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La tutela della "vita familiare" tra superiore interesse del minore e paternità
(CEDU, sez. II, sent. 30 novembre 2021, ric. n. 25450/20)

Nella presente causa, la Corte EDU ha definito il ricorso presentato da due ricorrenti (nonni) nell'interesse di un minore (nipote), affidato al padre biologico dopo aver vissuto i suoi primi cinque anni di vita con loro. Nella specie, i giudici di Strasburgo hanno valutato il modo in cui i tribunali nazionali hanno tenuto conto dell'interesse superiore del bambino nel rispetto dell'art. 8 della Convenzione.

Prima di scrutinare il merito, la Corte di Strasburgo ha risolto la questione sotto il profilo della sua ammissibilità e ha verificato la legittimazione processuale dei due ricorrenti. Per la Corte, l'oggetto e lo scopo della Convenzione come strumento per la protezione dei singoli esseri umani richiede che le sue disposizioni, sia procedurali che sostanziali, siano interpretate e applicate in modo da rendere le sue garanzie sia pratiche che effettive. In questo contesto, la posizione dei minori ai sensi dell'articolo 34 necessita di una specifica ermeneusi, la quale prescinde da un approccio restrittivo o tecnico, affinché trovino piena tutela i diritti del bambino. In proposito, la Corte ha ricordato le condizioni necessarie sulle quali si fonda la legittimazione processuale in casi come quello alla sua attenzione. E tra queste: *i*) l'esistenza di un legame sufficientemente stretto tra il minore e il ricorrente; *ii*) il rischio che, in assenza di tale denuncia, il minore sia privato di una tutela effettiva dei suoi diritti; *iii*) l'assenza di qualsiasi conflitto di interessi tra il minore e la persona che lo rappresenta. Constatata l'esistenza di tutte le suddette condizioni il ricorso è stato dichiarato ammissibile.

Quanto al merito, la Corte ha ribadito in generale che il mutuo godimento da parte dei genitori e dei figli della reciproca compagnia costituisce un elemento fondamentale della "vita familiare" ai sensi dell'articolo 8 CEDU, anche se il rapporto tra i genitori è venuto meno. La Corte ha precisato poi che può esserci "vita familiare" ai sensi dell'articolo 8 della Convenzione tra nonni e nipoti, là dove vi sia un legame sufficientemente stretto. Alla luce di tale premessa, essa ha verificato se le ragioni addotte dalle autorità nazionali, volte ad affidare il minore al padre biologico, fossero "pertinenti e sufficienti" ai fini dell'articolo 8 § 2 della Convenzione, e se i tribunali interni avessero svolto un esame approfondito dell'intera situazione familiare e di tutta una serie di fattori, in particolare quelli di natura fattuale, affettiva, psicologica, materiale e medica, formulando all'esito dello stesso un'equilibrata e ragionevole valutazione degli interessi di ciascuna persona, con una preoccupazione costante per l'interesse superiore del minore. Accertata l'esistenza di uno stretto legame familiare tra i nonni ed il nipote, la vulnerabilità di quest'ultimo ed il rischio per la sua salute fisica e mentale, le decisioni prese dalle autorità interne hanno costituito un'ingerenza nel diritto dei ricorrenti alla loro vita familiare. Esse sono apparse altresì "non necessarie", dal momento che le autorità nazionali non avevano effettuato un esame sufficientemente approfondito

circa il rapporto (in)esistente tra il padre biologico ed il minore né avevano adeguatamente bilanciato il superiore interesse del bambino anche per via dell'assenza di misure transitorie e preparatorie volte ad assistere il figlio e suo padre nella costruzione della loro relazione familiare.

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

SECOND SECTION

CASE OF T.A. AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 25450/20)

JUDGMENT

STRASBOURG

30 November 2021

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

In the case of T.A. and Others v. the Republic of Moldova,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Aleš Pejchal,

Valeriu Griţco,

Pauliine Koskelo,

Marko Bošnjak,

Saadet Yüksel, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 25450/20) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Moldovan nationals, Mr T.A., Mrs A.A. and N. ("the applicants"), on 29 June 2020;

the decision to give notice of the application to the Moldovan Government ("the Government");

the decision not to have the applicants' names disclosed;

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 9 November 2021,

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

INTRODUCTION

1. The present case concerns the removal of the third applicant from the care of his grandparents, with whom he spent his first five years, to that of his biological father, and the manner in which the domestic courts took into account the child's best interests.

THE FACTS

2. The details concerning each applicant are listed in the appended table. The applicants were represented by Mr V. Gribincea and Mr I. Chirtoacă, lawyers practising in Chișinău.
3. The Government were represented by their Agent, Mr O. Rotari.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
I. THE THIRD APPLICANT'S BIRTH AND HIS MEDICAL CONDITION
5. The first two applicants are the grandparents of the third applicant (N.). Their daughter had a relationship with A.C., resulting in the birth of N. in July 2015. Twelve days later she died; A.C. attended her funeral.
6. N. was born through emergency surgery, at 27 weeks of pregnancy. He weighed 930 grams at birth, was 39 cm long and spent 46 days in intensive care before being discharged to his grandparents' home.
7. N. was born with a number of health problems: severe respiratory distress syndrome, congenital pneumonia and bronchopulmonary dysplasia, allergy and anaemia. He was subsequently diagnosed with tetraparesis and locomotion retard and underwent treatment at the Republican Centre for rehabilitation of children with severe locomotion disability. He was also treated by a psychologist and a neuro-paediatrician and further treatment by a neurologist and a speech therapist was recommended. According to the applicants, the second applicant was often allowed to attend the hospital with N. in order to ensure constant care for him.
8. On 22 October 2018 N.'s family doctor described a positive dynamic in his state of health, notably owing to the treatment already received and the care given by the grandparents. She mentioned the persistence of health problems such as low immunity and frequent respiratory infections, anaemia and allergic reactions, all of which prevented N. from being amongst other children for longer periods or using public transport. He was also sensitive to vaccines, which led to his first vaccination being administered only in November 2017 and resulting in complications.
9. In a certificate issued on 30 August 2020 a doctor from the regional public health centre noted that N. was frequently ill with chronic severe bronchitis and nasopharyngitis, hyperexcitation and nervous tics and had a deviated nasal septum. He was to avoid groups of people. He frequently suffered fever with convulsions at night and was prescribed anti-viral and anti-convulsive treatment.
II. N.'S INITIAL CUSTODY AND CARE
10. The hospital where N. was born issued a document confirming the birth and indicating only his mother's name. That document served as a basis for the competent authority to issue his birth

certificate, again mentioning only the mother's name. According to the applicants, this document was given to A.C., who gave it to the second applicant.

11. According to the Government, shortly after the funeral of N.'s mother A.C. went to Russia in order to earn money needed for his son's treatment. As A.C. subsequently explained in court, he regularly inquired about his son's health and handed money to the first two applicants personally or through his mother. The applicants disputed this.

12. On 25 September 2015 the guardianship authority (the General Directorate of Social Assistance and Family Protection of Cahul City, or "GDSAFP") entrusted N.'s custody to his grandmother, the second applicant. On 4 December 2015 the GDSAFP attributed to N. the status of a child left without parental protection. During the period from September to November 2015 A.C.'s mother visited the applicants' home and helped take care of N. She allegedly told the first two applicants that A.C. had told her to leave N. at the hospital or in an orphanage, after which the first two applicants began to despise A.C.

13. A.C. visited N. a total of seven times: in November 2015, February 2016, July 2017, January 2019 and twice in March 2019. On 3 January and 13 March 2019 the GDSAFP fixed a schedule for twice-weekly visits of A.C. with his son. He visited N. on 24 March 2019. A.C. subsequently declared in court that he had had very good contact with his son during that meeting. According to the first two applicants, during that meeting N. had suddenly fled from his father's hands and gone directly to the second applicant, refusing to return to his father despite encouragement to do so. No complaints on the part of A.C. were registered with the GDSAFP or with any other authority about not being given contact rights with his son. On 13 June 2019 the last schedule for A.C.'s visits with N. expired. He did not ask for an extension.

III. COURT PROCEEDINGS CONCERNING N.'S DOMICILE

14. On 26 January 2016 A.C. filed a court action aimed at confirming his paternity of N. After a conclusive DNA test on 21 June 2017, on 17 July 2017 a court confirmed A.C.'s paternity of N. Those proceedings ended with the final decision of the Supreme Court of Justice of 14 November 2018, confirming the decision.

15. On 17 July 2017 A.C. asked the GDSAFP to establish his custody of N. The first two applicants opposed this request.

16. Between 12 and 18 July 2018 a psychologist examined N. In her conclusion she did not mention the year of the examination. She found that the child hardly spoke, had underdeveloped fine movements, had a low level of logical thinking, did not have the usual learning abilities for his age and avoided communication with strangers. She strongly recommended leaving him with his grandparents, with whom he had very close emotional ties. Separation from the grandparents could lead to severe effects on his psychological condition, taking into account his special development needs, his state of health and that he really knew no one other than his grandparents.

17. In July 2018 the first two applicants lodged a court action to deprive A.C. of parental rights owing to his failure to take care of his son. They also asked the court to establish N.'s domicile with them. They argued that A.C. had been absent from the child's life since birth, was not familiar with his medical needs and had not contributed to his upbringing. Subsequently they dropped the claim for deprivation of parental rights, purportedly realising that they had been badly advised by their lawyer.

18. In the family doctor's conclusion of 22 October 2018 (see paragraph 8 above) it was recommended that, owing to the particularities related to taking care of N.'s various health problems, he should remain with his grandparents.

19. At the court's request, on 25 January 2019 the GDSAFP issued an opinion, recommending that N. remain in the care of the first two applicants. It noted the child's very close ties with his grandparents, who "became his true parents" and offered him love, good care and education, the second applicant being a former schoolteacher. N. loved all the members of the grandparents' family and avoided contact with others. It also noted the good living conditions in their home. It noted that the local authorities had not recorded any request from A.C. to contribute to the material support of his son or to transfer any money for that purpose. Certificates issued by commercial banks confirmed the absence of any money transfers by A.C. intended for his son's upbringing. Having examined A.C.'s living conditions on 12 March 2019, the same authority found that the house which he rented had a free bedroom, not yet repaired or furnished, reserved for the child. He did not have a stable job and had declared that he was in intermittent employment, earning 5,000 Moldovan lei (EUR 260) a month.

The GDSAFP finally recommended that A.C. continue to enjoy the right to visit his son.

20. On 1 April 2019 the Cahul District Court decided that N. was to remain in the first two applicants' care. In reaching that decision the court relied on the child's young age, poor health and continuing need for treatment, close emotional ties with the grandparents and their ability to provide him with the necessary material comfort and psycho-emotional balance. It found that the child needed the daily presence of his grandparents in his life and that it was in the best interests of the child to leave him in their care. It added that the father did not have a stable income and that the house he rented did not offer appropriate conditions for bringing up a child. Having examined the psychologist's opinion (see paragraph 16 above), the judge added that the child's immediate transfer to his father, even if the latter were to secure appropriate material conditions, would expose the child to physical and mental danger and could place him in an intolerable position. The judge also found that the biological father continued to enjoy the right to visit his son.

21. A.C.'s lawyer appealed, noting the important role of the father figure in the emotional and social development of the child. She also argued that the first two applicants had prevented A.C. from visiting his son, which explained the low number of visits made. The father expressed his firm desire to reunite and strengthen his family and that he was fully capable of providing care to his son and also ensuring his material needs.

22. After hearing A.C. and his lawyer, the first applicant and his lawyer and a representative of the GDSAFP, on 29 October 2019 the Cahul Court of Appeal quashed the lower court's judgment and adopted a new one, rejecting the applicants' request to establish N.'s domicile with them. It noted that, according to Article 31 of the Civil Code as it read at the relevant time (see paragraph 28 below), a minor's domicile could be established with persons other than the parents only in exceptional cases. The court referred to the principle stemming from the domestic law according to which each child has the right to live with his family and to know his parents. Separation from a parent or both parents is admissible only when the best interests of the child require so. It referred to the Court's case-law confirming this principle. The criteria to be examined in determining the best interests of the child in any specific case included the child's age, the possibilities of the parent

to ensure the child's physical, intellectual and moral development, emotional ties between the parent and the child, the care which the parent has provided to the child, and so on. The court found that, although the evidence in the file confirmed N.'s health problems, this did not prove the existence of an exceptional situation which would justify establishing his domicile with his grandparents. In particular, the grandparents had not submitted evidence that A.C. presented any danger to his son or could not be trusted to ensure appropriate medical care for him. As for the recommendation of the psychologist (see paragraph 16 above), the court found that it was based solely on information provided by the grandparents, without trying to observe what the child's reaction would have been to contact with his father. Moreover, the dates of the psychological evaluation had been mentioned, but not the year. Similarly, the family doctor's conclusion (see paragraph 8 above) was not initially dated, and the subsequent clarification of the date contradicted the materials in the file. Therefore, neither document could be taken into account.

23. The fact that A.C. had visited his son on only a few occasions was due, as he explained, to obstacles created by the first two applicants. Moreover, he had tried to help them financially, but they had always refused his help. It was also established that A.C. had asked for confirmation of his paternity on 26 January 2016, six months after the child's birth, and that those proceedings had lasted until 14 November 2018. It was thus clear that he had not abandoned his child but had had to confirm his paternity. Another aspect was that, again in the words of A.C., during a visit to his son on the basis of the schedule of visits fixed by the GDSAFP, he had established contact with his son, who had not rejected him and with whom he had very good contact. Moreover, the court found that, while the first two applicants argued that A.C. had never helped them with the upbringing of his son, they had not proved that they had ever unsuccessfully requested such help. Finally, the court found that the absence of a furnished room for the child was not decisive, since the child had never lived with A.C., who still had time to prepare the room. The lower court's finding that A.C. was unprepared for taking care of his son was not based on any specific evidence. In the absence of any evidence in the file of the existence of an exceptional situation requiring the separation of A.C. from his son, the court rejected the first two applicants' claim.

24. In their appeal, the first two applicants clarified the dates of various documents in respect of which the Court of Appeal had had doubts by submitting additional documents from the same authorities. They also noted that the court had accepted – without any evidence – the simple statements made by A.C. and his lawyer concerning, *inter alia*, the obstacles created by the grandparents to his visits to his son or his attempts to send them money, as well as about his employment and ability to earn money to support the child. For instance, there was evidence of only two money transfers in March 2019 and there was not a single complaint by A.C. about such obstacles to any authority. More generally he had not come into any kind of contact with the local administration of the village where his child had spent five years, as confirmed in the statement of the village mayor that they attached. Moreover, it was strange for the court to invoke the absence of the grandparents' plea for help, since a father who truly cared for his son's health would not wait for such a plea and would at least inquire about any need, especially knowing that the child had serious and persistent health problems. The first two applicants insisted that this case should not be examined from the point of view of general measures of care to an ordinary child: this child needed very special attention and care owing to his fragile physical and psychological state. They

added that the court had totally ignored the GDSAFP's recommendation to leave the child with his grandparents.

25. On 8 May 2020 the Supreme Court of Justice found the appeal inadmissible since it did not correspond to any ground for quashing the judgment of the lower court, but essentially expressed the first two applicants' disagreement with the outcome of the proceedings.

26. At A.C.'s request, on 3 June 2020 the GDSAFP annulled the second applicant's custody of the child. According to the Government, from that date his son should have lived with A.C. However, the decision of 3 June 2020 has not yet been enforced. On 18 June 2020 A.C. asked the same authority to accompany him to the applicants' home in order to take his son to his home. This was temporarily refused, owing to the COVID-19-related lockdown, but the grandparents were warned to prepare for the transfer at any moment. The first two applicants challenged in court the decision of 3 June 2020; the proceedings were pending at the date of the parties' latest submissions.

27. Also on 18 June 2020 the psychologist who had examined N. in 2018 reiterated her previous findings.

RELEVANT LEGAL FRAMEWORK

28. In accordance with Article 31 of the Civil Code, as in force at the relevant time, the domicile of a minor under the age of 14 is with his or her parents. Exceptionally the court may, taking into account the minor's best interests, establish his or her domicile with the grandparents or other relatives or trustworthy persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The first and second applicants complained that the decisions resulting in the imminent removal of their grandson from their care constituted a breach of Article 8 of the Convention, which reads as follows:

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

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

A. Admissibility

30. The Court notes that the application was lodged by the first two applicants in their own names and on behalf of their grandson. It must examine whether the first two applicants have standing to lodge a complaint in the name of the third applicant.

31. The Court observes that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective. In this context, the position of children under Article 34 deserves careful consideration, as they 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 any steps to be taken on their behalf in any real sense. A restrictive or technical approach in this area is therefore to be avoided and the key consideration in such cases is that any serious issues concerning respect for a child's rights should be examined (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 118, 11 December 2014, with further references).

32. Moreover, in principle, a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII). In particular, minors can apply to the Court even, or indeed especially, if they are represented by a person who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention. In the event of a conflict over a minor's interests, 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 (*idem*).

33. In *N.Ts. and Others v. Georgia* (no. 71776/12, §§ 48-61, 2 February 2016), the Court referred to three criteria which must be met in order for a person to have standing in cases such as the present one: (a) a sufficiently close link between the minor and the person lodging the complaint before the Court in the name of that minor, (b) the risk that in the absence of this complaint, the minor will be deprived of effective protection of his or her rights, and (c) the absence of any conflict of interests between the minor and the person representing him or her (*idem*, § 55).

34. In the present case, the Court observes that the third applicant is still a minor and in a vulnerable situation owing to his serious health problems. He has been cared for and educated by his grandparents, with whom he has close emotional ties (see paragraphs 16 and 20 above). It therefore finds that there was a sufficiently close link between them and their grandson.

35. It is apparent that the child's biological father prevailed in the domestic proceedings, was granted custody and obviously has no interest in making the kind of complaints which the first two applicants have made in the present application. In such circumstances, the child might be deprived of effective protection of his rights if the grandparents do not have standing to do so on his behalf.

36. Finally, the Court observes that the core of the complaint in the current case is the alleged failure of the domestic authorities to comply procedurally with the requirements of the Convention and to act in the best interests of the child. It does not see any evidence in the file of any conflict of interest between the grandparents and the child, as the first were seeking protection of the child's best interests (see *N.Ts. and Others*, cited above, § 57).

37. Accordingly, the first two applicants have standing to lodge the complaint on behalf of the third applicant in the present case.

38. The Government argued that, having realised the absence of any legal means of keeping the child with them after it was officially established that he had a biological father, the applicants tried to deprive A.C. of his parental rights. The simple absence in domestic law of any lawful possibility of keeping the child with them in such a situation should be sufficient to declare the application inadmissible as manifestly ill-founded.

39. The Court considers that this objection relates to the merits of the complaint.

40. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Parties' submissions

(a) The applicants

41. In the applicants' view, the higher domestic courts essentially gave utmost priority to the fact that A.C. was the biological father of the child and did not represent any danger to him. They did not sufficiently take into account that N. had lived all his life with his grandparents, with whom he had developed a strong connection, calling them his parents. He needed special care, which the grandparents were able to provide and which the father could not. Both the psychologist and the GDSAFP had strongly recommended leaving the child with his grandparents. However, the courts decided that he must live with his father, who did not have a stable job and did not know the special needs of his son. At the same time, they rejected on formal grounds the opinions of specialists (family doctor and psychologist). While having doubts about the conclusions of these specialists, the Court of Appeal did not request alternative examinations of the child, in the absence of any other relevant specialists' conclusions. It did not give any importance to the fact that the father had not sought to see his child since March 2019, that is six months prior to the adoption of the judgment, even though a schedule for meetings had been established and in the absence of any complaint that he was somehow prevented from visiting his son. On the contrary, they submitted that they had contacted the GDSAFP several times when A.C. had failed to appear at scheduled meetings.

42. The courts did not establish a transition period for transferring the child to his father and essentially accepted a sudden change in the child's life by moving him to live with his father, whom he hardly knew. A.C. had shown little interest in his child's fate over the years, his contribution to the upbringing and care of his son amounting to a pack of nappies, an inflatable mini-pool and a toy in 2016 and two money transfers (the equivalent of approximately 90 euros (EUR)) in March 2019, when the proceedings in the first-instance court were almost over. This should have been an important factor to be taken into account by the courts. The father had also acted irresponsibly, going to the applicants' house shortly after the judgment became final in order simply to take the child to his home, without any preparation.

(b) The Government

43. The Government submitted that, under the Convention, Article 8 protected not only family life already established, but also extended, where the circumstances so dictate, to the potential relationship which may develop between a natural father and his child born out of wedlock.

44. The higher courts' decision that N. should live with his father, despite the recommendations of the relevant authorities, was based on several important considerations. If N. was to remain with his grandparents, this could irreparably damage the family relationship between him and his father, which had begun to consolidate after the formal recognition of A.C.'s paternity. The authorities' margin of appreciation was narrower in matters resulting in separation of a child and his biological parents.

45. The courts determined that, although N. needed special care, there was no evidence that his father could not provide it or that there was an exceptional situation requiring the separation of

the two, taking into account the authorities' positive obligation to ensure their reunion. The courts had no option but to reject the psychological report in view of its lack of objectivity, being based solely on the information submitted to the specialist by the first two applicants.

46. Moreover, placing a child under the guardianship of persons other than his or her parents must be considered a temporary measure and the State should always make real and substantial efforts to facilitate family reunion (*N.P. v. the Republic of Moldova*, no. 58455/13, § 69, 6 October 2015).

47. The courts balanced the three interests at stake in this case: the best interests of the child, that of the biological father and that of the grandparents, while keeping in mind the positive obligation to take measures aimed at family reunion. While the initial placement in the grandparents' custody responded to the best interests of the child, this was no longer so when his father expressed his clear intention to be reunited with him and there was no evidence that he could not provide for N.'s needs. Moreover, the grandparents were not prevented from continuing to have a relationship with their grandson. The Government considered that reunion between A.C. and his son should be duly prepared.

48. The Government submitted that any interference with the first two applicants' rights under Article 8 was not disproportionate, since they could continue to play a role in N.'s life, while had the child been left with them, the relationship between A.C. and his son could be irreparably affected.

2. The Court's assessment

(a) General principles

49. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention, even if the relationship between the parents has broken down (see, as a recent authority, *Ilya Lyapin v. Russia*, no. 70879/11, § 44, 30 June 2020). There is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010, and *X v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013). Generally, those interests dictate that the child's ties with his or her family must be maintained, except in cases where the family has proved to be particularly unfit and this may harm the child's health and development (see, for instance, *N.P. v. the Republic of Moldova*, cited above, § 66, and *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). Severing such ties means cutting a child off from his or her roots, which may only be done in exceptional circumstances (see *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004); everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 75, 10 January 2017).

50. The Court reiterates that there may be "family life" within the meaning of Article 8 of the Convention between grandparents and grandchildren where there are sufficiently close family ties between them (see *Kruškić v. Croatia* (dec.), no. 10140/13, § 108, 25 November 2014 and *Bogonosovy v. Russia*, no. 38201/16, § 79, 5 March 2019). The relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection. Therefore, the right to respect for family life of grandparents in relation to their grandchildren primarily entails the right

to maintain a normal grandparent-grandchild relationship through contacts between them (see *Kruškić*, cited above, §§ 110-111).

51. It is clearly in the child's interest to ensure his or her development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 207, 10 September 2019). The child's best interests may, depending on their nature and seriousness, override those of the parents (see, for instance, *V.D. and Others v. Russia*, no. 72931/10, § 114, 9 April 2019). In particular, where contact with the parent might appear to threaten the best interests of the child or interfere with his or her relevant rights, it is for the national authorities to strike a fair balance between them (see *Khusnutdinov and X v. Russia*, no. 76598/12, § 80, 18 December 2018).

52. In the context of both negative and positive obligations, the Court has to consider whether, in the light of the case as a whole, the reasons given by the competent domestic authorities to justify their decisions were "relevant and sufficient" for the purposes of Article 8 § 2 of the Convention. To that end, the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk*, cited above, § 139, and *N.P. v. the Republic of Moldova*, cited above, § 64).

(b) Application of those principles in the present case

53. The Court considers that the first two applicants clearly had a family relationship with N. as his grandparents, with whom he had lived all his life. Accordingly, Article 8 of the Convention applies in the present case. Moreover, the decisions taken by the domestic authorities resulted in a state of uncertainty in which N. could be taken away from his grandparents at any moment. This constitutes an interference with the applicants' right to family life within the meaning of the above-mentioned provision. It must now be determined whether such an interference, which was in accordance with the domestic law (see paragraph 28 above) and pursued the legitimate aim of protecting the rights of others (those of A.C.), was also "necessary in a democratic society".

54. The Court observes that the present case essentially concerns the manner in which the courts assessed and balanced all the competing rights involved and whether their decisions were ultimately driven by the best interests of the child, taking into account the domestic authorities' margin of appreciation. In particular, the courts needed to determine the extent of the risk that N.'s continued upbringing at his grandparents' house, even if his father were to visit him there regularly, could cause irreparable damage to the relationship between A.C. and his son and prevent the reunion of their family. They also needed to determine the existence and extent of the danger to the child's physical and mental health following his transfer to his father's house, even if his grandparents were to visit him there regularly. It is important to note that, should the courts establish a danger to the child's mental or physical health of any significance, all other considerations should yield to protecting the child's health and well-being.

(i) The risk to the relationship between A.C. and his son

55. In respect of the risk that the relationship between A.C. and his son could be damaged or come to an end, the Court notes the following. As is clear from the facts of the case, the first two

applicants relied on a number of elements showing that A.C. had not been interested in his son's fate and had not contributed in any meaningful manner to his upbringing. However, the courts found that A.C. had not lost all interest in his son, having asked for recognition of his paternity as early as six months after N.'s birth and having inquired about him, trying to help the grandparents financially (see paragraph 23 above).

56. In the Court's opinion, in determining the danger to the father-son relationship mentioned above, the courts had to examine both N.'s reaction to his father and the latter's attitude towards his son. It is apparent that in respect of both these aspects the courts relied mostly on A.C.'s statements, unconfirmed by any evidence (notably that he inquired about his son and tried to offer financial help to the grandparents, who always refused his help; that the grandparents created obstacles to his visiting his son, which explained the rarity of such visits; and that one contact between him and his son in March 2019 had been very positive, see paragraphs 11, 13 and 23 above). At the same time, no attention was paid to the grandparents' reliance on documentary evidence confirming only two money transfers in March 2019 and that A.C. had made no complaint about any obstacles to visiting his son (see paragraphs 19 and 24 above). It is unclear why the courts did not reflect on how A.C. intended to build a relationship with his son when, after having obtained in March 2019 a schedule for visiting his son twice a week, he visited him twice during that month and apparently never tried to see him thereafter (see paragraph 13 above). In such circumstances, simple reliance on the natural bond between a parent and his child would appear insufficient.

57. During his entire life (approximately five years) the child had never lived with his father and was strongly emotionally attached to his grandparents. The Court reiterates that, in somewhat similar circumstances, it found no violation of Article 8 of the Convention in *Hokkanen v. Finland* (23 September 1994, §§ 63-65, Series A no. 299-A) in respect of the domestic courts' decision transferring custody of a child from her father, whom she had not lived with for five years despite a court order reuniting the family, to her grandparents, to whom she had become emotionally attached. In the circumstances of the present case, the domestic courts could not simply presume that it was in the best interests of the child to live with his father without determining how strong the ties were between N. and both parties involved.

58. The Court concludes that the domestic courts did not carry out a sufficiently thorough examination of the depth of the relationship between A.C. and his son and the risk to that relationship in the present case.

(ii) The risk to the health and well-being of the child

59. As for the second main issue in the present case, namely the danger to the child's physical and mental health, the Court notes the following. The first two applicants submitted to the courts the conclusions of the specialised authority (the GDSAFP), of a psychologist and of a family doctor, all recommending that the child be left with his grandparents and warning about possible serious effects to his health if they were to be separated (see paragraphs 16, 18 and 19 above). The courts dismissed the psychologist's report as not objective enough and not properly dated. The doctor's conclusion was also dismissed as not properly dated. These were the only instances where specialists had examined N. Even if the courts had legitimate doubts as to the conclusions of the doctor and psychologist, it is unclear why they did not hear them or order alternative reports to be

made. In this respect they apparently treated the case as an ordinary civil case, where each party had to prove its claims. However, this was no ordinary court action: the courts needed to decide not just which party had submitted more convincing evidence, but most importantly what solution reflected the best interests of the child. They could not do this without obtaining a broad and up-to-date factual basis (see, *mutatis mutandis*, *A.S. v. Norway*, no. 60371/15, §§ 66-68, 17 December 2019), notably in the form of expert reports examining the various aspects of the case and in particular the best interests of the child. The courts focused on the absence of any evidence that A.C. could not provide for the needs of his child (an approach which would have been relevant in proceedings aimed at depriving a parent of his or her parental rights). However, the emphasis in a case such as the present one should have been on verifying that the parent could in fact provide appropriate care.

60. Moreover, having accepted A.C.'s statement that he was intermittently employed by an unidentified employer, the higher courts did not inquire how he would combine that employment with N.'s care on the frequent occasions when the child had to stay at home or in hospital for health reasons, not being able to spend a long time with groups of people (see paragraph 8 above).

61. Moreover, it is unclear why the Court of Appeal, having cited most of the opinion of the specialised guardianship authority (the GDSAFP) in its judgment, did not give any reasons for not accepting that opinion. Neither did the Supreme Court of Justice add any reasons.

62. One important aspect of the case, invoked by the first-instance court but left out by the higher courts, was whether it was possible to protect both the interests of the child and that of family reunion. In particular, the higher courts did not explore the possibility of temporarily leaving N. with his grandparents, while ensuring his father's frequent and unobstructed access, so as gradually to build the relationship between the two, while not exposing the child to any immediate risk. The result of the domestic courts' decisions as they stand is that N. could be moved to his father's house at any moment, which he has already tried to do. The absence of transitional and preparatory measures aimed at assisting N. and his father in building their relationship appears to be contrary to the child's best interests (see *N.Ts. and Others*, cited above, § 83).

63. The Court reiterates that it is primarily for the domestic courts, which have the benefit of directly assessing all the persons and materials of the case, to establish a fair balance between the various competing Convention rights (see paragraph 51 above). However, when doing so they need both to reason convincingly their decisions and to ensure the procedural fairness of the entire process. In the present case, although the reasons given by the courts were relevant, they were not sufficient. Moreover, the procedure could not be considered fair in the light of the reliance on A.C.'s statements without any supporting evidence, while rejecting, sometimes on purely formal grounds, documentary evidence submitted by the grandparents and not attempting to obtain an independent verification of the most important elements such as the effects of a transfer to A.C.'s house on the child's psychological and physical health. The Court therefore concludes that, also in respect of the risk posed to N.'s health and well-being in the event of a sudden transfer to his father, the domestic courts did not carry out a sufficiently thorough assessment.

64. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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. Non-pecuniary damage
66. The applicants claimed 10,000 euros (EUR) jointly in respect of non-pecuniary damage caused to them by the anxiety and uncertainty they had to endure and are likely to continue enduring if their grandson is transferred to his father. They referred to similar cases where the Court awarded comparable amounts.
67. The Government considered the sum claimed excessive. They pointed to the fact that it had been the first two applicants who had initiated the court proceedings at the domestic level, about the outcome of which they were now complaining.
68. The Court notes first that, even though it was the first two applicants who started the relevant domestic proceedings, they would have to suffer the sudden departure of their grandson in the absence of such proceedings: when A.C.'s paternity was confirmed it was only a formality for their guardianship over their grandson to end, as indeed happened. Therefore, it sees no reason to consider that they somehow caused the stress and frustration which they must have felt as a result of the manner in which the courts decided on what was their grandson's best interests. In the light of all the materials in the case, it awards the first two applicants jointly EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.
B. Costs and expenses
69. The applicants also claimed EUR 4,470 for the costs and expenses incurred before the Court. They relied on a contract with their lawyers and an itemised list of hours spent working on the case (43.2 hours).
70. The Government considered that the sum claimed was excessive and not in fact paid to the lawyers, and therefore not actually incurred.
71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first two applicants the sum of EUR 2,500 covering costs under all heads, plus any tax that may be chargeable to them.
C. Default interest
72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*

(a) that the respondent State is to pay the first two applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar

Jon Fridrik Kjølbro President