf*, cited above, § 96, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008). However, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of nationality as compatible with the Convention (see *Gaygusuz*, cited above, § 42, *Reports* 1996-IV; *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X; *Andrejeva v. Latvia* [GC], no. 55707/00, § 87, ECHR 2009; *Ponomaryovi v. Bulgaria*, no. 5335/05, § 52, ECHR 2011; and *Biao*, cited above, § 93).

(b) Whether there was a difference in treatment

408. The Court must first establish whether there was a difference in treatment based on the US applicants' nationality.

409. It observes that in 2010-12, when the US applicants initiated the adoption procedure with a view to adopting a child from Russia, Russian legislation had permitted intercountry adoptions when it appeared impossible to place the child in the care of Russian nationals permanently residing in Russia or in the care of the children's relatives, irrespective of the latter's nationality and place of residence (see paragraphs 313 above). Russian domestic law did not contain any specific provisions concerning the eligibility of nationals of a particular State for intercountry adoption. The US nationals could thus apply for intercountry adoption of a Russian child on an equal footing with other foreign nationals.

410. Law no. 272-FZ, which entered into force on 1 January 2013, introduced a general ban on the adoption of Russian children by US nationals. The Court takes note of the applicants' argument that Law no. 272-FZ was in breach of the Bilateral Agreement on Adoption. It observes, however, that the agreement set up a procedure and additional safeguards for intercountry adoptions between the United States and Russia and that Article 6 § 1 of the agreement expressly provided that "[t]he adoption and transfer of a child under this Agreement shall be carried out in accordance with the domestic laws of the Parties and ... [t]he requirements for prospective adoptive parents shall be determined by the domestic laws

of the Parties" (see paragraph 326 above). Therefore, the Bilateral Agreement on Adoption did not create a substantive right to intercountry adoption, which could only exist by virtue of the domestic law of the States parties. Although such a right existed in Russian law in respect of US nationals, among others, prior to 1 January 2013, the entry into force of Law no. 272-FZ on that date eradicated such a right in respect of US nationals. Therefore, unlike nationals of other States, US nationals were no longer eligible to apply for intercountry adoption of Russian children.

411. Accordingly, the Court finds that there was a difference between the treatment of US applicants and that of other foreign nationals who were candidates for intercountry adoption of Russian children on the grounds of the nationality of the former.

(c) Whether the difference in treatment had objective and reasonable justification

412. The Government justified the introduction of the ban on the adoption of Russian children by US nationals with reference to two main aims. Firstly, protecting the children's best interests. In this regard they referred to a number of instances of ill-treatment of Russian children adopted by US nationals and the allegedly poor cooperation on the part of the US authorities in this regard. And secondly, encouraging adoption by Russian nationals.

413. The applicants contested both the Government's stated aims. As regards the first aim, they argued that the number of such incidents had been very small and that there was no evidence that the situation was any better in other States or in Russia itself. Moreover, the existence of such incidents had constituted the main reason for the Bilateral Agreement on Adoption, which had introduced additional safeguards in this respect. As regards the second aim, the applicants pointed out that adoption by foreign nationals had in any event only been allowed when it appeared to be impossible to place the child in the care of Russian nationals permanently residing in Russia (see paragraph 313 above). In their view, the measure in question was in any event inadequate for this purpose as other foreigners were still able to adopt Russian children.

414. The Court accepts that, in principle, protecting the children's interests and encouraging adoption at national level constitute legitimate aims. It will further examine whether the measure in question constituted an adequate response to the aims stated by the Government.

415. The Court has already noted that the right to adopt is not guaranteed by either the Convention or other international legal instruments (see paragraph 378 above). Likewise, there is no obligation under international law for a State to provide for such a right.

416. The Court reiterates, however, that the prohibition of discrimination enshrined in Article 14 also applies to additional rights provided by States

that fall within the general scope of any Convention right, and that where a State has gone beyond its obligations under the Convention in creating such a right it may not, in the application of that right, take discriminatory measures within the meaning of Article 14 (see paragraph 380 above).

417. In the case at hand Russia voluntarily provided for a right to intercountry adoption which extended to US nationals, among others. This right was subsequently extinguished in respect of the latter with effect from 1 January 2013. The Court does not question the authority of a State to discontinue intercountry adoptions partially or completely. It must ascertain, however, that such a measure is carried out in a manner compatible with the State's obligations under the Convention.

418. As regards the aims advanced by the Government by way of justification for the measure in question, the Court notes that – according to the Joint Statement by the Presidents of the United States of America and the Russian Federation Concerning Intercountry Adoption released on 24 June 2010 (see paragraph 322 above) – tragic incidents involving Russian children adopted in the US for which the adoptive parents bore responsibility constituted the main reason for concluding the treaty, aimed as it was at providing stronger legal safeguards for such intercountry adoptions. It further notes that most of the incidents referred to by the Government had occurred before the entry into force of the Bilateral Agreement on Adoption, and that the total ban on adoption of Russian children by US nationals was introduced only two months after its entry into force. Although the Government maintained that the ban on adoption was "the last resort" (see paragraph 398 above), the Court observes that the Government did not produce any evidence of specific incidents occurring within that short period of time, when the additional safeguards introduced by the Bilateral Agreement on Adoption could hardly have had any impact.

419. The Court also notes that Article 3 § 4 of the Bilateral Agreement on Adoption restated the provision of the Russian law to the effect that intercountry adoption of a child from Russia was allowed only when it appeared impossible to place him or her with a family in Russia (see paragraph 326 above).

420. Accordingly, the Court retains doubts as to whether or not the ban on adoption in question constituted an adequate response to the aims stated by the Government. However, in order to decide whether or not the measure was compatible with the applicants' rights under Article 14 of the Convention, it must examine the way in which it was implemented.

421. The Court observes that intercountry adoption is a relatively long and complicated procedure involving multiple stages in both States concerned and requires significant time and effort on the part of the prospective adoptive parents. In cases where the procedure was initially aimed at the adoption of a particular child, or after the prospective adoptive parents had met the child at a later stage, it also involves considerable

emotional resources as an attachment begins to form between the adults and the child.

422. In the cases at hand the US applicants had initiated the intercountry adoption procedure in 2010-12, when it was still provided for in Russian law. By the date of introduction of the adoption ban on 1 January 2013, most US applicants had met the child they were seeking to adopt, had spent a certain amount of time with him or her, and had either submitted the adoption application to a Russian court or had completed all the prior stages of the procedure and had their file ready for submission to a court. Accordingly, these US applicants may be considered to have been in the final stages of the adoption procedure.

423. The Court notes that in cases nos. 23890/13, 37173/13 and 42403/13, the US applicants had not completed certain procedural steps in Russia that are required prior to submitting an adoption application to a court. It observes, however, firstly, that in any event these proceedings were already in progress and, secondly, that these cases involved situations where the proceedings initially concerned the adoption of a particular child: in case no. 23890/13 that of a boy whom the applicants had known for several years, in case no. 37173/13 that of a girl who had previously stayed with the US applicants as part of the orphan hosting programme, and in case no. 42403/13 that of the biological brother of the US applicants' previously adopted daughter. In all these cases the Russian authorities were aware of the adoption proceedings pending in respect of these children.

424. In the Court's view, having initiated the adoption proceedings at the time when Russia expressly permitted United States nationals to apply for intercountry adoption of Russian children, the US applicants could reasonably have believed that their applications for adoption would be fairly assessed on the merits. The Court has not been provided with any cogent argument to enable it to distinguish between the US applicants who were already at different stages of the adoption proceedings when the ban on adoption was introduced.

425. The Court is mindful of the fact that adoption proceedings do not necessarily guarantee a favourable outcome as the final decision always rests with the domestic courts of the State of the child's origin. However, in the cases at hand the US applicants had not received a negative decision based on the assessment of their individual circumstances by a competent court. Instead, the adoption proceedings had been brought abruptly to an end on account of the automatic ineligibility that unexpectedly came into effect over the course of ten days. No consideration was given to the interests of the children concerned, and those of them who were eventually placed in a different adoptive or foster family were obliged to stay in the orphanage for additional periods ranging from several months to several years. As at the date of this judgment, some of them are still in orphanages.

426. Accordingly, given that (i) the adoption proceedings in the cases at hand were instituted at the time when applying for intercountry adoption was expressly permitted by Russia and (ii) they were pending at the time of introduction of the ban on adoption by virtue of Law no. 272-FZ, the Court considers that the Government have failed to show that there were compelling or very weighty reasons to justify the blanket ban applied retroactively and indiscriminately to all prospective adoptive parents from the United States, irrespective of the status of the adoption proceedings already started and their individual circumstances. It thus constituted a disproportionate measure in relation to the aims stated by the Government. The Court therefore concludes that the difference in treatment was discriminatory in breach of Article 14 in conjunction with Article 8.

427. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 8.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

429. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

430. Having regard to its finding under Article 14 of the Convention taken in conjunction with Article 8 (see paragraph 427 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 8 of the Convention taken alone. For the same reason the Court considers that it is not called upon to rule on the preliminary objection raised by the Government, which has been linked to the merits of the complaints (see paragraph 357 above).

VII. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

431. The applicants further contended that most children concerned were in need of special medical care that would only be available to them in the United States and complained that depriving them of such medical assistance amounted to treatment prohibited by Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Arguments of the parties

1. The Government's submissions

432. The Government contested the applicant's assertion that, on average, the quality of medical care available to children with special needs in Russia was below that available in the United States. They argued that, in particular, the children whom the US applicants were seeking to adopt did not require medical treatment of a kind that is available only in the United States. According to the Government, the children in question had been receiving and continued to receive the medical support that was appropriate to their diagnosis. They submitted detailed information concerning the medical care provided to each child, including the medical tests conducted, doctors' examinations and the treatment prescribed, including placement in specialised medical institutions.

433. The Government further maintained that, as a general rule reflected in Article 123 of the Family Code as amended on 2 July 2013, children left without parental care are placed in orphanages only temporarily until a suitable adoptive or foster family can be found for them. Insofar as the applicants had appeared to assert that the delays in physical, cognitive, motor and speech development that some children suffered from had been due to or aggravated by their placement in an orphanage, the Government also submitted that most children placed in orphanages usually come from dysfunctional and disadvantaged families and often have serious congenital pathologies. About 30% of them have disabilities. For this reason most orphanages are specialised so as to provide better care for children with particular needs.

434. As regards the general conditions in Russian orphanages, the Government provided the following information. The maximum capacity of Russian orphanages is 79,888 children. In 2013 they accommodated 65,383 children and there was therefore no question of overcrowding. Catering in the orphanages is organised in accordance with guidelines based on nutritional value, vitamin content and a varied diet and is subject to strict control. Orphanages have both educational and medical staff. All

orphanages for children with special needs have medical licences and qualified medical staff as well as the equipment required to provide the requisite medical aid. Where necessary, children are placed for treatment in an external specialist medical institution. Children with neurological pathologies attend a course of treatment annually in a neurological hospital. Providing medical care for HIV-infected children constitutes a priority. Up to 80% of children who had been treated in the Republican Hospital for Infectious Diseases, set up in 1991 in order to provide care for HIV-infected children, were placed in foster families. Those children who could not be placed in families remain in orphanages with other children to ensure they experience a normal socialisation process. In Russia there are no specialised orphanages for HIV-infected children where they would be isolated.

435. The Government also submitted that in recent years there had been significant changes in Russia's policy concerning children left without parental care. Orphanages now have to provide conditions that would be closer to a family environment involving, in particular, smaller groups and reduced staff turnover. In 2013-14 the adoption procedure was simplified to ensure the speedier placement of children in families.

436. The Government thus considered as unfounded the applicants' allegations that the adoption ban had deprived the children in question of the requisite medical assistance and contended that there had been no violation of Article 3 in this regard.

2. The applicants' submissions

437. The applicants submitted that they were unable to provide specific information with regard to each child as the medical files were in the Government's possession and, in their view, the information provided to the Court by the Government was incomplete. In their submissions they relied on expert statements and academic works concerning the general situation with respect to the medical treatment available to children with special needs both in the United States and in Russian orphanages.

438. In particular, in their opinion of 16 September 2014, Drs G. and McC. of the University of Pittsburgh, Pennsylvania, provided an overview of the services and treatment generally available to children with special needs in the United States. They further described deficiencies in the care available to such children in Russian orphanages, including large group sizes, an insufficient number of caregivers, their limited interaction with the children, the frequent transfers of children between different groups and caregivers, the inadequacy of the caregivers' training for working with children with special needs, the use of allegedly ineffective therapeutic methods, and the failure to use other probably more effective therapeutic techniques. They concluded that the adoptive parents were very likely to make use of the services available to their children in the United States, whereas similar services were generally unavailable in Russia.

439. In an opinion dated 30 June 2014 Dr Sh., Director of the International Adoption Clinic at Hasbro Children's Hospital in Providence, Rhode Island, stated that the medical care provided to children in Russian orphanages varied greatly depending on the location of the orphanage. Overall he described the medical care available as "reasonably good" although not the best possible and, in his view, it fell short of that available to children with special needs in the United States. He emphasised that, in any event, no institution could be a substitute for caring parents.

B. Submissions of the third-party interveners

1. Submissions of the Harvard Law School's Child Advocacy Program

440. Referring to a number of academic works and, in particular, the Bucharest Early Intervention Project (BEIP), the Harvard Law School's Child Advocacy Program (CAP) argued that extensive social science research regarding both domestic and international adoption over many decades had demonstrated the importance of placing children in permanent adoptive homes as early in life as possible. According to the CAP, research into early brain development has confirmed that nurturing parenting in a child's early months and years is vital to normal physical, emotional and intellectual development, and delays or disruptions in providing such nurturing limit children's future potential. Age at placement regularly proves to be the most important factor in predicting the success or failure of adoptive placement, with children who are placed at a younger age doing the best.

441. Referring once again to the BEIP and other academic sources, the CAP argued that institutions for children left without parental care caused devastating damage to children, affecting their intellectual and emotional capacity and potential. Russian institutions in particular are described as particularly problematic. In this regard the CAP included references to two reports, according to which in Russia "one in three children who leaves residential care becomes homeless, one in five ends up with a criminal record and up to one in ten commits suicide"[1] and "95% of Russian children who grow up in orphanages end up on the streets, unable to function, and are very likely to die shortly after their eighteenth birthdays"[2].

442. The CAP further maintained that children with disabilities were particularly likely to grow up with limited chances for a fulfilling life of

1. Williamson and Greenberg, *Families, Not Orphanages*, at 6 (Better Care Network, September 2010)

2. Reitz, *Adoption: the Best Form of Protection*, Vital Speeches of the Day, quoted and cited in Bartholet, *Intergenerational Justice for Children: Restructuring Adoption, Reproduction and Child Welfare Policy*, Journal of Law and Ethics of Human Rights (2014) at 15.

loving connection and social involvement. In order to realise their potential, access to specialised care combined with nurturing permanent parenting was essential. The United States had a long tradition of special needs adoption, comparable with that of few, if any, other countries, characterised by (i) the high number of prospective adoptive parents willing to adopt children with significant special needs; (ii) studies showing that special needs adoptions generally show the same kind of satisfying family relationships as those formed in other adoptive families; and (iii) highly developed health care services for children with special needs.

443. In the CAP's view, the argument of critics of international adoption that placing children across racial or national lines must in some way be problematical has never been supported by any evidence of actual harm to the children. As the world became more global, the idea that children belonged in some essentialist sense with their racial or national groups of origin was outdated. In view of the foregoing, the CAP considered that Article 1 of the Convention created a positive obligation for the States to promote the adoption of the unparented and to place them without delay and undue disruptions with the first available permanent nurturing family.

2. The Government's comments on the third-party intervention

444. The Government pointed out that the principle of the subsidiary nature of international adoption was enshrined in Article 21 of the United Nations Convention on the Rights of the Child, to which Russia was a party but the United States was not. In their view, the CAP's assertion that the idea that children belonged with their racial or national groups of origin was outdated constituted an attempt to discredit the principle of the subsidiary nature of international adoption and to violate the child's right to preservation of his or her identity, including nationality, as protected by Article 8 of the United Nations Convention on the Rights of the Child.

445. The Government maintained that the domestic legislation conformed fully with the United Nations Convention on the Rights of the Child, and the fact that the US applicants could not adopt the children in question did not mean that the latter would remain unparented. Steps were being taken to find adoptive families for them in Russia, and in a number of cases the children had already been adopted.

446. The Government contested the statistical information provided by the CAP with respect to Russian institutions for children left without parental care (see paragraph 441 above), which they described as unsubstantiated and untrue. They also contested the CAP's reliance on the BEIP findings (see paragraph 440 above) and attached an expert opinion from M., the Head of the Bekhterev Brain Institute of the Russian Academy of Science, to the effect that brain scanning was unable to establish connections between cognitive function of the brain and the child's upbringing in a biological family, adoptive family or an orphanage.

447. With respect to the CAP's assertion that the United States provided conditions for adoption of children with special needs comparable with few, if any, other countries, the Government pointed out that the children involved in the present cases had received the full range of medical care appropriate to their diagnosis, which had been provided by the leading Russian clinics. They saw no reason to believe that certain types of medical care would be unavailable to them in Russia and were only available in the United States.

C. Admissibility

448. The Court reiterates that the preliminary objection raised by the Government with respect to the authority of the US applicants to represent, in proceedings before the Court, the children they were seeking to adopt was linked to the merits of the complaints (see paragraph 357 above). However, the Court is not called upon to decide this issue with regard to Article 3 as the complaint is in any event inadmissible on the following grounds (see *Giusto, Bornacin and V. v. Italy*, cited above).

449. The Court observes that it is not its task to rule on the alleged merits and shortcomings of the care available to children with special needs in Russia and the United States in general. Its analysis is focussed on the availability in Russia of the appropriate medical care for the children concerned and, should it be found to be unavailable, on the question of whether discontinuation of the adoption proceedings, which prevented the children from moving to the United States to live with their adoptive parents, deprived them of access to such care in breach of Article 3 of the Convention.

450. The Court notes that the information provided by the applicants is largely of a general nature. They admitted that they could not provide specific information with regard to each child and alleged that this was due to the medical files' being in the Government's possession.

451. The Court observes, however, that the Government provided detailed information with regard to each child, describing the diagnosis, the medical tests carried out and the treatment made available, including, as applicable, consultations with medical specialists, placements in specialised institutions and any surgery carried out (see paragraph 432 above). The Court observes that the treatment in each case was prescribed by doctors who had examined and tested the children in person on many occasions, and it sees no reason to doubt the accuracy of their conclusions (see *Lebedev v. Russia* (dec.), no. 4493/04, 18 May 2006).

452. In these circumstances, the Court concludes that the children in question received adequate medical care in Russia. The situation complained of was therefore not such as to disclose any appearance of an issue under Article 3 of the Convention.

453. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

454. 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. Pecuniary damage

455. The applicants claimed different amounts in respect of pecuniary damage, including expenses incurred by them within the framework of the adoption procedure in the United States, as well as in certain cases travel expenses relating to the US applicants' trips to Russia, including meals and accommodation, and payments for translation services and the notarisation of documents.

456. The Government contested the claims, arguing that they were unsubstantiated and excessive. They submitted, in particular, that the adoption procedure in Russia is exempt from any fees or taxes. Insofar as the applicants incurred fees in the United States or paid for the services of adoption agencies, the Russian authorities could not be held responsible for such costs. Furthermore, there was no guarantee that the domestic courts would have granted the adoption applications, and it would be improper for the Court to speculate as to what possible outcome the adoption proceedings might otherwise have had. The Government further pointed out that the applicants had failed to specify how the amounts claimed by them related to the alleged violation. They also contested the amounts claimed, arguing that in many instances they were not corroborated by documents submitted by the applicants.

457. The Court has noted in paragraph 425 above that adoption proceedings do not necessarily guarantee a favourable outcome, as the final decision always rests with the domestic courts. Accordingly, prospective adoptive parents inevitably run the risk that the expenses they incur in the course of the adoption proceedings will have been to no avail. The Court cannot speculate as to what the outcome of the adoption proceedings in the cases at hand might have been if the violation of the Convention had not occurred (see, *mutatis mutandis*, *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328‑A, § 44, and *Findlay v. the United Kingdom*, judgment of 25 February 1997, Reports 1997‑I, § 85). Therefore, the Court finds it inappropriate to award the applicants compensation for pecuniary damage.

B. Non-pecuniary damage

458. In case no. 27161/13 each applicant claimed 30,000 United States dollars (USD) in respect of non-pecuniary damage, and in cases nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13 each applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage on account of the suffering and distress they suffered as a result of the adoption ban introduced by Law no. 272-FZ. They claimed an additional EUR 20,000 in respect of each child applicant who remained in an orphanage awaiting adoption. The US applicants submitted that after they had initiated the adoption procedure, completed its numerous stages and bonded with a particular child, they had been deprived of the possibility of finalising the adoption process and creating the family they had envisaged. Furthermore, as a result of this measure, some of the US applicants were permanently deprived of the possibility of adopting a child due to their age and/or changes in their financial situation. The US applicants' mental suffering was aggravated by the feeling of humiliation and injustice caused by their being subjected to a discriminatory measure on the grounds of their nationality.

459. The Government contested the claims, arguing that they were unsubstantiated and excessive.

460. The Court considers that the applicants must have suffered non-pecuniary damage on account of discriminatory treatment following the institution of the adoption proceedings that cannot be sufficiently compensated for by the mere finding of a violation of Article 14 taken together with Article 8. Making its assessment on an equitable basis, it awards the following amounts in respect of non-pecuniary damage according to the table below:

Application no.	Name of the applicant(s)	Amount
6033/13	A.J.H. and J.A.H	EUR 3,000 jointly
	G.D.C.	EUR 3,000
	J.M. and A.M.	EUR 3,000 jointly
8927/13	J.J. and Jn.J.	EUR 3,000 jointly
10549/13	J.E.L. and A.M.L.	EUR 3,000 jointly
12275/13	M.S.P. and A.N.P.	EUR 3,000 jointly
	D.S.G.	EUR 3,000
	B.C. and J.W.S.	EUR 3,000 jointly
	T.L.B.-S.	EUR 3,000
	S.M. and K.M.	EUR 3,000 jointly
	Q.S. and W.S.	EUR 3,000 jointly
	S.A.K.	EUR 3,000

	C.B. and T.B	EUR 3,000 jointly
23890/13	M.W. and D.W.	EUR 3,000 jointly
26309/13	C.Z. and S.Z.	EUR 3,000 jointly
27161/13	S.S. and G.S.	EUR 3,000 jointly
29197/13	C.M.S.	EUR 3,000
32224/13	R.K.B. and T.B.	EUR 3,000 jointly
32331/13	D.M.L. and De.M.L.	EUR 3,000 jointly
32351/13	J.F.B.	EUR 3,000
32368/13	L.A.P. and J.N.T.	EUR 3,000 jointly
37173/13	J.W.H. and A.M.H.	EUR 3,000 jointly
38490/13	A.B.	EUR 3,000
42340/13	M.B. and D.B.	EUR 3,000 jointly
42403/13	M.M. and J.M.	EUR 3,000 jointly

C. Costs and expenses

461. The applicants in cases nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13 jointly claimed EUR 53,000 for the costs and expenses incurred before the Court, including EUR 50,000 in respect of legal services rendered under the contract dated 10 March 2014 with the representatives, and EUR 3,000 for translation of documents. The applicants in case no. 27161/13 noted that their representative had acted *pro bono* and claimed USD 186.29 for postal and stationary expenses incurred in the proceedings before the Court.

462. The Government contested these claims, arguing that no credible evidence had been submitted by the applicants to support the purported lawyers' fees, or the costs and expenses. They pointed out, in particular, that the figure of EUR 50,000 was not indicated in the contract of 10 March 2014. Furthermore, very few applicants had submitted copies of invoices to substantiate the amounts actually paid, and from the invoices submitted it was apparent that not more than USD 600 had been paid by the applicants in each case for legal representation. The Government added that the amounts claimed were excessive.

463. 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 (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the amounts indicated in the table below for costs and expenses incurred in the proceedings before the Court:

Application no.	Name of the applicant(s)	Amount
6033/13	A.J.H. and J.A.H	USD 600
	G.D.C.	USD 600
	J.M. and A.M.	USD 600
8927/13	J.J. and Jn.J.	USD 600
10549/13	J.E.L. and A.M.L.	USD 600
12275/13	M.S.P. and A.N.P.	USD 600
	D.S.G.	USD 600
	B.C. and J.W.S.	USD 600
	T.L.B.-S.	USD 600
	S.M. and K.M.	USD 600
	Q.S. and W.S.	USD 600
	S.A.K.	USD 600
	C.B. and T.B	USD 600
23890/13	M.W. and D.W.	USD 600
26309/13	C.Z. and S.Z.	USD 600
27161/13	S.S. and G.S.	USD 186.29
29197/13	C.M.S.	USD 600
32224/13	R.K.B. and T.B.	USD 600
32331/13	D.M.L. and De.M.L.	USD 600
32351/13	J.F.B.	USD 600
32368/13	L.A.P. and J.N.T.	USD 600
37173/13	J.W.H. and A.M.H.	USD 600
38490/13	A.B.	USD 600
42340/13	M.B. and D.B.	USD 600
42403/13	M.M. and J.M.	USD 600

D. Default interest

464. 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. *Decides* to join the applications;

2. *Decides* to strike application no. 12275/13 out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in the part relating to applicants J.R.V. and M.L.V.;

3. *Dismisses* the Government's objection raised with respect to application no. 42340/13 concerning the applicants' failure to comply with the six-month time-limit;

4. *Dismisses* the Government's objection concerning non-exhaustion of domestic remedies;

5. *Decides* to join to the merits the Government's objection concerning the US applicants' right to petition the Court on behalf of the children they were seeking to adopt and holds that there is no need to examine it;

6. *Declares* the complaints under Article 8 of the Convention and Article 14 of the Convention, to the extent that it relates to the US applicants, read in conjunction with Article 8 admissible and the remainder of the applications inadmissible;

7. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention;

8. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, in respect of non-pecuniary damage:

(i) application no. 6033/13, EUR 3,000 (three thousand euros) to applicants A.J.H. and J.A.H. jointly;

(ii) application no. 6033/13, EUR 3,000 (three thousand euros) to applicant G.D.C.;

(iii) application no. 6033/13, EUR 3,000 (three thousand euros) to applicants J.M. and A.M. jointly;

(iv) application no. 8927/13, EUR 3,000 (three thousand euros) to applicants J.J. and Jn.J. jointly;

(v) application no. 10549/13, EUR 3,000 (three thousand euros) to applicants J.E.L. and A.M.L. jointly;
(vi) application no. 12275/13, EUR 3,000 (three thousand euros) to applicants M.S.P. and A.N.P. jointly;
(vii) application no. 12275/13, EUR 3,000 (three thousand euros) to applicant D.S.G.;
(viii) application no. 12275/13, EUR 3,000 (three thousand euros) to applicants B.C. and J.W.S. jointly;
(ix) application no. 12275/13, EUR 3,000 (three thousand euros) to applicant T.L.B.-S.;
(x) application no. 12275/13, EUR 3,000 (three thousand euros) to applicants S.M. and K.M. jointly;
(xi) application no. 12275/13, EUR 3,000 (three thousand euros) to applicants Q.S. and W.S. jointly;
(xii) application no. 12275/13, EUR 3,000 (three thousand euros) to applicant S.A.K.;
(xiii) application no. 12275/13, EUR 3,000 (three thousand euros) to applicants C.B. and T.B jointly;
(xiv) application no. 23890/13: EUR 3,000 (three thousand euros) to applicants M.W. and D.W. jointly;
(xv) application no. 26309/13: EUR 3,000 (three thousand euros) to applicants C.Z. and S.Z. jointly;
(xvi) application no. 27161/13: EUR 3,000 (three thousand euros) to applicants S.S. and G.S. jointly;
(xvii) application no. 29197/13: EUR 3,000 (three thousand euros) to applicant C.M.S.;
(xviii) application no. 32224/13: EUR 3,000 (three thousand euros) to applicants R.K.B. and T.B. jointly;
(xix) application no. 32331/13: EUR 3,000 (three thousand euros) to applicants D.M.L. and De.M.L. jointly;
(xx) application no. 32351/13: EUR 3,000 (three thousand euros) to applicant J.F.B.;
(xxi) application no. 32368/13: EUR 3,000 (three thousand euros) to applicants L.A.P. and J.N.T. jointly;
(xxii) application no. 37173/13: EUR 3,000 (three thousand euros) to applicants J.W.H. and A.M.H. jointly;
(xxiii) application no. 38490/13: EUR 3,000 (three thousand euros) to applicant A.B.;
(xxiv) application no. 42340/13: EUR 3,000 (three thousand euros) to applicants M.B. and D.B. jointly;
(xxv) application no. 42403/13: EUR 3,000 (three thousand euros) to applicants M.M. and J.M. jointly;

(b) within the same three-month period, the respondent State is to pay the applicants the following amounts, plus any tax that may be chargeable to the applicants, in respect of costs and expenses:

(i) application no. 6033/13, USD 600 (six hundred United States dollars) to applicants A.J.H. and J.A.H. jointly;

(ii) application no. 6033/13, USD 600 (six hundred United States dollars) to applicant G.D.C.;

(iii) application no. 6033/13, USD 600 (six hundred United States dollars) to applicants J.M. and A.M. jointly;

(iv) application no. 8927/13, USD 600 (six hundred United States dollars) to applicants J.J. and Jn.J. jointly;

(v) application no. 10549/13, USD 600 (six hundred United States dollars) to applicants J.E.L. and A.M.L. jointly;

(vi) application no. 12275/13, USD 600 (six hundred United States dollars) to applicants M.S.P. and A.N.P. jointly;

(vii) application no. 12275/13, USD 600 (six hundred United States dollars) to applicant D.S.G.;

(viii) application no. 12275/13, USD 600 (six hundred United States dollars) to applicants B.C. and J.W.S. jointly;

(ix) application no. 12275/13, USD 600 (six hundred United States dollars) to applicant T.L.B.-S.;

(x) application no. 12275/13, USD 600 (six hundred United States dollars) to applicants S.M. and K.M. jointly;

(xi) application no. 12275/13, USD 600 (six hundred United States dollars) to applicants Q.S. and W.S. jointly;

(xii) application no. 12275/13, USD 600 (six hundred United States dollars) to applicant S.A.K.;

(xiii) application no. 12275/13, USD 600 (six hundred United States dollars) to applicants C.B. and T.B jointly;

(xiv) application no. 23890/13: USD 600 (six hundred United States dollars) to applicants M.W. and D.W. jointly;

(xv) application no. 26309/13: USD 600 (six hundred United States dollars) to applicants C.Z. and S.Z. jointly;

(xvi) application no. 27161/13: USD 186.29 (one hundred and eighty-six United States dollars and twenty-nine cents) to applicants S.S. and G.S. jointly;

(xvii) application no. 29197/13: USD 600 (six hundred United States dollars) to applicant C.M.S.;

(xviii) application no. 32224/13: USD 600 (six hundred United States dollars) to applicants R.K.B. and T.B. jointly;

(xix) application no. 32331/13: USD 600 (six hundred United States dollars) to applicants D.M.L. and De.M.L. jointly;

(xx) application no. 32351/13: USD 600 (six hundred United States dollars) to applicant J.F.B.;

(xxi) application no. 32368/13: USD 600 (six hundred United States dollars) to applicants L.A.P. and J.N.T. jointly;
(xxii) application no. 37173/13: USD 600 (six hundred United States dollars) to applicants J.W.H. and A.M.H. jointly;
(xxiii) application no. 38490/13: USD 600 (six hundred United States dollars) to applicant A.B.;
(xxiv) application no. 42340/13: USD 600 (six hundred United States dollars) to applicants M.B. and D.B. jointly;
(xxv) application no. 42403/13: USD 600 (six hundred United States dollars) to applicants M.M. and J.M. jointly;

(c) 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;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

L.L.G.
J.S.P.

PARTLY CONCURRING OPINION OF JUDGE DEDOV

I joined the majority in the present case because the Court has found a purely technical violation of the Convention, and the amount of compensation awarded is symbolic in comparison with the Court's normal practice. The main argument set out in the judgment is very simple: being at the advanced stage of the adoption proceedings, the applicants had a legitimate expectation of completing the process and being heard by the courts that take the final decision on parental rights. That does not mean that the national court would have granted them parental rights. Not at all. The Court just concentrated on the process, not on the result. So, the Court's approach looks simple, but the circumstances surrounding the present case are extremely complex and that makes the decision-making quite difficult. I will look at those circumstances to see whether they prevent the Court from using that approach and finding a violation of the Convention.

Is the Convention applicable?

According to the case-law, the Convention (Article 8) does not guarantee either the right to found a family or the right to adopt (see paragraph 377 of the judgment). To overcome this obstacle the Court uses a so-called "broad concept" of private life which encompasses, *inter alia*, the right to establish and develop relationships with other human beings, the right to "personal development" or the right to "self-determination" with elements like gender identification, sexual orientation and sexual life (see paragraph 379 of the judgment). This argument of the Court is futile as none of those elements corresponds to the nature of the present case.

The nature of the present case is quite concrete. The applicants seek to create parental (or, in a more general sense, family) relationships through the adoption proceedings. The national authorities assessed their capacity to create a family atmosphere for the children and to take care of them. Family life is determined not only by a biological link. It can be established through adoption on a lawful basis. Obviously, the applicants and children wanted to create a family on the basis of adoption proceedings set out by national law. I cannot agree with the Court's conclusion in paragraph 410 of the judgment that it was a substantive right which existed in Russian law prior to the ban introduced by Law no. 272-FZ (hereafter "the Law"), as though the procedural right (to adopt) was magically converted into a substantive right (to respect for family and private life).

It could be said that the applicants had an arguable claim, as they had received a positive assessment by the authorities of their individual circumstances at the preliminary stages, and had created emotional bonds with the children. The applicants were not in an unlawful situation and had demonstrated good faith and no abuse of process, so they were entitled to

complete the process. The principle declaring that adoption is not guaranteed under Article 8 of the Convention merely means that the Court is not authorised to require the authorities to grant parental rights to the applicants.

The authorities respect the right to adopt in principle. They just banned this right for certain nationals. Therefore, Articles 8 and 14 of the Convention are applicable. However, the Court did not examine either Article 8 separately (from a procedural perspective at least) or Article 14. The latter does not fit regarding the proportionality test or procedural limb (which was exactly what the Court did in the judgment) or the legitimate expectations. Nor is there any analysis of the discrimination itself. These errors relate to the administration of justice, but not the outcome – in fact a violation of the procedural limb of Article 8.

As the national court has the ultimate authority to grant parental rights in the adoption proceedings, and most of the applicants had an arguable claim, but have been deprived of an examination of their adoption cases on the merits, the issue of access to the court also arises in the present case. This means that Article 6 § 1 of the Convention is applicable, and that the violation is fundamental with respect to the rule of law and democracy. But again, I would emphasise that the violation is technical, not structural. The above principles are recognised by the Russian judiciary and law-makers. They knowingly applied a blanket ban.

Proportionality

From the perspective of the proportionality test, I must say that a blanket ban is in principle incompatible with the rule of law and the principle of proportionality. This measure as such cannot be accepted in a democratic society. The Court's usual approach of examining the necessity of the measure ("whether the measure was necessary in a democratic society") does not add anything to the proportionality test as the latter should answer another question: whether the measure is enough to strike a balance between public and private interests? I must say that the impugned measure was necessary for the reasons set out below (presuming that other measures should have priority over inter-country adoption). However, apart from general measures, private interests based on a lawful procedure should also be respected. Obviously, the blanket ban on adoption by US citizens was a message (rather than a measure) sent by the Russian authorities to the US authorities owing to the political tensions between them. The message was not addressed to individuals, but seriously affected them. Therefore, it is hard to demonstrate any legitimate aim in the present case because the ban was introduced at the time when all the necessary safeguards provided by the Bilateral Agreement were in force.

The Court requires that compelling or very weighty reasons should exist to justify such an exception in the form of a blanket and retrospective ban (in my view, no exception is possible owing to the absolute nature of the proportionality and the legitimate expectations). The Government referred to the tragic incidents that had happened with adopted children, but that reason did not convince the Court, which stressed that the Bilateral Agreement on Adoption addressed that problem and sought to introduce additional safeguards for children before and after adoption (see paragraph 418 of the judgment). Also, the Court pointed out that the Government had not produced any evidence of specific incidents occurring within the short period of time (two months) during which the above-mentioned Agreement was effective.

Legitimate expectations

As regards the legitimate expectations, although this principle was not mentioned explicitly, it constitutes the crux of the present case. The Court stressed that the ban was applied retrospectively and indiscriminately, irrespective of the status of the adoption proceedings (see paragraph 426). This idea has to be based on a right existing under the domestic law. In theory, if there is no right, then there are no legitimate expectations. The Court reiterated that a legitimate expectation must be of a nature more concrete than a mere hope and be based on a legal provision (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 75, 13 December 2016).

It is true that the present case is an unusual one. There was no interference with the existing right to family or private life, but with the intention to establish family relations in a lawful manner in accordance with the adoption proceedings. Application of the concept of legitimate expectations, not to a substantive, but to a procedural right, with the same degree of scrutiny requires the establishment of general principles. However, the Court did not refer to any of its case-law to address the legitimate expectations in general and this problem in particular. But even if the scrutiny were more lenient, this does not mean that the concept is not applicable at all. It just means, in my view, that the finding of a violation does not guarantee the adoption; in other words, it does not guarantee satisfaction of a claim and ultimately the enjoyment of a substantive right to family life. The Court has concluded that the applicants had prepared documents to be submitted to the national courts, and therefore they had a legitimate expectation of finalising the adoption process.

I must say that the key decisive element in the analysis of the legitimate expectations is that the granting of parental rights by the national court is an integral part of the adoption proceedings. This conclusion can be based on an interpretation of the adoption regulations set out in the Russian Code of Civil Procedure, the Family Code and other federal laws and Government

decrees (see paragraphs 304-20 of the judgment). According to the domestic law, the applicants were required to take a number of steps to receive necessary confirmations and documents from various authorities and agencies prior to applying to the national courts.

This means, however, that it is not correct for the Court to use the term "proceedings" in relation to the adoption. Rather, it is a "process", a term which is more general than the term "proceedings". It makes the legitimate expectations vague, not concrete, and it makes it very hard to conclude that there has been a violation. However, a conclusion of NO violation is also not easy for those who were at an advanced stage of the adoption process, and not merely deprived of the potential possibility of starting the process.

Discrimination

In paragraph 413 of the judgment the Court simply repeated the applicants' submission that the number of tragic incidents with adopted children in the United State of America ("the USA") had been very small and that there was no evidence that the situation was any better in other States or in Russia itself. Instead of thus repeating the applicants' observations (see paragraph 403 of the judgment), the Court should have made its own analysis. Indeed, the situation could be viewed from the opposite angle: there is no evidence that any incidents of the same nature (gross negligence or severe disregard of parental obligations causing the death of the child) happened in other countries with a high adoption rate like Italy and Spain, which rank after the USA, though do not have similar problems to those described by the Russian Government.

Also, it is ethically incorrect to compare the situation in Russia even if it is not "any better". This case is about international adoption and whether the problems of bad treatment of adopted children in the USA could affect the rights of the particular applicants. I have to conclude that the applicants were not discriminated against in comparison with other foreign nationals and that the Court failed to examine the discrimination claim at all.

Political background

I should make some preliminary remarks before starting an analysis of the political background to the present case. The judges usually prefer not to be involved in politics. This depends, however, on the nature of their involvement. In accordance with Article 21 § 3 of the Convention, judges shall not during their term of office engage in any political activity which is incompatible with their independence or impartiality. This rule does not prevent judges from evaluating the political activity of others if the political decisions or political situation affect human rights and if the interference is subject to a judicial examination in a particular case.

The specificity of a judicial examination does not mean that the scope of review should be a narrow one, and judges are not obliged to close their eyes to the political background. This is also because political activity is not isolated from the universal values of a democratic society. The scope of the judicial examination can be wide enough and deep enough to take into account all factors, elements and circumstances which influenced the interference and which might affect the judicial decision. Moreover, the political background is necessary to discover the "compelling or very weighty reasons" in the present case.

In 2013 the Parliamentary Assembly of the OSCE recognised the political volatility of intercountry adoption (see paragraph 301 of the judgment). Obviously, the impugned Law was a reaction to the political pressure constantly exercised by the US authorities in relation to Russia since 2002, when the Russian authorities started taking steps to reinforce the independence and sovereignty of the country. Finally, in 2015 Russia was officially declared to be one of the most serious threats (together with ISIS and Ebola) to the USA. The US strategy was implemented through political and economic sanctions, cultural isolation, intensive political propaganda demonising the so-called "political regime" in Russia and establishment of military bases surrounding Russian territory.

There is widespread opinion that a political conflict between the USA and Russia existed for a long time. I intentionally use the term "conflict" because I think it is more politically correct for a judicial analysis, although political experts usually talk about "the Cold War" to characterise the nature of these relations.

Any political conflict divides people and nations, rather than unites them. Any political conflict is destructive for the rule of law, human rights and democracy, even if the declared purposes of the political pressure are related to the promotion of those values. The truth is that these values can be promoted only in a context of peace and cooperation between governments or non-government organisations. A strategy led by force, however, driven by the idea of the exceptional nature of one nation, or by the idea of "leadership" over all other nations through the application of military power, aimed at securing control over any sovereign decision-making process, inevitably leads to fierce political conflicts which usually arise in the course of a fight for independence and self-determination.[1] .

Unfortunately, in such an atmosphere, every politically sensitive case against Russia is inevitably considered a part of this political conflict. Law no. 272-FZ is no exception. Even if the ban on adoption were not included in the Law, it would in any event be considered to be the result of political

[1] See, among many other sources, State of the Union Addresses by Presidents Bill Clinton, George W. Bush and Barack Obama; Samuel P. Huntington, *The Clash of Civilizations* 1996; Zbigniew Brzezinski, *Strategic Vision: America and the crisis of global power* 2012.

tensions between the USA and Russia. Unfortunately, the applicants and the children fell victim to this political conflict.

That political background is also helpful in understanding the hidden motivation of those who promoted the Law: after adoption the children will change their nationality, become US citizens and then, in a situation of political conflict, they will be obliged to consider their home country a potential enemy of their new State. They may or may not participate in that conflict, but it would at least be unreasonable to send children to a country which has applied the political pressure.

This is the main ethical problem in the present case. The right to private life cannot be fully respected if it is not kept away from politics. However, private life in a broader sense cannot be fully separated from State policy, which is a part of social life. Also, any State needs the legitimisation of its actions by society. The tragedy of the present case is that these conflicting ideas caused the enactment of the Law and the organisation of the March Against Scoundrels to protest against that Law. A conflict always arises in the absence of a dialogue.

This is why the blanket ban became possible. The impugned measure was a symbolic reaction to the political pressure. This means that the judgment in the present case is also symbolic and can be considered an effort to cool down those tensions because the children should be kept away from politics and deserve a peaceful life in any country. Although the Government did not raise this issue, such unprecedented political pressure could, in my view, constitute a compelling and weighty reason to stop international adoption in principle.

The question arises, however, whether or not the compelling reasons should prevail over legitimate expectations. They would, in my view, if there were an imminent risk for the most fundamental human rights. In the case of *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 259, ECHR 2016) the Court accepted that where a respondent Government had convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this could amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. This position includes an important element: compelling reasons should be derived from the concrete circumstances of a particular case. The Court concluded that a non-specific claim of a general risk of leaks could not constitute compelling reasons so as to justify the restriction.

In the present case the risk demonstrated by the respondent Government (tragic incidents in the past) was general, not specific. It did not therefore constitute a compelling reason justifying the denial of access to the national courts to examine the adoption cases on the merits and to complete the adoption process. I ought to point out that about 60,000 children have already been adopted by US citizens, so the applicants, who are so few in

number, could not add anything to that general risk. Moreover, the risk was still manageable on account of the competence of the national courts.

International adoption

The Convention on the Rights of the Child has recognised that "inter-country adoption may be considered as an alternative means of child's care, 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" (Article 21). The OSCE Parliamentary Assembly in its Resolution on Inter-country Adoption affirmed the sovereign prerogatives of the participating States to permit, prohibit, restrict or otherwise regulate the practice of intercountry adoptions consistent with international norms and commitments (see paragraph 301 of the judgment). There is no doubt that international adoption is subject to a wide margin of appreciation of any State. Moreover, international adoption is the last resort, to be used in an emergency situation where the children, for any disastrous reasons, are left without their parents and due care.

But there was no large-scale emergency in Russia. I cannot understand the reasons that would allow the State to send hundreds of thousands of children out of the country. Such mass adoption looks like a very well-organised business which made the examination of adoption cases by the national courts purely formalistic. It could be said that if the Russian authorities had seriously examined previous adoption cases, this may have helped to prevent tragic incidents affecting adopted children. Therefore, I do not see any abuse on the part of Russian authorities when enacting the Law to stop mass inter-country adoption.

Again, the authorities should enjoy an extremely wide margin of appreciation as the issue involves identity and nationality and the capability of the national authorities to resolve the problem by themselves, rather than through international adoption. And I am happy to note that after the enactment of the Law the authorities reformed the adoption system in Russia and achieved positive results with more children adopted nationally, intended parents trained on special courses, public child-care institutions concentrating more on creating a family atmosphere, and financial support for families with disabled children.

The impact of international adoption should be limited and precise in nature. I refer to a very useful publication of the UNICEF Office of Research prepared by Nigel Cantwell in 2014, called *The Best Interests of the Child in Intercountry Adoption*. The book addresses a deep concern regarding how the "best interest" principle is complied with in the context of intercountry adoption. The author notes that his "study contributes to ongoing debates by clarifying important issues and proposing ways forward that would better enable intercountry adoption to fulfil its prime and historic

role: as an exceptional protective measure offered to a child for whom adoption is legally possible, warranted and desirable; and when no suitable alternatives exist, or can be created, in that child's own country. Determining best interests needs to be a thorough and well-prescribed process."

What were the reasons for adoption? It is up to the national judges to put this question to the applicants. The national judges should consider other benefits which the intended parents would be entitled to when they obtain their parental rights, including material or non-material support, and whether there are circumstances proving that the children could be used for other purposes than merely to create family relations, such as tax benefits, whether there is evidence that children (and people in general) of different races could live together as a family, or whether they increase the number of followers of a church.

All these examples are taken from mass media reports. According to Kathryn Joyce's research: *The Evangelical Adoption Crusade*, published in 2011 with support from the Investigative Fund at the Nation Institute, adoption has long been the province of religious and secular agencies. This research reveals plans by the American evangelical church to obtain 50,000 new followers through adoption after the Haiti earthquake. But again, it is the task of the national courts to review the application for adoption seriously and to establish the sincerity and veracity of the applicants' intentions for the best interests of the child.

Best interests of the child

What is in the best interests of a child in terms of adoption proceedings? Merely to have a family? To ensure that biological brother and sister can live together? It would be reasonable to take those circumstances into account in the present case. An individual approach is important, but again the ultimate decision belongs to the national courts, which refused to review the applications for adoption on the merits.

Article 20 of the Convention on the Rights of the Child provides certain safeguards in relation to the problems arising from the circumstances of the present case:

> "Article 20
>
> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
>
> 3. Such care could include, inter alia, foster placement, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions,

due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

The above-mentioned safeguards are complex and respect the child's human dignity. This means that the organisers of the March Against Scoundrels were wrong to choose that way of expressing their opinion. Indeed, the family environment is vital for the child, but ultimately the child needs sincere care and love in any environment. It depends on the personality of those who care for the children, regardless of whether that care is provided in a family or in a public institution. But it is necessary to limit inter-country adoption because of the risk of losing the child's ethnic, religious, cultural and linguistic background.

The question arises whether the *restitutio in integrum* principle requires that the applicants, if they so wish, should be allowed by the authorities to reopen proceedings and to complete the process of adoption. In the best interests of the child – a principle which was explicitly accepted by the Government in the present case – this approach would be reasonable especially concerning those children who are still in orphanages.

However, the most shocking fact for me was that the applicants were not interested in the children's state of health during the adoption proceedings (see paragraph 437 of the judgment). The applicants complained that depriving children of special medical assistance amounted to inhuman treatment prohibited by Article 3 of the Convention (see paragraph 431). They submitted that they were unable to provide specific information with regard to each child (see paragraph 437). The Government argued that the children in question had been receiving and continued to receive appropriate medical support. In my view, this is an important element in the present case because if the applicants were seeking to adopt severely disabled children they should have investigated their health situation as a first priority, but failed to demonstrate that to the Court.

This gives the impression that the applicants were not ready to respond to the questions to be asked by the national court about how they planned to organise health care for the children immediately after the adoption was completed. The applicants did not prepare to satisfy the best interests as required by the Convention on the Rights of the Child. This raises doubts as to whether their intentions to adopt were serious and sincere, but again this issue should have been examined by the national courts.

In lieu of a conclusion

There is a more serious problem in Russia. The Russian Government informed the Court that there were still more than 66,000 children abandoned by their parents and subsequently placed in orphanages. The total number of such children who have been accommodated in orphanages during the last 25 years may be close to 300,000. Obviously, this is the

result of a structural social problem caused by the deterioration of values and lack of social responsibility. This problem cannot be resolved either by inter-country adoption or by political pressure.