



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

FIRST SECTION

CASE OF M. AND M. v. CROATIA

(Application no. 10161/13)

JUDGMENT

STRASBOURG

3 September 2015

FINAL

03/12/2015

This judgment is final.

In the case of M. and M. v. Croatia,

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

Isabelle Berro, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2015,

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

PROCEDURE

1. The case originated in an application (no. 10161/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms M. (“the second applicant”) and her minor daughter M. (“the first applicant”), both Croatian nationals, on 3 January 2013. The President of the Section decided not to disclose the applicants’ identity to the public (Rule 47 § 4 of the Rules of Court).

2. The applicants were represented by Ms S. Bezbradica Jelavić and Mr I. Jelavić from the law firm Jelavić & Partners, lawyers practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged, in particular, that the domestic authorities had failed to meet their positive obligations under Articles 3 and/or 8 of the Convention, as they had neither appropriately prosecuted the first applicant’s father for the violence perpetrated against her nor protected her against further violent attacks by removing her from his home.

4. On 16 May 2013 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The second applicant was born in 1976 and the first applicant in 2001 and they live in Zadar.

6. On 23 June 2001 the second applicant married I.M.

7. On 4 September 2001 the second applicant gave birth to the first applicant.

8. Relations between the spouses deteriorated, and in 2006 the second applicant brought a civil action against her husband seeking divorce, custody of, and maintenance for the first applicant. Her husband, I.M., filed a counterclaim, seeking custody of the first applicant.

9. In the period between 5 July 2006 and 7 March 2008 a total of eight criminal complaints were filed against the second applicant and I.M. Most of these complaints were filed against each other directly, but some were filed at the initiative of the police. Three of those eight complaints resulted in criminal proceedings being instituted (two against I.M. and one against both I.M. and the second applicant), the outcome of which is unknown. The remaining five criminal complaints were dismissed, including three in which it was alleged that criminal offences of child abuse and domestic violence had been committed against the first applicant.

10. By a judgment of 24 August 2007, the Zadar Municipal Court (*Općinski sud u Zadru*) (a) granted the second applicant and I.M. a divorce; (b) awarded I.M. custody of the first applicant; (c) granted the second applicant access (contact) rights; and (d) ordered the second applicant to make regular maintenance payments for the first applicant. In so deciding the court relied on the opinion of forensic experts in psychiatry and psychology obtained during the proceedings and on the recommendation of the Zadar Social Welfare Centre (*Centar za socijalnu skrb Zadar*, “the local social welfare centre”) which participated in those proceedings as an intervener *sui generis* with a view to protecting the first applicant’s interests. The judgment became final on 2 January 2008.

11. Previously, by a decision of 7 November 2006 the local social welfare centre had ordered a child protection measure of supervision of the exercise of parental authority in respect of the first applicant. The measure was imposed with a view to improving communication between the second applicant and I.M. regarding the first applicant, and also with a view to preventing her from being drawn into their conflict. The measure lasted until 31 August 2008, when it was discontinued. In its decision of 2

September 2008 the local social welfare centre stated, *inter alia*, the following:

“The measure only partly achieved its goal, in that contact with the mother has stabilised. The parents still do not communicate with each other and it is evident that the mother intends to continue with such behaviour. Furthermore, the mother’s cooperation with the supervising officer is not adequate and it is evident that the measure has become futile.”

B. The alleged abuse

12. The applicants submit that on 1 February 2011 the first applicant’s father I.M. hit her in the face and squeezed her throat while verbally abusing her.

13. The next day the second applicant took the first applicant to the police to report the incident. The police instructed them to see a doctor and accompanied them to the local hospital, where the first applicant was examined by an ophthalmologist, who diagnosed her with bruising of the eyeball and eye socket tissue. In particular, the ophthalmologist noted:

“Clinically discrete haematoma of the left lower eyelid, in resorption. The motility of the eyes is normal, no diplopia [double vision], no clinical signs of orbit fracture.

Pupils are normal, lenses [are] in place, transparent, fundus [is] normal on both sides.

Dg.: *Contusio oc.sin.*

Haematoma palp.inf.oc.sin.

Treatment: cold wraps [compresses] ... Into the eye: Effludimex sol ...

Dg:

S05.1. Bruising of the eyeball and the eye socket tissue”

14. After examining the first applicant the ophthalmologist filled in a standard form to be submitted to the police, in which he indicated that the injury had been inflicted by a hard blow to the left eye, gave bruising of the left eyelid (*haematoma palp.inf.oc.sin.*) as his diagnosis, and described the injury as light.

15. The applicants then returned to the police, where they both gave statements. In her statement the first applicant mentioned other instances of physical and psychological violence by her father in the past three years. The relevant part of the police record of the interview conducted with the first applicant reads as follows:

“This interview was conducted regarding the violent behaviour of the [child’s] father I.M.

[The child] stated that yesterday around 4 p.m., when she was getting ready to visit her mother D.M., she wanted to take a picture frame containing a lock of her hair which her mum had had framed when she had had her first haircut. She put the picture

frame underneath her jacket because she knew that her dad would not allow her to take that picture frame to her mum. Then his girlfriend I.P. saw that she had something under her jacket and asked what it was. She replied that it was nothing. Then her father came and took the picture frame from under her jacket and told her that they would talk about it when she came home in the evening.

... In the evening, around 8 p.m., mum took her back to her dad, who brought her into the room and called her a thief, hit her with his hand on the left eye, and started squeezing her neck and pushing her. During this she fell, but did not hurt herself because she fell on a bag which was on the floor. Then she vomited saliva because she felt nauseous from her father's squeezing her neck. Then [her father's partner] I.P. came and told her father to calm down, otherwise she [the first applicant] would vomit ... He then left and sat in the living room. She was very afraid and was crying, but nevertheless went to her room and did her homework for the next day. When she woke up in the morning she greeted her father with 'good morning' but he did not even look at her and just turned his head away. In the morning she felt slight pain under the left eye where her father had hit her. When she arrived at school she mentioned it to her teacher and her friends P. and A., because she felt the need to confide in someone.

Today she went to her mum and told her everything that happened that evening. She was also very hurt when her dad rudely [swore at] her. He often does that, and did so [also] yesterday evening. He also called her a 'cow' and told her she was stupid. Because of his rude language she cried a lot thereafter. Dad tells her from time to time [to go to hell] and she does not like swearing, especially when he mentions her mum while doing so. A few months ago the father told her that through his friends he would ensure that she never heard from or saw her mum. She is therefore very afraid of her dad because he can be dangerous. She had seen her dad beating her mum and was therefore afraid that he might beat her the same way too. She states that her father is often rude to her, yelling at her, forcing her to eat food she does not like, and when she does not, grabs her chin and shoves the food into her mouth, which makes her feel sick. He often takes away her mobile phone so she cannot call her mum, and she would like to be in contact with her mum. Once he hit her on the leg with a hairbrush when she would not allow him to brush her hair. He also grabs her arm and squeezes it so hard that she has bruises afterwards. She states that she is very afraid of her dad and would like to live with her mum. Tonight she definitely does not want to go with her father but wants to stay with her mum. She is afraid that her father will beat her and yell at her. He often threatens her by waving his hand at her and saying 'look at it, look at it', with the intention of hitting her if she does not listen to him. The father also threatens to cut off her hair, knowing that she likes [her] long hair. He threatens her with that when she is crying for her mum, bites her fingernails or asks for a mobile phone. Dad often tells her that she must not love her [maternal] grandmother, [her mother's partner] N. or his mum, whereas she loves them all.

She further states that each time her mum or [her mother's new partner] N. buys her something and she brings it to her father's home he throws all those things into the rubbish. Therefore, she wears the things her mum bought her only when she goes to her mum's place, as she is not allowed to wear them when she is at her dad's home.

Lastly, she states that she is very afraid of her dad and [particularly] ... that he might do something bad to her mum, because he constantly threatens to do so.

The interview was conducted in the presence of a social worker from the Zadar Social Welfare Centre V.C."

16. The same day the police interviewed I.M. and his partner I.P. The relevant part of the police record of the interview conducted with I.M. reads as follows:

“The interview was conducted in the presence of his advocate B.Z., regarding the complaint that he had hit his minor daughter ... In that connection he stated the following:

...

[He says that his former wife] does not regularly pay maintenance for [their] daughter ... amounting to 800 Croatian kunas (HRK) per month and up to the present day owes [him] HRK 15,000.

[He submits that], sadly, [his former wife] manipulates their daughter ... and uses her so that she rejects everything that bears [his] surname. She even created a Facebook page for her under ... the surname of her current partner ...

As regards his relationship with his daughter ..., [he] states that he, as a parent who wants to teach his child to respect work and discipline, has his duties, and that the child has to have certain discipline, [for example] she must not lie to her parents, and may not do whatever she pleases. When [his daughter] comes back from school ... he requires her to do her homework and study. As regards food, [he] states that he wishes [his daughter] to eat healthy and varied food, with fruit and vegetables, rice and meat, and that she does not only eat pizzas, sandwiches and sweets. He also does not like to throw away food and prefers that it is eaten.

On 1 February 2011 around 3.50 p.m. [his daughter] was preparing to go to her mother and came into the kitchen to say goodbye. On that occasion [his partner] I.P. noticed that she had something under her jacket ... and asked what it was. [The daughter] replied that it was nothing, even though there was visibly something underneath it. He asked her to open her jacket. [Then they realised] that she had taken a glass picture frame containing the locks of her hair cut off when she was still a baby. [He] then asked her why she had not asked to take it instead of doing it the way she did, stealing from her own house. [The daughter] said that it was for her mum and that if she had asked him if she could take it he would not have allowed it. Then he told her to go to her mum and that they would talk about it later, when she came home.

[The daughter] came home at 8 p.m. and they continued their conversation because he wanted to tell her that what she had done was bad and that she should have asked instead of stealing things from the house and taking them to her mother. [His daughter] replied that she wanted [the picture frame] to be at her mother's place. [He] then reprimanded her for lying to him, saying that what she had done was sad or bad and that she always had to tell the truth because he did not tolerate lies and that all problems would be solved the way they had been solved so far. He admits that he is sometimes a strict parent but that he always behaves in a measured way and with [good] reason, and it is only ever exclusively done with a view to making her behave [better].

Today, on 2 February 2011 [his daughter] was at school in the morning and in the afternoon was having fun with [him] and his [partner] ... Nothing suggested that [she] was in any way distressed by the previous evening's events.

[He] emphasises that all this was fabricated by her mother ... who has a negative influence on [their daughter].”

17. The relevant part of the police record of the interview conducted with I.M.'s partner I.P. reads as follows:

"The interview was conducted regarding a complaint that I.M. had hit his minor daughter ... In that connection she stated the following:

On 1 February 2011 around 3.50 p.m. [her stepdaughter] was preparing to go to her mother and came into the kitchen to say goodbye to them. On that occasion [I.P.] noticed that she had something under her jacket ... and asked her what it was. [Her stepdaughter] replied that it was nothing, even though there was visibly something underneath her jacket. I.M. asked her to open her jacket. [Then they realised] that she had taken a glass picture frame containing locks of her hair cut off when she was a baby. [He] then asked [his daughter] why she had not asked to take it instead of doing it the way she did, stealing from her own house. [The stepdaughter] said that it was for her mum, and that if she had asked him for it he would not have allowed it. Then he told her to go to her mum and that they would talk about it later, when she came home.

[The stepdaughter] came home at 8 p.m. and she and her father continued their conversation, because he wanted to tell her that what she had done was bad and that she should have asked instead of stealing things from the house and taking them to her mother. [The stepdaughter] replied that she wanted [the picture frame] to be at her mother's place. I.M. then reprimanded her for lying to him, by saying that what she had done was sad or bad and that she always had to tell the truth because he did not tolerate lies and that all problems would be solved the way they had been solved so far. I.P. firmly states that on that occasion I.M. did not hit [his daughter], nor has she ever seen him hitting [her]. She says that I.M. has a temper and sometimes shouts when he considers that something is wrong, but that he is really not prone to physical violence or hitting the children. I.P. notes that [her stepdaughter] is generally very sensitive about her mother and immediately starts crying as regards anything related to her."

18. After the interviews, the first applicant was returned to her father I.M., following the intervention of an employee of the local social welfare centre.

19. On 19 February 2011 the first applicant was, at the initiative of the second applicant, examined by a psychiatrist at the Psychiatric Hospital for Children and Young People in Zagreb. The relevant part of the psychiatrist's observations reads as follows:

"The child was with the mother at the police station and reported the incident [of 1 February 2011] because the mother, and also the child, claim that this was not the first time that the father has mistreated [the child], although not so much physically as psychologically ...

During the interview with the girl it is evident that the child gets very upset at the mention of the father, she is afraid of him, 'constantly thinks that he will hit her again and would like to stay with mum'. Dad is allegedly constantly threatening that he will 'cut off her hair if she keeps crying and mentioning mum ...' he often swears and utters vulgar expressions against the mother; all this was allegedly reported to the police ... (the interview was conducted first with the mother alone and then with the girl, also alone; [the child] talks about it all through tears and while biting her fingernails)

The girl says that she remembers that ‘she was asked when she was little with whom she wished to live and that she said with dad because she was told that she had to say that, now she regrets it’ (she is crying all the time).

The girl otherwise appears to have good intellectual capacity; she functions well outside the family, and is an A-grade pupil. There are no signs of psychotic disorder, and the girl is emphatic in contact except when she gets upset and talks rapidly when the topic of the father and his relationship with her is raised (thus there is an impression of strong fear of the father).

Given the complexity of the family situation (the father has remarried and [the child] lives with him, his new wife, her daughter from her first marriage and two small half-sisters, while the mother also has a new partner with whom she has a small son) and the evident traumatisation of the child which has probably already lasted a long time, a psychiatric assessment of the child is recommended.

Until then ... I recommend taking the girl to a psychologist ...

Dg. Abused child, T 74.8”

20. On 5 March 2011 the second applicant took the first applicant to a psychologist in Zagreb, who, *inter alia*, made the following observations:

“The interviews, which were conducted with the mother alone and separately with the girl, indicate that the child is afraid of her father because he psychologically and sometimes physically abuses her ...

The girl ... says that she would gladly live with mum if she could, and that dad speaks badly of mum ...

The results show that [the child] is emotionally attached to her mum and thinks that her dad does not love her, is afraid of him, does not trust him, and thinks that it is not fair that dad constantly yells at her even when she is not at fault. Her biggest wish is to live with her mum and her family, and she finds it difficult to return to her dad’s home. She identifies with her mother and thinks that they are very much alike.

Findings: [The girl] is a traumatised child with well above-average mental abilities, strong self-control, neuroticism, depressive affect, hypersensitive, anxious with strong inferiority complex. Discrete tremor is diagnosed.

I recommend psychological and, if need be, psychiatric counselling.”

21. On 30 March 2011 the Zadar Municipal State Attorney’s Office (*Općinsko državno odvjetništvo u Zadru*, hereafter “the State Attorney”) informed the second applicant that on the same day it had, concerning the incident of 1 February 2011, indicted I.M. before the Zadar Municipal Court for the criminal offence of bodily injury defined in Article 98 of the Criminal Code (for a more detailed description of the course of those proceedings see paragraphs 35-51 below).

22. On the same day, 30 March 2011, the second applicant instituted civil proceedings before the Zadar Municipal Court seeking reversal of the custody arrangements set forth in that court’s judgment of 24 August 2007 (see paragraph 10 above; for a more detailed description of the course of those proceedings see paragraphs 60-81 below).

23. On 22 April 2011 the second applicant took the first applicant back to the same psychologist (see paragraph 20 above). The psychiatrist made the following observations:

“... The interview with [the child] was conducted without her mother’s presence.

In contact silent, with depressive affect, cooperative, bites her fingernails, occasionally cries. We again had a conversation about the events of 1 February 2011 during which the child was psychologically and physically abused by her father, and which she in her mother’s presence reported to the police.

[The child] says that that was not an isolated incident and that she is afraid of her father because she has continuously, from the moment she started living with him, been exposed to psychological and, from time to time, also physical abuse. She says that on multiple occasions he has threatened that he would hit her if she kept biting her fingernails and that he would take her mobile phone away. Previously she was more afraid of her father’s physical violence than now, but her mother encourages her by telling her not to be afraid and to ‘endure difficult moments’. The child states that she does not like living with her father because he threatens her and tells her that he will beat her. She says that mum loves her more, does not threaten her and is good to her. She uses suppression and ‘forgetting’ as defence mechanisms ...

The child states that the father yells at her almost every day, swears, tells her that she is a ‘stupid cow, pig, goat, thief, that she constantly defies him’. She says that this offensive behaviour by her father is rarer since she reported him to the police.

[The child] says that the father has threatened her that he will, through ‘his people’, take care that she does not hear from or see her mother. He threatens her that he will cut off her hair if she cries for her mother.

The child alleges that her father forces her to eat so that she has to eat everything he puts on her plate and that she sometimes vomits because of that. If she refuses to eat everything the father holds her chin and ‘shoves’ the food in her mouth. If she resists, he smears the food over her face.

After she reported him to the police, the father controlled himself for a couple of days, and then again started yelling but then to a lesser degree. He no longer shoves food in her mouth, but she has to eat everything he puts on her plate. Sometimes she has to eat something that she does not like, which the mother never does to her.

[The child] is lonely at her father’s home, because she spends time only with her half-sisters; her friends are not allowed to visit in case [the younger half-sister] gets sick. After school the father allows her to meet with friends for half an hour only. She visited one of her friends only once and she did not dare to ask the father for more visits. She thinks that her father is stricter with her than with her older half-sister.

I found out that the father speaks badly of the mother and her new partner in front of the child, that she has different clothes at her mother’s and her father’s places, and that the father threw the sneakers she got as a birthday present from her mother and her partner into the rubbish.

Asked about her father’s wife, she says that she is better to her than her father: does not force her to eat, has never hit her, helps her with homework, and brushes her hair.

The child shows a strong desire to live with her mother because she is emotionally closer to her, and because the mother supports her in difficult moments. She has many friends in her mother’s neighbourhood and is encouraged to spend time with them; she has fun and feels safe with her mother. Asked about [the behaviour of] her

mother's partner towards her, the child says he is good to her and tries to cheer her up, buys her presents, and is fun and pleasant to talk to.

To the question whether, if she were to live with her mother, she would be allowed to see her father outside the visiting schedule ordered by the court, she says that it is certain that her mum would allow her to see her father whenever she wished to and states that 'she would like to move to her mum's [place] right away and forever'.

Findings and recommendations: In order to prevent the development of irreversible psychopathological consequences due to continuous abuse, it is recommended that the child be immediately removed from the family where she currently lives and that custody be awarded to the mother.

Psychological and if need be, psychiatric follow-up is also recommended."

24. On 4 May 2011 the second applicant again took the first applicant to the police to report another instance of abuse by her father, who had allegedly pressured her to change her earlier statements made before the police and the experts. The relevant part of the police record of the interview conducted with the first applicant on that occasion reads as follows:

"This interview was conducted regarding inappropriate behaviour of the [child's] father I.M.

[The child] stated that a couple of days ago her dad's girlfriend I. asked her whether she had visited a certain lady in Zagreb with her mum. She had replied that she had, whereupon I. had asked her what she had talked about with that lady in Zagreb and why she had not said anything about [it] to her dad. She replied that she had forgotten to mention it. After that her father had called her on her mobile phone and asked her to come to his café ... immediately. When she had arrived there he had started yelling at her and asking why she had been saying bad things about him and why she had not told him that she had been in Zagreb ... After that he had told her that she was lying like a dog and told her to get out of his sight.

... Afterwards her dad had kept asking her whether she really wanted to live with her mum and she always replied that she did. A couple of days ago he had told her that she would not live with her mum until she was eighteen years old.

[The child] also states that he said that he would report her mum for taking her to a doctor in Zagreb, and that she [the mother] would receive a criminal complaint for [having done] that. He [also] told her that he would now take her to a psychologist and to some other people where she would have to say that he had not hit her and that he was good to her.

Today he had again asked her whether she really wanted to live with her mum and she had again replied to him that she did want to live with her mum.

This interview was conducted in the presence of the [child's] mother ..."

25. On 7 May 2011 the first applicant's father took her to a psychiatrist at the Polyclinic for the Protection of Children in Zagreb, who, after studying the opinions of 19 February, 5 March and 22 April 2011 (see paragraphs 19, 20 and 23 and above) and interviewing the first applicant, in his observations noted, *inter alia*, the following:

“It is evident that [the child] is very burdened by her parents’ conflict and the inadequacy of their mutual communication, which frequently goes through her. The girl shows affection towards, rather than fear of, her father. However, when asked what happened [on 1 February 2011] she did not want to talk about it; she was visibly emotionally burdened so I did not insist on it. She freely expresses her dissatisfaction by saying that she does not like it when her father raises his voice. Asked when that happens, she replies: ‘when I do something bad’.

She is functioning well at school, says that she has many friends ... that at her mother’s place she also has friends and likes to go there, but that she feels comfortable at home with her father because she gets on well with ... the daughter of her father’s new partner ...

Her mental state is dominated by the emotional burden of her parents’ conflict, high emotional tensions, the need to be close to her mother (whom she wishes to please by being with her) and, in her relationship with her father, by the conflict of loyalties she has been placed in.

I am of the opinion that the girl has been drawn into a conflict of loyalties and is very burdened by her parents’ disagreements and conflict, which has resulted in high emotional pressure, anxiety and hypersensitivity.

I recommend that the parents undergo family counselling and possibly afterwards also family therapy together with [their daughter].”

26. On 6 June 2011 the father took the first applicant back to the same psychiatrist who, in so far as relevant, noted:

“The interview with the girl was conducted alone. [The child] states that she feels good, that she cannot wait for school to end but that she has no difficulties in school. She gets on well with both her father’s wife and her mother’s partner, and regards her half-brother and half-sisters as real siblings. She is still sad about her parents’ differences and their inability to adequately communicate [with each other] and their different parenting styles.”

27. In the course of the above-mentioned custody proceedings (see paragraph 22 above) the court ordered a combined expert opinion from experts in psychiatry and psychology. Accordingly, the applicants and the first applicant’s father were examined by forensic experts of this type at the Neuropsychiatric Hospital in Popovača. As part of the preparation of their opinion each expert conducted interviews, *inter alia*, with the first applicant. In particular, on 1 July and 28 September 2011 the first applicant was interviewed by each expert; on 2 September 2011 she was interviewed only by the expert in psychiatry. The interviews of 1 July 2011 were conducted without the first applicant’s parents being present, that of 2 September 2011 in the presence of her mother (the second applicant), and those of 28 September 2011 in the presence of her father.

28. The relevant part of the record of the interview of 1 July 2011 with the expert in psychiatry reads as follows:

“[The child] states that she always tells the truth, literally always, and that she feels her worst when she is told that she is a liar like her mum.

... She very clearly articulates her emotional bond and closeness with her mother and her wish to live with her. ...

[The child] states that she once attempted to talk with her father about living with her mother, but that the conversation ended quickly with him telling her that there would be no discussion about that and that she would stay with him until she was eighteen ... She says that her father is very strict and that he often shouts at and insults her, which makes her embarrassed and scared. The last time he attacked her, because of the picture [frame], I. [her father's partner] stopped him, and she felt nauseous ...

She says that she complained to her mother about her father, which was why she went to the police with her. She was particularly struck when the social worker came to the police [station] and talked to her mother; she heard the social worker say that unless they agreed on where [their daughter] was going to live she would be placed in a children's home. (The girl cries for a long time afterwards).

When asked how it is to live with her father, she states that she would prefer to live with her mother as she is closer to her ..."

29. The relevant part of the record of the interview of 1 July 2011 with the expert in psychology reads as follows:

"Dad is so- so. When he is in a good mood, he is good. When he is not [in a good mood] he is not [good]. Once when he forced me to eat I vomited.' ...

'Mum is great. Good, fair and does not hit me. She does not threaten me. I do not fight with her that much. I am calmer when I am with my mum, there are not that many fights, I am more relaxed.'

... She said that she came to the expert assessment 'because of what dad did to me and because I want to live with my mum. I wanted ... He threatened me ...' She cried and indistinctly through tears says that her dad smeared food over her face as a joke so she felt ugly and embarrassed. 'He hit me once ... He said that he did not but that he only made a [threatening] gesture with his finger ...'

After she calmed down we came back to the traumatic incident.

You started crying?

'... He did this to me (she demonstrates with her hand round her neck). Dad hit me and I always cry so I almost vomited. [He squeezed me] this hard (she is touching her throat and chin) so that I almost vomited ...'

'[He called me a thief] and I said I was not and then he hit me near the eye (she shows the left temple) ... He asked me if I would do that again (she needs to be interrupted because she is speaking indistinctly while sobbing) ... [The next day] ... I told my mum what he had done to me. She told me that we could go to the police and there I told [them what happened] ... The first lady [the policewoman] there was good. The other [the social worker] pulled my hand while saying that I have to go to my dad. I did not want [to go]. She then told me that if mum gets into a fight with dad she will go to jail and I will go into a children's home (she is sobbing). I had to go with my father. Dad said that we would not talk about that ...'

'Yesterday he told me that he had never hit me and that he had not done anything to me and that I should tell the truth. But he did hit me. He also told me that when he smeared the food over my face it was a joke, but I felt embarrassed. He also told me that if I mentioned it he would call [the stepmother and stepsister] to say that it was a joke, which would make me look like a liar. I felt embarrassed and ugly then ...

‘He threatened to cut off my hair if did not stop biting my nails, and to take my mobile phone away.’

‘Once we were in the car together ... he saw mum with [her new partner] in the next lane. He said that he would put both of them to jail and kill them. He swore at them a lot. He told them many bad things ... The next day or shortly afterwards he said that through his people he would ensure that my mum and me did not see or hear from each other.’

‘I was at a doctor’s in Zagreb some time ago. He asked me something about school but he seemed bad to me and I did not want to talk to him and I did not tell the truth. After a month we went to him again. I said I wanted to live with my mum but I did not mention that my dad had hit me. Then I was afraid of my dad, and still am because I knew he would say that he had not hit me ...’

‘Once he hit me when I was little, I do not remember, once ...’

‘He gets upset when I cannot eat something. When I say something [to justify myself] he asks why I defy him. He used to insult me. He called me a cow, stupid goat. He swore at me. He told me to go to hell ... he said that to me many times. He also told me to fuck off many times ... He told me that my mum was a whore (she is crying) ...’

‘Mum tells me that I cannot do certain things. She does not threaten me. Sometimes she raises her voice, but she does it rarely and then I do not do it any more.’

30. The relevant part of the record of the interview conducted on 2 September 2011 with the expert in psychiatry reads as follows:

“This interview was conducted with the girl and the mother together in order to observe their mutual interaction. During the interview it is noticeable that the girl is somewhat more withdrawn and serious than during the previous interview ...

At some point the girl has a strong emotional reaction. The girl states (while crying) that she would like to celebrate her forthcoming birthday at her mum’s place ... given that she celebrated her last birthday with her father. The mother did not manage to calm the girl completely or ease her frustration. Instead, she herself looked anxious and frustrated, almost lost.”

31. The relevant part of the record of the interview of 28 September 2011 with the expert in psychiatry reads as follows:

“This interview was conducted with the girl and the father together in order to observe their mutual interaction. During the interview it is noticeable that the girl is somewhat more withdrawn and deep in her thoughts, and seems restrained ... Asked if she would like to change something, she says that she would like to live with her mum and that she wishes to be able to extend the time she spends with one parent when she wants to stay with that parent longer. While saying that the girl reacts emotionally (she is crying). In the course of it there is no mutual contact between the girl and her father; there is no eye contact, nor is the father trying to calm her. Each [keeps] to themselves, with their eyes fixed forward.”

32. The relevant part of the record of the interview of 28 September 2011 with the expert in psychology reads as follows:

“She states in her father’s presence: ‘I would like to live with my mum and decide when visits should take place, to go with my mum or my dad (she is crying). Dad adds: ‘That would be the best ...’

To the direct question whether she asked her dad about it, she replies that she did not. She adds that once she asked her dad [about it] and that he said that she could not go to her mum ...”

33. On 27 October 2014 the first applicant wrote the following in her school essay:

“...they all think that they know me but they don’t know even a third of me. They judge me by my success in school, but that isn’t me. They don’t know what is happening, they see me as a happy girl, but I am the opposite of that. I have lived with my dad since I was six years old, and from day one I wanted to go to [live with] my mum ... Dad tells me he won’t let me go until I am 18 ... For some time already I have found comfort in cutting myself ... the scars are no longer visible, only when I play volleyball or some other ball game and when my arm turns red, then they are visible.”

34. Alarmed by the first applicant’s admission of self-harm in the school essay, on 22 November 2014 the second applicant took her to the same psychologist who had examined her on 5 March and 22 April 2011. In her observations the psychologist noted the following:

“[The girl] came accompanied by her mother because the mother had learned of [her daughter’s] self-harm, which [the girl] had written about in a school essay ... of 27 October 2014.

Interview:

Depressive, anxious at the beginning ... verbally fluent. We are talking in the absence of the mother.

After the her parents’ divorce, [the girl] lived with her mother. She says that was the happiest period in her life. She had lived with her father since she was six [years old] ... Relations in the family she described as conflictual, she is afraid of her father. She describes emotional blackmail by her [paternal] grandmother and threats and emotional blackmail by her father, as well as occasional abuse by the father, on which there are medical and police reports. She states that when she was six, she [because of being] manipulated and intimidated by her father, stated during the [forensic] expert examination [in the course of divorce proceedings] that she wanted to live ‘fifty-fifty’ [when asked which parent she would like to live with]. She says that her dad told her to say that but that she did not know what it meant. Since the divorce became final she has lived with her father, and has suffered because she has a close and trusting relationship with her mother and her mother’s partner. From that time on she has been expressing the wish to live with her mother, but despite all her statements [to that effect] ... the [relevant] authorities pay no heed ... Thanks to her mother’s support and understanding she is still functional [that is she manages to live normally] but is unhappy because she cannot live with her mother.

She says that she is unhappy, that she does not understand why the [relevant] authorities are ignoring her, and that they do not understand how much they are abusing her by not taking appropriate measures.

In her school essay (which was presented) she mentions that she cut herself on the arms. Her friend helped her to deal with the scars. When asked why she did that, she replies that it was because she felt helpless in enduring the constant pressure in her

father's family, constant conflicts, inability to manage her own time, and refusal to let her live with her mother, which would make her happy. Other behaviour mentioned in the essay points to the development of an obsessive-compulsive disorder, fear of the dark, anxious-depressive symptomatology, and emotional control disorder. These are not related to puberty but indicate post-traumatic stress symptomatology, emotional disorders caused by constant frustrations, and child abuse ...

The girl has for years been burdened by expert examinations, judicial proceedings, interviews at the social welfare centre, and the hope that someone will finally listen to her plea to live with her mother, because since the age of six she has been unhappy because she has to live with her father. She enjoys her mother's and her mother's partner's company, and they are supportive, but she is afraid that she will not be able to live with them for a long time yet. She is unhappy because her father constantly fights with her and does not want her to be happy (as she would be if she lived with her mother). She 'hates the situation she is in, where she is forced to live with her dad. She wants to become an advocate and she would never allow her child to suffer as she does because she is not allowed to choose with whom ... to live.'

She is introverted, anxious ... Emotional suffering, distrust, depression, fear, guilt, reduced impulse control and problems with facing stress are diagnosed. These symptoms are related to inability to control her desires and to plan and organise. Despite previously established above-average cognitive capacities, a reduced level of openness and a need for new experiences is detected. This is probably because of continuing obstruction of her freedom of action. Despite constant obstructions she is still willing to fight for herself. She is empathic.

She has very developed defence mechanisms. However, symptoms of post-traumatic stress are also detected.

Conclusion:

Elements of strong psychological trauma are diagnosed (post-traumatic stress), which are, according to her statements, the result of frustration caused by the abuse by her father and the authorities who are ignoring her wish to live with her mother, and [which serve] to protect her from suffering and the feeling of helplessness, which she reduces by obsessive-compulsive disorder and by harming herself."

C. Criminal proceedings

1. Criminal proceedings for bodily injury

35. As already mentioned above (see paragraph 21), on 30 March 2011 the State Attorney indicted the first applicant's father before the Zadar Municipal Court for having committed the criminal offence of bodily injury defined in Article 98 of the Criminal Code (see paragraph 86 below) during the incident of 1 February 2011.

36. On 19 April 2011 the court issued a penal order (*kazneni nalog*), finding him guilty as charged and imposing a fine of HRK 1,820.

37. On 4 May 2011 the first applicant's father challenged the penal order, arguing that the basis on which it had been issued was false. The court accordingly set aside the penal order, and the proceedings resumed under the rules of summary criminal procedure.

38. The hearing scheduled for 7 May 2013 was adjourned because neither the accused nor the summoned witnesses attended it.

39. At the hearing held on 6 June 2013 the first applicant's father pleaded not guilty and made a statement. He also proposed that several witnesses be heard. The applicants proposed that they themselves be heard.

40. At the hearing held on 23 July 2013 the court heard the second applicant, one of the police officers who had interviewed the applicants following the incident of 1 February 2011, the first applicant's schoolteacher, and Z.M., a psychologist who had acted as supervising officer during the implementation of the first child protection measure in respect of the supervision of the exercise of parental authority (see paragraph 11 above).

41. The police officer stated that she had not noticed any visible injuries on the first applicant during the interview with her the day after the incident of 1 February 2011. The first applicant's schoolteacher had not seen any injuries either. He also testified that he had noticed that the first applicant had seemed sad the day after the incident and that he had talked to her about this; the first applicant had told him on that occasion that her father had not hit her. Z.M., who said that he had spoken with the first applicant some time after the incident in the capacity of a private individual and at her father's request, testified that the first applicant had told him that her father had yelled at her and that she had been afraid that he would hit her but that he had not. He also stated that as a school psychologist he knew very well how to recognise signs of abuse in children and that the first applicant had not shown such signs.

42. On 25 July 2013 the court decided to obtain an expert opinion from a medical expert on the first applicant's injuries.

43. The hearing scheduled for 18 September 2013 was adjourned because the summoned witnesses failed to attend it.

44. On 23 September 2013 the expert submitted his opinion, which stated that it was possible, but could not be determined with certainty, that the first applicant's injury had been sustained during the incident of 1 February 2011. The relevant part of his opinion states as follows:

"The following injury was established [at the time] by medical examination:

small haematoma of the left lower eyelid.

This injury constitutes a **bodily injury**.

The injury was inflicted by some hard and blunt object. It was inflicted by a single blow of low intensity.

The mechanism of the injury could correspond to the course of events as they were described to the doctor by the injured party during the examination (a blow with the hand to the eye).

However, it is to be noted that the injury was described by the doctor who performed the examination as a haematoma in resorption, thus in [the process of]

disappearing, fading. That normally happens after a certain period of time, for example, several days, after an injury. It would not be common for resorption to already be visible the day after the injury.

It follows from the above that the injury could have been inflicted during the incident in question, but that a causal link cannot be established with certainty.”

45. At the hearing held on 24 October 2013 the court heard the other police officer who had interviewed the first applicant on 2 February 2011, the social worker who had been present during the interview with the police, and the doctor who had examined her on that day.

46. The police officer testified that the first applicant did indeed not want to return to her father and that the social worker from the local social welfare centre had indeed told her that they would have to temporarily place her in a children’s home if she refused. She also testified that she had not seen any signs of injury on the first applicant. The social worker testified that she had not noticed any signs of injury on the first applicant either. She also stated that while it was true that the first applicant had not wanted to return to her father, she had changed her mind after they spoke, in the course of which she had not mentioned the alternative of sending the first applicant to a children’s home. The doctor who examined the first applicant stated that resorption of a haematoma occurred more quickly in children and young people. While he excluded the possibility that the injury could have been caused by crying and rubbing the eyes he did not rule out the possibility that it had been caused by, for example, the first applicant being hit by the ball during her volleyball practice. The applicants’ representative reiterated their proposal that the first applicant be heard.

47. In order to decide on that proposal, the court decided to consult the case file concerning the above-mentioned custody proceedings (see paragraph 22 above and 60-81 below). Eventually, the court decided to hear the first applicant via video link on 1 July 2014.

48. However, that hearing was adjourned because on 30 June 2014 the first applicant’s father sought withdrawal of the trial judge; that application was dismissed by the court’s president on 3 July 2014.

49. Since none of the courts in Zadar was equipped with a video link device, the court asked the police authorities to provide it. The police informed the court that it would make available a video-link device on 16 October 2014. Accordingly, the examination of the first applicant was scheduled for that date.

50. However, on 14 October 2014 the police authorities informed the court that they would not be able to provide the device on 16 October 2014.

51. According to the Government, the proceedings are still pending, depending on the availability of the video link device.

2. *The applicants' attempts to institute criminal proceedings against the first applicant's father for child abuse*

52. Meanwhile, on 27 April 2011 the second applicant lodged a criminal complaint with the State Attorney against the first applicant's father accusing him of the criminal offence of child abuse as defined in Article 213 paragraph 2 of the Criminal Code (see paragraph 86 below). In particular, the second applicant argued that he had physically and psychologically abused the first applicant by: (a) in the period between February 2008 and April 2011, *inter alia*, swearing at her and calling her names, frequently forcing her to eat food she did not like, and force-feeding her when she refused, threatening to hit her, cut off her long hair and ensure that she never saw or heard from her mother, hitting her with a hairbrush on one occasion, among others, and (b) on 1 February 2011 hitting the first applicant several times in the face and squeezing her throat while verbally abusing her, as a result of which she was later diagnosed by an ophthalmologist with bruising of the eyeballs and eye-socket tissue.

53. On 20 June 2011 the State Attorney asked the of the Zadar County Court (*Županijski sud u Zadru*) investigating judge to: (a) question the suspect, (b) take statements from his partner and from the second applicant and her partner, and (c) order a combined expert opinion from experts in psychiatry and psychology.

54. On 29 September 2011 the State Attorney's Office itself ordered a combined expert opinion from certain court experts in psychiatry and psychology. On 4 October 2011 it set that order aside after finding that such a combined expert opinion had already been obtained in the context of the above-mentioned custody proceedings (see paragraph 22 above and paragraphs 60-81 below).

55. On 16 January 2012 the State Attorney dismissed the second applicant's criminal complaint, finding that there were not sufficient grounds to suspect that the first applicant's father had committed the criminal offence the second applicant had accused him of. In so doing the State Attorney's Office addressed only the part of her complaint concerning the alleged abuse of the first applicant in the period between February 2008 and April 2011, and not the part concerning the incident of 1 February 2011. After examining the statements made to the police by the suspect and his partner, the second applicant and her partner, psychiatrists' opinions of 19 February and 7 May 2011, the psychologist's opinion of 5 March 2011, and the combined expert opinion of 29 December 2011 (see paragraphs 16-17, 19-20 and 25 above and paragraphs 69-70 below), the State Attorney gave the following reasons for his decision:

“Analysing the above facts, it follows that the suspect I.M.'s conduct or the conduct of [the second applicant] cannot be regarded as conscious and deliberate emotional or physical child abuse, but rather as inadequate child-rearing practice [parenting style]

and reaction caused by parental conflict over child custody, persistence of long-lasting mutual unresolved conflicts, and limited parenting capacity ...

In view of the foregoing ... there is no reasonable suspicion that the suspect I.M. committed the criminal offence he is accused of ...”

56. The first and second applicants then decided to take over the prosecution from the State Attorney as injured parties in the role of (subsidiary) prosecutors. As the Criminal Procedure Act requires that an accused be questioned before being indicted, on 25 January 2012 the applicants asked an investigating judge (*sudac istrage*) of the Zadar County Court to question the first applicant’s father.

57. By a decision of 9 February 2012 the investigating judge dismissed the applicants’ request, holding that the facts adduced by the applicants did not constitute the criminal offence of child abuse. In so doing he relied on the combined expert opinion of the forensic experts in psychiatry and psychology of 29 December 2011 obtained in the custody proceedings (see paragraphs 69-70 below). The relevant part of that decision reads as follows:

“... the conduct cannot be regarded as abuse [because the combined expert opinion] did not confirm the diagnosis of child abuse. This is very strongly indicated by the recommendation that changing the child’s residence is not advisable. Had that diagnosis been established, the recommendation concerning the child’s residence would have certainly been very different.”

58. On 21 February 2012 a three-member panel of the Zadar County Court dismissed an appeal by the applicants against the decision of the investigating judge. The relevant part of that decision reads as follows:

“[The child is under supervision] by the [local] social welfare centre. It is therefore evident that if the suspect had behaved in an unseemly or inappropriate manner towards her as a parent that the centre would have reacted. There must have been reasons why the father was awarded care of the child. If there is any change in circumstances that decision could also be changed. According to the expert opinion no elements of abuse were found ...”

59. On 24 May 2012 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared inadmissible a subsequent constitutional complaint by the applicants. It held that the contested decisions of the Zadar County Court were not susceptible to constitutional review. The Constitutional Court served its decision on the applicants’ representative on 3 July 2012.

D. Custody proceedings

60. Meanwhile, on 30 March 2011 the second applicant brought a civil action in the Zadar Municipal Court against the first applicant’s father with a view to altering the custody and contact arrangements ordered in the judgment of the same court of 24 August 2007 (see paragraph 10 above). In particular, she sought custody of the first applicant. At the same time the

second applicant asked the court to issue a provisional measure whereby it would temporarily grant her custody of the first applicant pending the final outcome of the principal proceedings.

61. The court regarded the second applicant's civil action as an application for non-contentious proceedings, as it considered that the rules on non-contentious procedure rather than those on regular civil procedure should apply in such matters. It held hearings on 29 April and 16 May 2011.

62. The local social welfare centre participated in those proceedings as an intervener *sui generis* with a view to protecting the first applicant's interests.

63. At the hearing held on 29 April 2011, the second applicant's representative insisted on the provisional measure being issued. The representative of the local social welfare centre stated that the situation in the first applicant's family was very complex, that her parents had made numerous criminal complaints against each other, and that both parents should be assessed by forensic experts. He also stated that the centre could not at that time make a recommendation as regards the provisional measure requested, because such a recommendation could only be made after completion of the family-assessment procedure by a team of professionals employed at the centre. The second applicant's representative replied that the centre had been aware of the incident of 1 February 2011 but had taken no action to address the situation in the first applicant's family. She therefore insisted on pursuing the application for a provisional measure.

64. On 12 May 2011 the local social welfare centre submitted its report and recommendation to the court. In the course of their preparation of this report the centre interviewed the second applicant and the first applicant's father on 3 and 4 May 2011, visited their homes and requested an opinion from the first applicant's school. The relevant part of the centre's report reads as follows.

"The allegations of the [child's parents] who accuse each other of child abuse are impossible to verify, nor can a straightforward conclusion be made only on the basis of interviews with them or on the basis of visits to their families.

There is an impression that the parents, burdened by their permanently strained relationship and their own need to live with the child, consciously or subconsciously place themselves and their needs first while disregarding the welfare and the needs of the child.

The child protection measure of supervision of the exercise of parental authority was previously ordered in respect of the parents during the divorce proceedings, from 7 November 2006 to 31 August 2008.

Given that the already poor communication between the parents has worsened again, which brings about negative tensions which could be harmful for the child's emotional development, and having regard to the fact that they are again facing court proceedings, the centre is in the process of imposing the same measure with a view to protecting the rights and welfare of [the child] through which [the centre] shall monitor the mother's and the father's relationship with the child and [in the

implementation of which] they will be advised how to improve communication between them and strengthen their parenting competencies.”

65. The local social welfare centre recommended a combined expert assessment (psychiatric and psychological) of the first applicant and her parents with a view to establishing their parenting abilities and the possible consequences of their behaviour for her physical and mental development. They added that the first applicant’s family situation was complex but that at that moment there was nothing to suggest that it was life-threatening. The relevant part of the local social welfare centre’s recommendation reads as follows.

“After conducting the family-assessment procedure ... it was established that the parents express opposing views as regards abuse and neglect of [their child]. [The mother] accuses the father of child abuse [in that] he is abusing the child physically and emotionally, obstructing her contact with the mother, and using inappropriate child-rearing methods. [The father] accuses [the mother] of neglecting the child’s interests by her behaviour [in that] she does not pay child maintenance, does not come to school to consult with teachers or to parents’ meetings and that the child is being manipulated by the mother ...

Having regard to the medical documentation at the disposal of the centre, the parties’ submissions, visits made to [the father’s and the mother’s] homes and interviews with them, we recommend that the parents and the child undergo a combined [psychiatric and psychological] expert assessment in order to assess their fitness for further care of [their daughter] and the possible consequences of their behaviour for her psycho-physical development.

It is true that the family situation is complex. However, there is no impression that at present [the child’s] life is at risk in her father’s family.”

66. By decisions of 16 May and 6 and 16 June 2011, the court ordered a combined expert opinion from forensic experts in psychiatry and psychology who were to assess (a) the parenting capacities of the second applicant and the first applicant’s father, (b) the first applicant’s condition, and (c) whether the first applicant had been exposed to abuse and, if so, by whom.

67. By a decision of 7 June 2011, the court refused to issue a provisional measure sought by the second applicant (see paragraph 60 above). In so deciding the court examined the ophthalmologist’s report of 2 February 2011, psychiatrists’ opinions of 19 February and 7 May 2011, and psychologist’s opinions of 5 March and 22 April 2011 (see paragraphs 13-14, 19-20, 23 and 25 above). It also consulted the case file of the criminal proceedings in respect of the bodily injury, and examined the report and recommendation of the local social welfare centre of 12 May 2011 (see paragraphs 64-65 above). It found, in view of the conflicting opinions of the psychiatrists, the penal order against the first applicant’s father which never became final, and the recommendation of the local social welfare centre, that at that point the allegations that the first applicant had been abused by her father were not plausible enough to justify her

immediate temporary removal from his custody. In particular, the court held as follows:

“... the case was not sufficiently plausibly made that such a measure was necessary to prevent violence or the risk of irreparable harm from materialising, given that at present it remains uncertain and disputed whether [the child] was subjected to abuse by her father or was being manipulated by her mother ...”

68. On 2 March 2012 the Zadar County Court (*Županijski sud u Zadru*) dismissed an appeal by the second applicant and upheld the first-instance decision.

69. On 29 December 2011 the forensic experts submitted their opinion (see paragraph 66 above) to the Zadar Municipal Court. In their opinion the experts found that both the second applicant and the first applicant’s father had limited parenting abilities and suffered from personality disorders (both of them were emotionally unstable and the first applicant’s father was also narcissistic). As regards the first applicant, the experts found that she was emotionally traumatised by her parents’ separation and their mutual conflict and lack of communication. Instead of shielding her from that conflict, her parents had placed her at the centre of it and manipulated her, sometimes up to the level of emotional abuse. The experts therefore recommended that the first applicant and her parents receive appropriate therapy. They further found that the first applicant was ambivalent towards her father and idealised her mother, whom she viewed as a “friend”, and expressed the wish to live with her. The experts were of the opinion that this desire to be close to her mother could be achieved through (more) extensive contact between the first and the second applicant. If after one year of recommended therapy the first applicant still wished to live with her mother, they recommended that another combined expert opinion be obtained.

70. The experts did not reply to the court’s question whether the first applicant had been exposed to abuse and, if so, by whom (see paragraph 66 above). Their conclusions were (a) that the first applicant should nevertheless continue living with her father for the time being while maintaining extensive contact with her mother; (b) that she and both her parents should undergo treatment and counselling; (c) that the supervision of the exercise of parental authority (the child protection measure imposed by the local social welfare centre, see paragraph 82 below), should be continued; and (d) the first applicant and her parents should be reassessed after a year. In particular, the experts concluded as follows.

“We do not find [any] contraindications to [the child’s living with her father. [Our] recommendation is that, for the time being it is not necessary or desirable to change the child’s place of residence, that is to say [the child] should continue living with her father.”

71. Following a request by the second applicant, by a decision of 27 July 2012, the Zadar Municipal Court appointed G.Š., a lawyer practising in Zadar, to act as a special representative for the first applicant and represent

her interests in the proceedings, as required by Article 9, paragraph 1, of the European Convention on the Exercise of Children's Rights (see paragraph 98 below).

72. Following an appeal by the first applicant's father, on 26 October 2012 the Zadar County Court quashed that decision and remitted the case. It held that the first-instance court had failed to establish whether the interests of the first applicant were indeed in conflict with the interests of (one of) her parents, which was a necessary precondition for the appointment of a special representative.

73. By a decision of 13 November 2012, the local social welfare centre also appointed G.Š. to act as the first applicant's guardian *ad litem* pursuant to section 167 of the Family Act (see paragraph 84 below).

74. The Zadar Municipal Court held further hearings in the case on 6 September and 11 December 2012 and 8 March 2013.

75. At the last-mentioned hearing the court heard the experts who had prepared the combined expert opinion of 29 December 2011. Those experts stated, *inter alia*, (a) that their expert opinion had in the meantime become obsolete, because a year and two months had passed since they had prepared it; (b) that they had not replied to the court's question whether the first applicant had been exposed to abuse because it was the task of the judicial authorities and not theirs to make that assessment; and (c) that it would be irrelevant which parent the first applicant should live with if her parents both behaved better.

76. By a decision of 30 April 2013, the Zadar Municipal Court dismissed the second applicant's application for the custody and contact arrangements stipulated in the judgment of 24 August 2007 to be reversed. The second applicant and the first applicant's guardian *ad litem* appealed.

77. On 15 November 2013 the Zadar County Court quashed the first-instance decision for incomplete facts and remitted the case to the lower court. It instructed the first-instance court to (a) inquire whether the first applicant's father's conviction for the criminal offence of bodily injury against her had become final; (b) assess whether the first applicant was able to understand the importance of the proceedings and, if so, allow her to express her opinion and take her testimony; (c) assess the need to appoint a special representative to the first applicant; and (d) obtain an opinion and recommendation from the local social welfare centre.

78. In the resumed proceedings, on 18 November 2013 the Zadar Municipal Court discontinued the non-contentious proceedings and decided that the proceedings would be continued under the rules of (regular) civil procedure. The court explained that the second applicant's application for reversal of the custody and contact arrangements set forth in its judgment of 24 August 2007 (see paragraph 10 above) would, if agreed, necessarily entail a new decision on the payment of maintenance by the non-custodial parent, which was an issue that could not be decided in non-contentious but

only in regular civil proceedings. That did not mean that procedural acts undertaken thus far had lost their validity or become irrelevant.

79. On 27 February 2014 the second applicant lodged a request for the protection of the right to a hearing within a reasonable time, complaining of the length of the proceedings.

80. On 9 July 2014 the President of the Zadar Municipal Court dismissed the first applicant's request.

81. It would appear that the proceedings are currently again pending before the Zadar Municipal Court as the court of first instance.

E. Proceedings before the local social welfare centre

82. Following the incident of 1 February 2011, on 22 September 2011 the local social welfare centre again (see paragraph 11 above) issued a decision ordering the child protection measure of supervision of the exercise of parental authority in respect of the first applicant. The measure was imposed for a period of one year and was, by the centre's decision of 1 October 2012, further extended for another six months, until 31 March 2014, when it was discontinued.

83. In her final report of 30 March 2014 the supervising officer (a psychologist) summarised the results of the measure in the following terms:

"The aim of the measure was to encourage appropriate parental behaviour with a view to preventing and minimising the negative effects of [their] conflictual relationship on the child's psycho-physical development ... in that sense it was only a question of creating preconditions for adequate communication between the parents, so that currently there is no open conflict (but only because the parents avoid it). In particular, the parents are observing the visiting schedule. They have made concessions to each other from time to time. However, the parents are still in conflict, they still do not communicate, and the majority of their communication goes through the child or through text messages. It is precisely in this way that they are disregarding [her] needs and forcing [her] to deal with something with which she should not be dealing at her age (or at any other age for that matter). Both parents think they are doing what is best for their child, while forgetting that their conflict is the major obstacle to the normal psycho-physical development and functioning of their child ... [The mother] thinks that the child should be with her and that the wish of the child, who also expresses the wish to be with her, should be respected. [The father] thinks that that his role is to protect the child from the mother's negative influence and ensure stability for her. Those views are O.K., but the only question is how much each of them negatively affects the child by fighting for their own position? For a compromise people need to be ready to partially abandon their position, but they are not ready to do so. In my view, both parents have a good relationship with the child; they [both] try to spend quality time with her. They differ to some extent in their methods and parenting styles ([the mother's] is permissive and directed at [developing] a friendly relationship with her daughter, which may also be a strategy for 'winning' the child, whereas [the father] is more impulsive, with a tendency to give in, and is oriented towards the traditional role of the father, which would not be a problem if the two parents would cooperate ... Neither of them disputes that the role of the other parent is also important for the child, but they both find it important that the

child lives with them, believing that in that way they would diminish the harmful influence ‘the other parent has on the child’. This means that the main problem is unresolved parental conflict, and the parents should probably work on that outside the [social welfare] centre. When they are able to talk to each other, and when they realise why and which of their actions are harmful for [the child] (and stem from their personal conflict) then they will be able to function better. In that regard I think that the supervision measure cannot provide a better solution to the problems they have.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Family Act

1. Relevant provisions

84. The relevant provisions of the Family Act of 2003 (*Obiteljski zakon*, Official Gazette no. 163/03 with subsequent amendments – hereafter “the Family Act 2003”), which was in force between 22 July 2003 and 1 September 2014, read as follows:

Third part

PARENTS AND CHILDREN

II. RIGHTS AND DUTIES BETWEEN PARENTS AND CHILDREN

1. Rights and duties of the child

Section 88

“Parents and other family members must not subject the child to degrading treatment, psychological or physical violence or abuse.”

Section 89

“(1) The child is entitled to seek protection of his or her rights before the relevant authorities, which must inform the social welfare centre thereof.

(2) The child is entitled to a special guardian in cases specified by this Act.

(3) The special guardian shall be appointed by the social welfare centre in cases where another authority is deciding on the infringement of the child’s right, and by the court when the social welfare centre is competent to decide on a right of the child.

(4) The special guardian shall submit a report on the representation of the child at the request of, and within the time-limit set forth by, the authority that appointed him or her.

(5) In proceedings involving decisions on the child’s right or interest the child is entitled to be informed in an appropriate way of the relevant circumstances of the case, obtain advice and express his or her views, and to be informed of the possible consequences of [those] views. The [child’s] views shall be given due weight in accordance with his or her age and maturity.”

2. Parental responsibility

Section 102

“The court shall, upon application by the parent, the child or the social welfare centre, issue a new decision on custody and access rights, and if need be on other elements of parental responsibility, if substantially changed circumstances so require.”

3. Measures for the protection of the rights and welfare of the child

Section 109

“(1) The social welfare centre shall order supervision of the exercise of parental authority when the errors and omissions are various and frequent or when the parents need special assistance in bringing up their child.

(2) ...

(3) The programme of supervision may entail referring the child to a children’s home for a half day or for a full day, or referring the parents and the child to medical and other institutions for treatment and other professional assistance.

(4) The supervision shall be ordered for a minimum period of six months ...”

Fifth part

GUARDIANSHIP

III. GUARDIANSHIP IN SPECIAL CASES

Section 167

“In order to protect certain personal and pecuniary rights and interests the social welfare centre shall appoint a special guardian

6. ... in other cases where the interests of the child conflict with those of the parents.”

Eighth part

JUDICIAL PROCEEDINGS

I. COMMON PROVISIONS

Section 263

“(1) The provisions of this part of the Act determine the rules by which the courts shall proceed in special civil [contentious] and non-contentious proceedings and special enforcement and security proceedings when deciding in matrimonial, family and other matters regulated by this Act.

(2) The proceedings referred to in paragraph 1 of this section shall be urgent.”

Section 269(2)

“In order to pursue his or her rights or interests, the court shall in [personal] status matters, in accordance with his or her age and maturity and [having regard to the

child's] welfare, allow the child to express his or her views before the social welfare centre or before the court."

II. SPECIAL CIVIL PROCEEDINGS

3. *Proceedings concerning custody, parental responsibility or child protection measures*

Section 295

"(1) Before reaching a decision on custody or parental responsibility, the court shall obtain a report and recommendation of a social welfare centre.

(2) The social welfare centre must within thirty days submit to the court the report and recommendation referred to in paragraph 1 of this section.

(3) ..."

2. *Relevant case-law*

85. In its judgment no. GŽ-994/11-3 of 17 March 2011 the Bjelovar County Court held as follows:

"When the child has gone to live of his or her own free will with the other parent (the father), who was equally as fit to take care of the child as the parent (the mother) with whom the child had lived thus far, and the child is, having regard to his or her age and maturity, capable of forming his or her own opinion and expressing views on issues that concern him or her, then these circumstances may justify a reversal of an earlier custody decision."

B. The Criminal Code

1. *Relevant provisions*

86. The relevant provision of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/97 with subsequent amendments), which was in force from 1 January 1998 to 31 December 2012, reads as follows:

Article 8

"(1) Criminal proceedings in respect of criminal offences shall be instituted by the State Attorney's Office in the interest of the Republic of Croatia and its citizens.

(2) It may be exceptionally provided by law that criminal proceedings in respect of certain criminal offences should be instituted upon a private bill of indictment or that the State Attorney's Office should institute criminal proceedings at the initiative of [a victim]."

CHAPTER TEN (X)

CRIMINAL OFFENCES AGAINST LIFE AND LIMB

Bodily injury**Article 98**

“Whoever inflicts bodily injury on another person or impairs another person’s health shall be fined or punished by imprisonment not exceeding one year.”

Instituting criminal proceedings for criminal offences of bodily injury**Article 102**

“Criminal proceedings for the offence of bodily injury (Article 98), unless committed against a child or a minor, shall be instituted upon a private bill of indictment.”

CHAPTER SIXTEEN (XVI)

CRIMINAL OFFENCES AGAINST MARRIAGE, THE FAMILY AND JUVENILES

Neglect or abuse of a child or a minor**Article 213**

“(1) A parent, adoptive parent, guardian or other individual who grossly neglects their duties to care for or raise a child or minor shall be punished by imprisonment of six months to five years.

(2) The penalty referred to in paragraph 1 of this Article shall be imposed on a parent, adoptive parent, guardian or other individual who abuses a child or minor, forces [the child] to perform work unsuitable for his or her age, or to work excessively, or to beg, or out of greed induces [the child] to behave in a manner harmful to his or her development, or by [engaging in] dangerous activities or in some other way puts [the child] in danger.”

Domestic violence**Article 215a**

“A family member who by violence, abuse or particularly offensive behaviour places another member of the family in a humiliating position shall be punished by imprisonment of six months to five years.”

2. Legal commentary

87. According to Croatian legal scholars, *abuse*, as a constitutive element of a number of criminal offences, including the offence of child abuse, is defined as “deliberate infliction of physical or mental discomfort or pain of significant intensity” (see *Željko Horvatić (ed.), Rječnik kaznenog prava* [The Dictionary of Criminal Law], *Masmedia, Zagreb, 2002*, p. 664) or “... deliberate infliction of mental or physical discomfort of significant

degree. What constitutes a ‘significant degree’ of physical or mental discomfort is to be determined on a case-by-case basis. In making that assessment the court will often require an opinion from an expert in psychiatry” (see *Ana Garačić, Kazneni zakon u sudskoj praksi – Posebni dio* [Criminal Code in Judicial Practice – Special Part], *Organizator, Zagreb, 2009*, pp. 375-376).

88. As regards the criminal offence of domestic violence Croatian legal scholars have expressed the following view (see op. cit., pp. 285-286):

“[The perpetrator’s conduct] is defined alternatively as violence, abuse or particularly offensive behaviour. Violence is to be understood in a wider sense [that is] as an application of physical force against the physical integrity of another family member, psychological coercion, or serious psychological maltreatment, but also as coercion directed at objects if the family member perceives this as physical coercion. Violence is normally not an isolated and single incident, but entails a number of instances and is characterised by continuous activity. Abuse is very deliberate infliction of physical or mental pain of great intensity, short of bodily injury. Abuse within a family may be physical, psychological or emotional, or sexual ... Particularly offensive behaviour entails the perpetrator’s manifest contempt for, and ruthlessness and arrogance against, another family member ... For the offence to be committed it is necessary for the family member to be put into a humiliating position as a result of the perpetrator’s conduct. This is a position which offends honour and reputation, human dignity, and self-esteem. Putting a family member in a humiliating position is regarded as the objective element of the crime ... which does not have to be accompanied by the perpetrator’s *mens rea*. However, the intent of the perpetrator must correspond to his or her conduct ...”

C. Protection against Domestic Violence Act

89. The Protection against Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*, Official Gazette no. 137/09 with subsequent amendments), *inter alia*, defines the minor offence of domestic violence and provides sanctions which may be imposed to those convicted of that offence.

90. Section 20 provides that where the minor offence of domestic violence has been committed against a child, the court may impose either a fine of at least HRK 7,000 or a prison sentence of at least forty-five days. In cases of recidivism the court may impose a fine of at least HRK 15,000 or a prison sentence of at least sixty days. The maximum fine of HRK 50,000 and the maximum prison sentence of ninety days are prescribed by the Minor Offences Act (*Prekršajni zakon*, Official Gazette no. 107/07 with subsequent amendments).

91. Sections 11-19 of the Protection against Domestic Violence Act provide for various protective measures the court may impose in addition to, or independently of, the penalties listed in section 20, even before the institution of minor offences proceedings. Section 12 provides for the protective measure of compulsory psycho-social treatment.

D. The Courts Act 2013

92. Under the Courts Act 2013 (*Zakon o sudovima*, Official Gazette no. 28/13), which entered into force on 14 March 2013, a party to pending judicial proceedings who considers that those proceedings have been unduly protracted has the right to lodge an acceleratory remedy, namely a “request for the protection of the right to a hearing within a reasonable time” and to request that the president of the same court before which those proceedings are pending expedite them by setting a time-limit of a maximum of six months within which the judge sitting in the case must render a decision. A party whose request is not decided upon within sixty days or whose request is dismissed may lodge an appeal with the president of the immediately higher court.

93. In addition, a further, combined compensatory-acceleratory remedy, namely a “request for payment of appropriate compensation”, is also available, but only in cases where the judge sitting in the case did not comply with the time-limit for deciding the case specified by the court president when granting the request for the acceleratory remedy.

III. RELEVANT INTERNATIONAL LAW

A. Convention on the Rights of the Child

1. Relevant provisions

94. The relevant provisions of the Convention on the Rights of the Child of 2 September 1990, which came into force in respect of Croatia on 12 October 1992, read as follows.

Article 12

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 19

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

95. The Preamble of the Optional Protocol of 19 December 2011 to the Convention on the Rights of the Child on a communications procedure, which Protocol entered into force on 14 April 2014 but has not yet been ratified by Croatia, reaffirms “the status of the child as a subject of rights and as a human being with dignity and with evolving capacities”.

2. *General Comment no. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*

96. The relevant part of General Comment no. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*) adopted by the Committee on the Rights of the Child at its forty-second session held from 15 May to 2 June 2006, reads as follows:

“40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

41. Children’s dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children’s best interests. It is the Committee’s view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child’s views should be given due weight, according to his or her age and maturity.

42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to

placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on.”

3. General Comment No. 12 (2009) on the right of the child to be heard (Article 12)

97. The relevant part of General Comment No. 12 (2009) on the right of the child to be heard, adopted by the Committee on the Rights of the Child at its fifty-first session held from 25 May to 12 June 2009, reads as follows.

“A. Legal analysis

15. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child’s age and maturity. This right imposes a clear legal obligation on States parties to recognize this right and ensure its implementation by listening to the views of the child and according them due weight. This obligation requires that States parties, with respect to their particular judicial system, either directly guarantee this right, or adopt or revise laws so that this right can be fully enjoyed by the child.

...

1. Literal analysis of article 12

(a) Paragraph 1 of article 12

(i) ‘Shall assure’

19. Article 12, paragraph 1, provides that States parties ‘shall assure’ the right of the child to freely express her or his views. ‘Shall assure’ is a legal term of special strength, which leaves no leeway for State parties’ discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

(ii) ‘Capable of forming his or her own views’

20. States parties shall assure the right to be heard to every child ‘capable of forming his or her own views’. This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him. ...

(iv) ‘In all matters affecting the child’

26. States parties must assure that the child is able to express her or his views ‘in all matters affecting’ her or him. This represents a second qualification of this right: the

child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.

...

v) “Being given due weight in accordance with the age and maturity of the child”

28. The views of the child must be “given due weight in accordance with the age and maturity of the child”. This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.

30. Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child.

31. Consideration needs to be given to the notion of the evolving capacities of the child, and direction and guidance from parents

(b) Paragraph 2 of article 12

(i) The right ‘to be heard in any judicial and administrative proceedings affecting the child’

32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular ‘in any judicial and administrative proceedings affecting the child’. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, ...

...

(ii) ‘Either directly, or through a representative or an appropriate body’

35. After the child has decided to be heard, he or she will have to decide how to be heard: ‘either directly, or through a representative or appropriate body’. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

36. The representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child’s views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

37. The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child's views.

...

2. Steps for the implementation of the child's right to be heard

40. Implementation of the two paragraphs of article 12 requires five steps to be taken in order to effectively realize the right of the child to be heard whenever a matter affects a child or when the child is invited to give her or his views in a formal proceeding as well as in other settings. These requirements have to be applied in a way which is appropriate for the given context.

...

(c) Assessment of the capacity of the child

44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

(d) Information about the weight given to the views of the child (the feedback)

45. Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.

...

3. Obligations of States parties

...

(b) Specific obligations with regard to judicial and administrative proceedings

(i) The child's right to be heard in civil judicial proceedings

50. The main issues which require that the child be heard are detailed below:

Divorce and separation

51. In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the 'best interests of the child'.

...

B. The right to be heard and the links with other provisions of the Convention

68. Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to

life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

...

1. Articles 12 and 3

70. The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.

71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

...

74. There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.

...

E. Conclusions

135. Investment in the realization of the child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration, is a clear and immediate legal obligation of States parties under the Convention. It is the right of every child without any discrimination. Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.

136. Fulfilling these obligations will present a challenge for States parties. But it is an attainable goal if the strategies outlined in this general comment are systematically implemented and a culture of respect for children and their views is built."

B. European Convention on the Exercise of Children's Rights

1. Relevant provisions

98. The relevant provisions of the European Convention on the Exercise of Children's Rights of 25 January 1996, which came into force in respect of Croatia on 1 August 2010, read as follows.

“Chapter I – Scope and object of the Convention and definitions

Article 1 – Scope and object of the Convention

1. This Convention shall apply to children who have not reached the age of 18 years.

2. The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.

3. For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.

4. Every State shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, specify at least three categories of family cases before a judicial authority to which this Convention is to apply.

5. Any Party may, by further declaration, specify additional categories of family cases to which this Convention is to apply or provide information concerning the application of Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and Article 11.

6. Nothing in this Convention shall prevent Parties from applying rules more favourable to the promotion and the exercise of children's rights.

...

Chapter II – Procedural measures to promote the exercise of children's rights

A. Procedural rights of a child

Article 3 – Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a to receive all relevant information;
- b to be consulted and express his or her views;
- c to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

...

B. Role of judicial authorities

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

a consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;

b in a case where the child is considered by internal law as having sufficient understanding:

- ensure that the child has received all relevant information;
- consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
- allow the child to express his or her views;

c give due weight to the views expressed by the child.

...

Article 9 – Appointment of a representative

1. In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.

2. Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.

C. Role of representatives

Article 10

1. In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:

a provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;

b provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;

c determine the views of the child and present these views to the judicial authority.

2. Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.”

2. Croatia's declaration under Article 1 § 4 of the European Convention on the Exercise of Children's Rights

99. On 6 April 2010, when depositing the instrument of ratification of the above Convention with the Secretary General of the Council of Europe,

the Croatian Minister for Foreign Affairs made the following declarations (contained in the instrument of ratification):

“In accordance with Article 1, paragraph 4, of the Convention, the Republic of Croatia designates the following categories of family cases to which this Convention is to apply before its judicial authorities:

- proceedings for deciding on parental care during the divorce of parents;
- proceedings for the exercise of parental care;
- measures for the protection of personal rights and interests of a child;
- proceedings for adoption; and
- proceedings concerning guardianship of minors.”

C. Council of Europe Convention on preventing and combating violence against women and domestic violence

100. The relevant Article of the Council of Europe Convention on preventing and combating violence against women and domestic violence of 25 January 1996, which entered into force on 1 August 2014 but has not yet been ratified by Croatia, read as follows:

Article 3 – Definitions

“For the purpose of this Convention:

a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;

...”

Article 31 – Custody, visitation rights and safety

“1 Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.

2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.”

Article 45 – Sanctions and measures

“1 Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These

sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

2 Parties may adopt other measures in relation to perpetrators, such as:

- monitoring or supervision of convicted persons;
- withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.”

Article 46 – Aggravating circumstances

“Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

...

d the offence was committed against or in the presence of a child;

...”

101. The relevant part of the Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence reads as follows:

Article 31 – Custody, visiting rights and safety

“175. This provision aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence covered by the scope of this Convention. It concerns judicial orders governing the contact between children and their parents and other persons having family ties with children. In addition to other factors, incidents of violence against the non-abusive carer as much as against the child itself must be taken into account when decisions on custody and the extent of visitation rights or contact are taken.

176. Paragraph 2 addresses the complex issue of guaranteeing the rights and safety of victims and witnesses while taking into account the parental rights of the perpetrator. In particular in cases of domestic violence, issues regarding common children are often the only ties that remain between victim and perpetrator. For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face. Hence, this paragraph lays out the obligation to ensure that victims and their children remain safe from any further harm.”

D. Council of Europe Guidelines on child-friendly justice

102. The relevant part of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, read as follows.

“III. Fundamental principles

1. The guidelines build on the existing principles enshrined in the instruments referred to in the preamble as well as the case law of the European Court of Human Rights.

2. These principles are further developed in the following sections and should apply to all chapters of these guidelines.

A. Participation

1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.

2. Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views as well as the circumstances of the case.

...

IV. Child-friendly justice before, during and after judicial proceedings

...

3. Right to be heard and to express views

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child’s level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

45. Due weight should be given to the child’s views and opinion in accordance with his or her age and maturity.

46. The right to be heard is a right of the child, not a duty on the child.

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child’s best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.

49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child’s views and opinions have not been followed.”

E. Council of Europe Recommendation on integrated national strategies for the protection of children from violence

103. The Recommendation CM/Rec(2009)10 of the Committee of Ministers to member States on integrated national strategies for the protection of children from violence, adopted by the Committee of Ministers of the Council of Europe on 18 November 2009, emphasises that “children’s fragility and vulnerability and their dependence on adults for the growth and development call for greater investment in the prevention of violence and protection of children on the part of families, society and the State”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 AND/OR ARTICLE 8 OF THE CONVENTION

104. The applicants complained that the State authorities had not complied with their procedural positive obligation under Article 3 and/or Article 8 of the Convention in that they had refused to prosecute the first applicant’s father for the criminal offence of child abuse he had committed against her. They also complained that the domestic authorities had not discharged their positive obligation under either of those Articles in that they had failed to remove the first applicant from her father’s care and thus prevent him from committing further violent acts against her. Those Articles read as follows:

Article 3 (prohibition of torture)

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 (right to respect for private and family life)

“1. Everyone has the right to respect for his private and family life ...”

105. The Government contested those arguments.

A. Admissibility

1. The parties’ submissions

(a) The Government

106. The Government argued that in so far as the applicants complained of a breach of the authorities’ procedural positive obligation under Article 3

of the Convention to investigate the incident of 1 February 2011, their complaints were inadmissible for non-compliance with the six-month rule. They first explained that the incident in question was to be regarded as a one-off act which had not produced any permanent consequences or a continuous situation. The Government further referred to the Court's case-law, according to which in the absence of an effective remedy the six-month time-limit begins to run from the moment the event complained of occurs. That was precisely the situation in the present case, where the applicants complained that the response by the domestic authorities to the incident of 1 February 2011 had not been appropriate.

107. In any event, since the father had been punished for the incident in question by a penal order against the first applicant's father on 19 April 2011, the six-month time-limit had started to run at the latest on that date, whereas the applicants had not lodged their application with the Court until 3 January 2013.

108. To the extent that the applicants complained of breaches of the authorities' positive obligations under Articles 3 and/or 8 of the Convention in the custody proceedings, the Government submitted that the applicants had failed to exhaust domestic remedies. In particular, the Government argued that those complaints were premature because the custody proceedings were still pending (see paragraphs 60-81 above), and that the applicants had not (fully) availed themselves of domestic remedies for the excessive length of proceedings (see paragraphs 79-80 and 92-93 above). The Government therefore invited the Court to declare those complaints inadmissible for non-exhaustion of domestic remedies, both in respect of the length of the proceedings and in respect of the other alleged breaches of positive obligations in those proceedings.

(b) The applicants

109. As regards the alleged non-compliance with the six-month rule (see paragraphs 106-07 above), the applicants explained that their complaint that the domestic authorities had failed to comply with their procedural positive obligation was primarily directed against those authorities' refusal to prosecute the first applicant's father for the criminal offence of child abuse. In that respect they had exhausted domestic remedies by taking over the prosecution as injured parties in the role of (subsidiary) prosecutors, and had lodged their application with the Court within six months of the last domestic decision rendered in that regard.

110. The applicants did not reply to the Government's argument concerning non-exhaustion of domestic remedies (see paragraph 108 above) because it had been raised for the first time on 26 February 2014 in the Government's comments on the applicants' observations of 9 December 2013.

2. *The Court's assessment*

(a) **Compliance with the six-month rule**

111. As regards the Government's objection regarding the alleged non-compliance by the applicants with the six-month rule (see paragraphs 106-107 above), the Court first reiterates that the procedural positive obligation under Article 3 of the Convention requires States to conduct effective official investigations capable, *inter alia*, of leading to the punishment of those responsible (see paragraph 136 below). That being so, the Court finds it sufficient to note that the penal order of 19 April 2011, whereby the first applicant's father was sentenced to a fine, was set aside and that the criminal proceedings against him are still pending (see paragraphs 37 and 51 above). Accordingly, the six-month time-limit has not even started to run yet, much less expired, as the Government suggested. It follows that the Government's inadmissibility objection based on non-compliance with the six-month rule must be dismissed.

(b) **Non-exhaustion of domestic remedies**

112. As to the Government's argument that the applicants failed to pursue the domestic length-of-proceedings remedies, the Court notes that it is not the length of the proceedings which is at issue in the present case. Rather, the question is whether in the circumstances of the case seen as a whole the State could be said to have complied with certain positive obligations under Article 3 and/or 8 of the Convention (see *Remetin v. Croatia*, no. 29525/10, § 75, 11 December 2012).

113. It follows that the Government's objection as regards non-exhaustion of domestic remedies must be rejected.

114. To the extent that the Government's non-exhaustion objection rests on the fact that the custody proceedings are still pending and that therefore the applicants' complaints under Article 3 and/or 8 of the Convention concerning the alleged breach of the positive obligation to prevent future violent acts against the first applicant are premature, the Court considers that this argument concerns only the merits of those complaints, rather than their admissibility. It will therefore be examined accordingly (see paragraphs 153-62 below).

3. *Conclusion as to the admissibility*

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

B. Merits

1. The parties' submissions

(a) The Government

116. The Government emphasised that the documents in the case drawn up by various experts in psychiatry and psychology suggested that the first applicant was traumatised by the highly conflictual relationship of her separated parents. In particular, those experts had regarded her as a child drawn into a conflict of loyalties and thus torn between her parents, both of whom she loved.

117. Not even the diagnosis of child abuse made by a psychiatrist in the opinion of 19 February 2011 (see paragraph 19 above), on which the applicants had relied heavily in support of their allegations that the first applicant had been abused by her father, suggested otherwise. Namely, the code (T74.8) under the International Classification of Diseases the psychiatrist had used on that occasion merely indicated some form of maltreatment, without specifying whether it was physical or psychological (as such abuses were classified under different codes), or whether it had been perpetrated solely by her father.

118. As regards the alleged breach of the procedural obligation under Article 3 or 8 of the Convention, the Government argued that the domestic authorities' reaction to the incident of 1 February 2011 had been prompt, without any unexplained delays or obstructions, and detailed. In particular, the police had reacted immediately after the applicants had reported the incident, and had conducted interviews with all the participants and other individuals who could have had knowledge of it, and of events that had preceded it (see paragraphs 13, 15-17, 21 and 24 above).

119. As regards the alleged breach of positive obligations under Article 3 or 8 of the Convention, the Government submitted that the judicial authorities had decided promptly on the second applicant's request for a provisional measure and, on the basis of an opinion given by the local social welfare centre, refused her request for an interim custody order (see paragraph 67 above). That decision had been made only after a careful examination of all the evidence presented and after establishment of all the relevant facts, with the best interests of the first applicant as the primary consideration. The first-instance court had given sufficient reasons for its decision, which thus could not be regarded as arbitrary. The Government averred in that connection that since they had heard the parties directly and examined evidence the domestic courts were in a better position than the Court to assess the evidence, establish the relevant facts, and make a decision.

120. In addition, while the custody proceedings were pending before the first-instance court, the social authorities had imposed the child protection

measure of supervision of the exercise of parental authority (see paragraph 82 above), with a view to monitoring the situation in the first applicant's family and reacting promptly if changed circumstances so required.

121. Furthermore, in the course of the first-instance custody proceedings an extensive psychiatric and psychological assessment had been made by forensic experts who, together with a number of other witnesses, had been examined by the first-instance court (paragraphs 66, 69-70 and 75), with a view to establishing whether the change in the first applicant's family situation justified a reversal of the custody order.

122. In particular, those experts had suggested that the behaviour of the first applicant's mother (the second applicant) was unpredictable, and that she placed her needs before those of her child. It was therefore better in the given circumstances for the first applicant to continue to live with her father and his family, where she had been living since early childhood, and whose home was a better and safer environment for her development. Therefore, not only was it unnecessary to separate the first applicant from her father, but it would be counterproductive. The experts had also found that what was detrimental to the first applicant's development was the conflict between her parents. All the experts and social welfare professionals had warned both parents about it, and it was the principal reason for imposing the child protection measure of supervision of the exercise of parental authority.

123. In view of the foregoing, it could not be argued that while the custody proceedings were pending the first applicant was at risk of being abused.

124. As regards the applicants' objections that the first applicant had not been heard in the custody proceedings, nor had a special representative (see paragraph 129 below), the Government first noted that the domestic authorities had eventually assigned her a guardian *ad litem* (see paragraph 73 above) whose role was to protect the first applicant's interests and that, contrary to the applicants' view, neither the European Convention on the Exercise of Children's Rights nor the domestic law provided for an obligation to assign her any other special representative (see paragraphs 84 and 98 above). Furthermore, from the latest decisions adopted in both the criminal proceedings for bodily injury and the custody proceedings (see paragraphs 47 and 77 above) it was evident that the first applicant would be given a chance to express her views.

125. In view of the foregoing arguments, the Government invited the Court to find that there had been no violation of either Article 3 or Article 8 of the Convention in the present case.

(b) The applicants

126. The applicants reiterated their view (see paragraph 104 above) that prosecuting the first applicant's father (only) for the criminal offence of inflicting bodily injury was not sufficient for the domestic authorities to

meet their positive obligations under Articles 3 and/or 8 of the Convention. Rather, he should have been prosecuted for the criminal offence of child abuse (see paragraph 86 above). By charging the first applicant's father with the less serious offence of bodily injury entailing a modest penalty the prosecuting authorities had acted in his favour. Besides, even those criminal proceedings had already been pending for more than four years, and there was no indication that they would be over soon and that he would be punished.

127. As regards the custody proceedings and the obligation to protect the first applicant from future violence by her father, the applicants argued that precisely because the domestic prosecuting and judicial authorities had failed to adequately prosecute him, judicial and social authorities and the forensic experts in the custody proceedings had been reluctant to find that the first applicant had been abused by him and to protect her from further violence by removing her from his custody.

128. The applicants in particular pointed to a flaw in the combined expert opinion of 29 December 2011, namely to the fact that the forensic experts who had prepared it had expressly refused to reply to the family court's question whether the first applicant had been abused, and if so by whom (see paragraphs 66, 70 and 75 above). That shortcoming had had wider repercussions, because that expert opinion had also been consulted by the prosecuting and judicial authorities which had eventually refused the applicants' attempts to prosecute the first applicant's father for the criminal offence of child abuse (see paragraphs 55 and 57-58 above).

129. The applicants particularly emphasised the fact that neither in the criminal proceedings nor in the custody proceedings was the first applicant heard, although the forensic experts regarded her as being of above-average intellectual capacities and she on multiple occasions before various professionals had unequivocally expressed the wish to live with her mother, even though her age and maturity so permitted. The first applicant's precarious position had been further exacerbated by the fact that it took the domestic authorities more than a year and a half before she finally had a special representative assigned to her in the custody proceedings (see paragraph 73 above), as required by the European Convention on the Exercise of Children's Rights (see paragraph 98 above).

130. Lastly, the applicants pointed out that the custody proceedings had, like the criminal proceedings for bodily injury, also already been pending for more than four years, and there was no indication that they would soon be completed, or what would be their outcome. Because of their inordinate length they had lost their initial purpose, and the first applicant had started exhibiting signs of psychological damage, which the applicants had wished to prevent by instituting those proceedings and removing her from her father's care (see paragraph 33-34 above).

2. *The Court's assessment*

(a) *As regards the first applicant*

131. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects, and in some instances the sex, age and state of health of the victim (see, for example, *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports of Judgments and Decisions* 1998-VI, and *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C).

132. Treatment has been found by the Court to be “degrading”, and thus falling within the scope of the prohibition set out in Article 3 of the Convention, if it causes in its victim feelings of fear, anguish and inferiority (see, for example, *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 203, ECHR 2012); if it humiliates or debases an individual (humiliation in the victim’s own eyes, see *Raninen v. Finland*, 16 December 1997, § 32, *Reports of Judgments and Decisions* 1997-VIII; and/or in other people’s eyes, see *Gutsanovi v. Bulgaria*, no. 34529/10, § 136, ECHR 2013 (extracts)), whether or not that was the aim (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV), if it breaks the person’s physical or psychological resistance or drives him or her to act against his or her will or conscience (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX), or if it shows a lack of respect for, or diminishes, human dignity (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 118 and 138, 17 July 2014).

133. In the present case the applicants alleged that in the period between February 2008 and April 2011 the first applicant had been exposed to physical and psychological abuse by her father (see paragraph 52 above). In particular, they claimed that the first applicant’s father had sworn at her, uttered vulgar expressions against her, and called her names such as “stupid” or “cow”, and that he had threatened that he would cut off her long hair and ensure that she never saw or heard from her mother. They also claimed that he had frequently forced her to eat food she did not like and, when she refused, grabbed her chin and shoved the food in her mouth. He had sometimes even smeared the food all over her face. The applicants further claimed that the first applicant’s father had often threatened her with physical violence, had hit her on the leg with a hairbrush on one occasion, and had sometimes grabbed her arm and squeezed it so hard that she had bruises afterwards. This had culminated in the incident of 1 February 2011, when he had allegedly hit her in the face and squeezed her throat while verbally abusing her.

134. In this connection the Court itself notes that in her statements to the police, those given before various clinical experts and those before the forensic experts who examined her in the custody proceedings, the first applicant stated on a number of occasions that she was afraid of her father (see paragraphs 15, 19-20, 23, 28-29 and 32 above). She also stated, *inter alia*, that when her father had smeared the food over her face she had felt embarrassed because she had been made to look ugly (see paragraph 29 above). It follows that, if the applicants' allegations are true, the abuse complained of instilled in the first applicant feelings of fear and shame, and on one occasion even caused her physical injury.

135. Therefore, the Court, having regard in particular to the first applicant's young age (she was nine years old at the time of the incident of 1 February 2011), considers that the cumulative effect of all the above-described acts of domestic violence (see, *mutatis mutandis*, *Sultan Öner and Others v. Turkey*, no. 73792/01, § 134, 17 October 2006) would, if they were indeed perpetrated, render the treatment she was allegedly exposed to sufficiently serious to reach the threshold of severity required for Article 3 of the Convention to apply. Having regard to its case-law (see paragraph 132 above), the Court finds that such treatment could be regarded as "degrading".

136. The Court further reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, for example, *A. v. the United Kingdom*, cited above, § 22, and *Opuz v. Turkey*, no. 33401/02, § 159, ECHR 2009, as well as the Council of Europe Recommendation on integrated national strategies for the protection of children from violence, cited in paragraph 103 above). The Court has also acknowledged the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008, and *Opuz*, cited above, § 132). Those positive obligations, which often overlap, consist of: (a) the obligation to prevent ill-treatment of which the authorities knew or ought to have known (see, for example, *Dorđević v. Croatia*, no. 41526/10, §§ 138-139, ECHR 2012), and (b) the (procedural) obligation to conduct an effective official investigation where an individual raises an arguable claim of ill-treatment (see, for example, *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 47, 16 April 2013).

137. In this connection, the Court first observes that the applicants reported the events of 1 February 2011 to the police authorities the next day. During the interview with the police the first applicant stated that her father

had hit her in the face the day before, and mentioned other instances of domestic violence complained of (see paragraph 15 above). She later repeated those allegations before various clinical experts (see paragraphs 19 and 23 above), and before the forensic experts in the custody proceedings (see paragraphs 28-29 above).

138. Furthermore, the injury the first applicant allegedly sustained on 1 February 2011 was medically documented. In particular, the next day she was diagnosed by an ophthalmologist with bruising of the left lower eyelid (see paragraph 13 above). The opinion obtained from the forensic expert in the course of the criminal proceedings against the first applicant's father for bodily injury states that she had indeed sustained an injury around that time and that it was possible, though not certain, that it had been inflicted in the way she had described (see paragraph 44 above).

139. As regards the remaining allegations of (mostly psychological) abuse, the Court notes that various therapists and the forensic experts in the custody proceedings established that the first applicant was a traumatised child (see paragraphs 19-20, 23, 25 and 69 above).

140. The Court, being fully aware that the manipulation of children and false accusations of child abuse are common occurrences in highly conflictual relationships between separated parents, considers that this evidence (see the three preceding paragraphs) is sufficient to render the applicants' claim brought before the domestic authorities that the first applicant had been abused by her father "arguable". It was thus capable of triggering the State's (procedural) positive obligation under Article 3 of the Convention to investigate. The "arguable" character of the applicants' claim is therefore not called into question by the fact that the Government's submission relied on (see paragraphs 116-17 above) the possibility that the first applicant had been traumatised by her separated parents' conflictual relationship, rather than by the alleged ill-treatment by her father.

141. Likewise, once the applicants had reported to the authorities that the first applicant had been abused by her father and had presented the above evidence, those authorities must have been aware that she could be at risk of being subjected to such treatment (again). Accordingly, the State's positive obligation to protect her from future ill-treatment was also engaged.

142. Having regard to the foregoing, and in particular to the fact that the first applicant is both a child and an alleged victim of domestic violence, the Court considers that the present case gave rise to the State's positive obligations under Article 3 of the Convention as regards that applicant.

143. That being so, the Court considers that in so far as the first applicant complained about the State's failure to discharge its positive obligations in relation to violent acts allegedly perpetrated against her by her father, her complaints under Article 8 of the Convention are absorbed by her complaints under Article 3 thereof.

144. The Court must further ascertain whether the domestic authorities complied with their positive obligations under Article 3 of the Convention.

(i) As regards the alleged breach of the (procedural) positive obligation to investigate

145. As regards the positive obligation of the domestic authorities to conduct an effective official investigation into the applicants' allegations of ill-treatment, the Court first notes that those authorities decided to prosecute the first applicant's father only for the injuries allegedly sustained during the incident of 1 February 2011 (see paragraphs 21 and 35 above). In other words, the domestic authorities decided to prosecute only what appears to be the most serious in a series of violent acts against the first applicant rather than charging her father (also) with a criminal or minor offence(s) capable of covering all the instances of ill-treatment she had allegedly sustained (see paragraphs 86-89 above), which would have enabled those authorities to address the situation in its entirety.

146. In this connection the Court also notes that under the Convention on the Rights of the Child (see Article 19 thereof and points 40-41 of the General Comment thereto, cited in paragraphs 94 and 96 above) all reports of violence against children, including those within the family, must be appropriately investigated (but not necessarily prosecuted).

147. However, even if prosecuting the first applicant's father only for the criminal offence of bodily injury was not in the given circumstances contrary to the State's procedural positive obligation to conduct an effective investigation into allegations of ill-treatment, the Court considers that in the present case the domestic authorities nevertheless failed to comply with that obligation. That is so because the criminal proceedings for bodily injury they did institute have so far lasted more than four years and two months, during which time the case has remained pending before the first-instance court (see paragraphs 35-51 above).

148. In this connection the Court reiterates that for the investigation required by Article 3 of the Convention to be regarded as "effective", it must not only be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible; a requirement of promptness and reasonable expedition is also implicit in that context (see, for example, *W. v. Slovenia*, no. 24125/06, § 64, 23 January 2014). Moreover, when the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention. In this respect, the Court has already held that the protection mechanisms available under domestic law should operate in practice in a manner allowing for the examination of the merits of a particular case within a reasonable time (see, for example, *W. v. Slovenia*, cited above, § 65).

149. In that regard the Court first notes that the first applicant's father was indicted within two months of the alleged commission of the offence and that the penal order against him was issued less than a month after that (see paragraphs 35-36 above). It thus cannot but be concluded that at that stage the domestic authorities demonstrated exceptional promptness.

150. However, substantial delays occurred once the first applicant's father challenged the penal order which was then automatically set aside and the criminal proceedings resumed. In particular, from the Government's submission it would appear that in the period between the penal order being challenged on 4 May 2011 and the first hearing in the case being scheduled on 7 May 2013 the proceedings were at a complete standstill for two years (see paragraphs 37-38 above). The Government did not provide any explanation for that delay.

151. Further delays occurred once the trial court decided to hear the first applicant, because neither the court nor the police authorities were equipped with a video-link device (see paragraphs 47-50 above). At a time when this or similar technology is easily available, the Court finds it difficult to justify such a delay, which has so far lasted more than a year.

152. The result of these delays on the part of the domestic authorities is that in the more than four years and five months **since** the first applicant was injured the domestic authorities have not established by a final judicial decision whether her injuries were inflicted by her father and, if so, determined his criminal liability in that regard and imposed a penalty. In such circumstances, the Court concludes that those authorities have failed to comply with the requirement of promptness implicit in their procedural positive obligation under Article 3 of the Convention (see, *a fortiori*, *Remetin v. Croatia (no. 2)*, no. 7446/12, § 120, 24 July 2014).

(ii) As regards the alleged breach of the positive obligation to prevent ill-treatment

153. At the outset the Court finds it important to emphasise that the applicants did not argue that the domestic authorities had breached their positive obligation by failing to prevent the alleged acts of domestic violence against the first applicant that had already occurred. Rather, they complained that after the incident of 1 February 2011 those authorities had breached that positive obligation by leaving the first applicant in her father's custody, and thus had failed to prevent the recurrence of domestic violence against her.

154. Therefore, the Court's task is to determine whether since the incident of 1 February 2011 the domestic authorities have taken all reasonable measures to prevent potential ill-treatment of the first applicant by her father, that is to prevent a risk which even the applicants themselves have not argued has ever materialised.

155. In this connection the Court notes that on 30 March 2011, some two months after the incident of 1 February 2011, the second applicant

instituted proceedings to have the custody order of 24 August 2007 reversed (see paragraphs 22 and 60 above) and the first applicant thereby removed from her father's care. At the same time she asked the first-instance court to issue a provisional measure in the form of an interim custody order, whereby she would have been temporarily awarded custody of the first applicant (see paragraph 60 above).

156. The Court further notes that in its recommendation of 12 May 2011 the local social welfare centre stated that at the time there was nothing to suggest that by staying in her father's home the first applicant would be at risk (see paragraph 65 above). Nevertheless, the centre's opinion was incorrectly formulated in that the relevant risk it was required to assess was the risk of abuse of the first applicant rather than any risk to her life.

157. In this regard the Court finds it important to note that the local social welfare centre was familiar with the first applicant's situation, because in the period between 7 November 2006 and 31 August 2008 it carried out a child protection measure of supervision of the exercise of parental authority in her family (see paragraph 11 above). Following the incident of 1 February 2011 the local social welfare centre again, on 22 September 2011, imposed the same measure, which lasted until 31 March 2014 (see paragraph 82 above). This means that the situation in the first applicant's family was closely monitored by the social authorities during that period. Moreover, nothing in the reports of the supervising officer suggests that during that period the first applicant was, or risked being, ill-treated (see paragraph 83 above).

158. The Court also notes that some two months after the institution of custody proceedings, on 7 June 2011 the first-instance court refused the second applicant's request for a provisional measure (see paragraph 67 above). In so deciding it relied primarily on the above-mentioned recommendation of the local social welfare centre, while also taking into account other evidence, in particular two conflicting opinions of clinical psychiatrists (see paragraphs 19 and 25 above) and the fact that criminal proceedings for bodily injury against the first applicant's father were still pending. It follows that its refusal to order the drastic measure proposed by the second applicant (see in this connection points 40-42 of General Comment no. 8 of the Committee on the Rights of the Child in paragraph 96 above) was based on the absence of sufficient proof that the abuse had taken place and after careful consideration of all relevant materials (see, *mutatis mutandis*, *M.P. and Others v. Bulgaria*, no. 22457/08, § 115, 15 November 2011).

159. The combined expert opinion from forensic experts in psychiatry and psychology of 29 December 2011, obtained in the context of the same custody proceedings, stated that there were no contraindications to the first applicant's continuing to live with her father (see paragraph 70 above). As regards the applicants' argument that those experts had not replied to the

family court's question whether she had been abused, and if so by whom (see paragraphs 70 and 128 above), the Court finds it evident that the experts would not have recommended that she continue living with her father if they considered that she had been at risk of ill-treatment.

160. The foregoing considerations are sufficient for the Court to find that in the period after 1 February 2011 the domestic authorities took reasonable steps to assess and weigh the risk of potential ill-treatment of the first applicant by her father and to prevent it.

161. Therefore, while the length of the custody proceedings, which have so far lasted more than four years and three months, is indeed regrettable and is relevant in a different context (see paragraphs 182-84 and 188-89 below), it is not of decisive importance in the context of this complaint, and thus cannot call into question the Court's finding that the State has complied with its positive obligation to protect the first applicant from possible ill-treatment by her father (see, *mutatis mutandis*, *M.P. and Others v. Bulgaria*, cited above, § 117).

162. This also means that the applicants' complaints concerning the alleged breach of the positive obligation to prevent ill-treatment cannot be considered premature just because the custody proceedings are still pending, as the Government argued (see paragraphs 108 and 114 above).

(iii) Conclusion as to the merits

163. It follows that in the present case there has been, as regards the first applicant, a violation of Article 3 of the Convention on account of the breach by the domestic authorities of their (procedural) positive obligation to conduct an effective investigation into allegations of ill-treatment, and no violation of that Article on account of their obligation to prevent such treatment.

(b) As regards the second applicant

164. As regards the second applicant, the Court reiterates its finding that in the case of *Dorđević v. Croatia* the ill-treatment to which the second applicant's son had been exposed in that case had had an adverse effect on her private and family life (see *Dorđević*, cited above, § 97, ECHR 2012). It also held that, by failing to put in place adequate and relevant measures to prevent further ill-treatment of her son, the State authorities had not only breached their positive obligation under Article 3 of the Convention in respect of him but also their positive obligation under Article 8 in respect of her (see *Dorđević*, cited above, § 153, ECHR 2012).

165. However, in the present case the Court, in view of its above finding under Article 3 of the Convention that the State has adequately discharged its positive obligation to prevent ill-treatment of the first applicant (see paragraphs 160 and 163 above), considers that the domestic authorities have

also complied with their positive obligation towards the second applicant under Article 8 of the Convention.

166. Accordingly, there has been no violation of Article 8 of the Convention in the present case as regards the second applicant concerning the alleged breach of the State's positive obligation to prevent violence against her daughter, the first applicant.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

167. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case, and that it is not bound by the characterisation given by the applicant or the Government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties and even under a provision in respect of which the Court had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see, for example, *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 52, 2 November 2010).

168. The Court reiterates that various therapists and the forensic experts in the custody proceedings have established that the first applicant is a traumatised child (see paragraphs 19-20, 23, 25, 69 and 139 above). It further notes that in her statements to the police, those given before various clinical experts, and those before the forensic experts who examined her in the custody proceedings the first applicant stated on a number of occasions that she wanted to live with her mother, the second applicant (see paragraphs 19-20, 23-24, 28, 32, 34 and 69 above). The Court also observes that in her school essay of 27 October 2014 the first applicant stated that she had started cutting herself and later explained before a clinical psychologist that she had done that, *inter alia*, because of "inability to manage her own time and refusal to let her live with her mother, which would make her happy" and "because she was not allowed to choose with whom to live" (see paragraphs 33-34 above). The report of that psychologist suggests that the first applicant started self-harming because of frustration resulting from limitation of her freedom of action (see paragraph 34 above).

169. In this connection, 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 (see, among other authorities, *Olsson v. Sweden* (no. 1), 24 March 1988, § 59, Series A no. 130, and *Gluhaković v. Croatia*, no. 21188/09, § 54, 12 April 2011), and that the concept of "private life" within the meaning of that Article includes, *inter alia*, the right to personal autonomy (see, for example, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III)

and to physical and psychological integrity (see, for example, *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91).

170. In particular, in the case of *Fernández Martínez v. Spain* the Court, as regards the right to private and family life, stressed the importance for individuals to be able to decide freely how to conduct their private and family life, and reiterated that Article 8 also protected the right to self-fulfilment, whether in the form of personal development or from the point of view of the right to establish and develop relationships with other human beings and the outside world, the notion of personal autonomy being an important principle underlying the interpretation of the guarantees laid down in that provision (see *Fernández Martínez v. Spain* ([GC], no. 56030/07, § 126, ECHR 2014 (extracts)).

171. This right to personal autonomy – which in the case of adults means the right to make choices as to how to lead one's own life, provided that this does not unjustifiably interfere with the rights and freedoms of others – has a different scope in the case of children. They lack the full autonomy of adults but are, nevertheless, subjects of rights (see the Preamble to the Optional Protocol [of 19 December 2011] to the Convention on the Rights of the Child [which came into force on 14 April 2014] on a communications procedure in paragraph 95 above). This circumscribed autonomy in cases of children, which gradually increases with their evolving maturity, is exercised through their right to be consulted and heard. As specified in Article 12 of the Convention on the Rights of the Child (see paragraph 94 above), a child who is capable of forming his or her own views has the right to express them and the right to have due weight given to those views, in accordance with his or her age and maturity, and, in particular, has to be provided with the opportunity to be heard in any judicial and administrative proceedings affecting him or her.

172. Having regard to the foregoing considerations, and taking the best interests of the child as a primary consideration, the Court considers that the applicants' complaints that the domestic authorities have been ignoring the first applicant's wish to live with her mother, and the fact that she has not yet been heard in the custody proceedings, which have themselves lasted too long (see paragraphs 129-30 above), raise issues regarding the right to respect for private and family life distinct from those analysed in the context of Articles 3 and 8 of the Convention in paragraphs 153-66 above, which thus require separate examination by the Court under the latter Article.

A. Admissibility

173. The Court reiterates that the Government argued that certain complaints by the applicants under Articles 3 and/or 8 of the Convention, namely those concerning the alleged breach of the positive obligation to prevent future violent acts against the first applicant, were premature

because the custody proceedings were still pending (see paragraph 108 above). In the context of this part of the application, that argument constitutes an inadmissibility objection and has to be examined as such (compare with paragraph 114 above).

174. In this connection the Court reiterates that those custody proceedings have so far been pending for more than four years and three months, and notes that after three and a half years the first applicant started exhibiting self-harming behaviour, which she herself described as a reaction to the frustration resulting from the fact that she was not allowed to live with her mother, the second applicant (see paragraphs 33-34 above). The Court further reiterates that the speed of the domestic proceedings is relevant to whether a given remedy is to be deemed effective and hence necessary in terms of Article 35 § 1 of the Convention. Indeed, the excessive length of the domestic proceedings may constitute a special circumstance which would absolve the applicants from exhausting the domestic remedies at their disposal (see *Šorgić v. Serbia*, no. 34973/06, § 55, 3 November 2011). That is especially so in cases such as the present one, which concerns a continuing situation (highly) prejudicial to the first applicant's private life (see, *mutatis mutandis*, *X. v. Germany*, no. 6699/74, Commission decision of 15 December 1977, Decisions and Reports 11, p. 16, at p. 24). Having regard to the particular circumstances mentioned above, the Court considers that in this case the applicants cannot be required to wait any longer for the final outcome of the custody proceedings.

B. Merits

1. The parties' submissions

175. The arguments of the Government and the applicants reproduced in paragraphs 121-22 and 124 and in paragraphs 129-30 above, respectively, are also relevant for examining the merits of this part of the application.

2. The Court's assessment

(a) The first applicant

176. While the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective "respect" for private and family life, and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves. Children and other vulnerable individuals, in particular, are entitled to effective protection (see, for example, *Bevacqua and S.*, cited above, § 64).

177. As regards the right to respect for private life, these obligations may involve the adoption of measures designed to secure that right,

including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (see, for example, *P. and S. v. Poland*, no. 57375/08, § 95, 30 October 2012).

178. As regards the right to respect for family life, these include an obligation on the national authorities to take measures with a view to reuniting parents with their children and to facilitate such reunions. This also applies to cases where contact and custody disputes concerning children arise between parents and/or other members of the children's family (see, for example, *Gluhaković*, cited above, § 56).

179. The Court reiterates that ineffective, and in particular delayed, conduct of custody proceedings may give rise to a breach of positive obligations under Article 8 of the Convention (see *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, § 127, 1 December 2009, and *S.I. v. Slovenia*, no. 45082/05, § 69, 13 October 2011).

180. It further reiterates that whilst Article 8 contains no explicit procedural requirements, the decision-making process must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, for example, *W. v. the United Kingdom*, 8 July 1987, §§ 62 and 64, Series A no. 121, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V (extracts)). In particular, in a number of childcare cases the Court has examined whether the parents had been sufficiently involved in the decision-making process, with a view to establishing whether their rights under Article 8 had been violated (see, for example, *W. v. the United Kingdom*, cited above, §§ 62-68 and 70; *Sommerfeld v. Germany* [GC], no. 31871/96, §§ 66-75, ECHR 2003-VIII (extracts)); and *Sahin v. Germany* [GC], no. 30943/96, §§ 68-78, ECHR 2003-VIII).

181. Having regard to Article 12 of the Convention on the Rights of the Child (see paragraphs 94 and 97 above, and in particular paragraph 32 of General Comment No. 12 (2009) on the right of the child to be heard), the Court finds that the same considerations apply *mutatis mutandis* in any judicial or administrative proceedings affecting children's rights under Article 8 of the European Convention on Human Rights. In particular, in such cases it cannot be said that the children capable of forming their own views were sufficiently involved in the decision-making process if they were not provided with the opportunity to be heard and thus express their views.

182. Turning to the present case, the Court notes that the custody proceedings have so far been pending for more than four years and three months. Having regard to its case-law (see *Eberhard and M.*, cited above, §§ 138-42, and *Kopf and Liberda v. Austria*, no. 1598/06, §§ 46-49, 17 January 2012), the Court considers that this fact alone would be sufficient to find that the respondent State has failed to discharge its positive obligations under Article 8 of the Convention, even if the facts of the instant

case had not necessitated greater promptness than that normally required in childcare cases.

183. The present case indeed called for greater promptness, because it concerns a traumatised child who, if for no other reason than the fact of her parents' conflictual relationship, suffered great mental anguish which culminated in self-harming behaviour. However, it would appear that the domestic courts failed to recognise the seriousness and the urgency of the situation. In particular, it appears that they did not understand that the first applicant perceived life with her mother as a way out of her precarious position, and the custody proceedings as instrumental in achieving that goal. The domestic courts therefore did not realise that the protracted character of those proceedings was exacerbating the first applicant's plight.

184. The Court is particularly struck by the fact that after four years and three months the first applicant has not yet been heard in those proceedings and thus given a chance to express her views on the issue of which parent she wanted to live with. It notes that the County Court had in its decision of 15 November 2013 instructed the Municipal Court to assess whether the first applicant was able to understand the importance of the proceedings and, if so, allow her to express her opinion and take a statement from her (see paragraph 77 above), although there was nothing to call into question the presumption that the first applicant – who was at the time twelve years old – was capable of forming her own views and expressing them (see paragraph 20 of the General Comment No. 12 (2009) on the right of the child to be heard, in paragraph 97 above). In any event, more than a year and seven months have passed without steps being taken to comply even with that instruction. What is even more surprising is that no steps have been taken to accelerate the proceedings even after the first applicant started exhibiting self-harming behaviour.

185. In addition, the Court notes that under the case-law of the Croatian courts, in situations where both parents are equally fit to take care of the child, and the child is, having regard to his or her age and maturity, capable of forming his or her own views and expressing them, the child's wishes as regards which parent to live with must be respected (see paragraph 85 above). The Court cannot but subscribe to that view, as it considers that otherwise the rule that the views of the child must be given due weight would be rendered meaningless.

186. The Court observes that in the present case the forensic experts in psychology and psychiatry found that the first applicant's parents were equally (un)fit to take care of her (see paragraph 69 above), a view that appears to be shared by the local social welfare centre (see paragraph 83 above). Those experts also established that the first applicant expressed a strong wish to live with her mother (see paragraph 69 above). The Court further observes that both her parents live in the same town, and that a reversal of the custody order would therefore not entail the first applicant

having to change school or otherwise be removed from her habitual social environment. Moreover, the first applicant, who is an A-grade pupil and whom the experts viewed as being of good or even above-average intellectual capacities (see paragraphs 19-20 above), was nine and a half years old at the start of the proceedings and is now thirteen and a half. It would thus be difficult to argue that, given her age and maturity, she is not capable of forming her own views and expressing them freely. The Court therefore finds that not respecting her wishes as regards the issue of which parent to live with would, in the specific circumstances of the present case, constitute an infringement of her right to respect for private and family life.

187. Having regard to all of the above, the Court finds that there has been a violation of Article 8 of the Convention in the present case as regards the first applicant's right to respect for her private and family life.

(b) The second applicant

188. The Court considers that its above findings concerning the protracted character of the custody proceedings apply equally to the second applicant (see paragraph 182).

189. There has accordingly been a violation of Article 8 of the Convention in the present case as regards the second applicant's right to respect for family life.

III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND 13 OF THE CONVENTION

190. The applicants also complained that they had neither had access to court nor an effective remedy to complain of a violation of their rights under Articles 3 and 8 of the Convention because of the refusal by the domestic authorities to allow them to pursue criminal proceedings against the first applicant's father for the criminal offence of child abuse. They relied on Article 6 § 1 and Article 13 of the Convention, the relevant parts of which read as follows:

Article 6 (right to a fair hearing)

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13 (right to an effective remedy)

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

191. The Court reiterates that the Convention does not guarantee a right to have criminal proceedings instituted against third persons or to have such persons convicted (see, among many other authorities, *Perez v. France*

[GC], no. 47287/99, § 70, ECHR 2004-I, and *Krzak v. Poland*, no. 51515/99, § 24, 6 April 2004).

192. It follows that these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of its Article 35 § 3 and must be rejected pursuant to Article 35 § 4 thereof.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

193. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

194. The applicants each claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

195. The Government contested that claim.

196. Having regard to all the circumstances of the present case, the Court accepts that the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the first applicant EUR 19,500, to be paid to her guardian *ad litem* and held until such time as this sum can be administered by the first applicant herself, and the second applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on those amounts.

B. Costs and expenses

197. The applicants also claimed HRK 15,625 for costs and expenses incurred before the domestic authorities and HRK 27,578.47 for those incurred before the Court.

198. The Government contested these claims.

199. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 3,600 for the proceedings before the Court, plus any tax that may be chargeable to them.

C. Default interest

200. 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

1. *Declares*, unanimously, the complaints concerning prohibition of ill-treatment and the right to respect for private and family life admissible and the remainder of the application inadmissible;
2. *Holds*, by five votes to two, that there has been a violation of Article 3 of the Convention as regards the first applicant on account of the breach of the State's procedural obligation to conduct an effective investigation into the allegations of ill-treatment;
3. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention as regards the first applicant on account of the breach of the State's positive obligation to protect her from ill-treatment;
4. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention as regards the second applicant on account of the breach of the State's positive obligation to protect the first applicant from ill-treatment;
5. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention as regards the first applicant's right to respect for her private and family life on account of the protracted character of the custody proceedings and her non-involvement in the decision-making process;
6. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention as regards the second applicant's right to respect for family life on account of the protracted character of the custody proceedings;

7. *Holds*, unanimously,

(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, to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, to the first applicant in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, to the second applicant in respect of non-pecuniary damage;

(iii) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable to the applicants, to the applicants jointly 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;

8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 September 2015 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President

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

I.B.
S.N.

JOINT PARTLY DISSENTING OPINION OF JUDGES BERRO AND MØSE

1. To our regret we cannot follow the majority's reasoning concerning Article 3 of the Convention. Leaving aside the complaints under Article 6 § 1 and Article 13, which are rightly declared inadmissible in the judgment (see paragraphs 190-92), it is our view that the present case should be examined under Article 8.

2. The judgment correctly concludes that, as a result of the protracted custody proceedings, which lasted for more than four years, there has been a violation of Article 8 both with respect to the first applicant – the daughter – and the second applicant – the mother (see paragraphs 176-87 and 188-89 respectively).

3. The applicants also complained that the authorities had not complied with their procedural positive obligations under Article 3 and/or Article 8 because they had refused to prosecute the father and failed to remove the daughter from the father's custody and thus prevent him from committing further violent acts against her (see paragraph 104).

4. As stated in the judgment, albeit in a different context (see paragraph 167), it is firmly established in the Court's case-law that it is master of the characterisation to be given in law to the facts of the case, and that it is not bound by the characterisation given by the applicant or the Government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on.

5. The majority have chosen to focus on Article 3 (see paragraphs 131-32). Finding that the cumulative effect of all purported acts performed by the father would "if they were indeed perpetrated" render the treatment the daughter was allegedly exposed to sufficiently serious to reach the threshold of severity required under Article 3 (see paragraph 135), they find that the evidence is sufficient to consider the allegations under that Article arguable and hence to trigger the State's procedural obligation under that provision. Therefore, in the majority's view, the daughter's complaints under Article 8 are absorbed by her claims under Article 3 (see paragraphs 140-43).

6. In our view, this approach under Article 3 does not take sufficient account of the factual context of the case. The manipulation of common children and (false) accusations of child abuse are very frequent in highly conflictual relationships between separated parents and are often instrumental in custody battles for the children. In this connection we note that in the period between 5 July 2006 and 7 March 2008 altogether eight criminal complaints were filed against the mother and the father, most of which they filed against each other. Five criminal complaints were dismissed, including the three in which it was alleged that criminal offences of child abuse and domestic violence had been committed against the

daughter (see paragraph 9 of the judgment). It is also revealing that the mother insisted that the father be prosecuted and convicted specifically for the criminal offence of child abuse even though the conduct the applicants had accused him of could also be regarded as a criminal or minor offence of domestic violence, or as a criminal offence of bodily injury (for which he was being prosecuted).

7. According to the Committee on the Rights of the Child, children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care, and prosecuting parents is in most cases unlikely to be in their children's best interests (see paragraph 96 of the judgment). It is also noteworthy that it has not yet been established by a final judicial decision whether or not the daughter's eye injury was inflicted by the father during the incident of 11 February 2011 (see paragraphs 35-51 of the judgment).

8. Furthermore, it seems to us that the majority's approach concerning the procedural obligation to prosecute the father is not fully consistent with its subsequent conclusion that there was no violation of the obligation to prevent ill-treatment by removing the daughter from his custody (see paragraphs 153-163). Here, the judgment refers to the local social welfare centre's assessment of 12 May 2011 that the daughter was not at risk; the refusal of the first-instance court on 7 June 2011 to grant the mother's request for provisional measures, due to the absence of sufficient proof that abuse had taken place; and the combined report from forensic experts in psychiatry and psychology of 19 December 2011 stating that there were no contraindications for the daughter to remain living with her father.

9. In the present case the daughter was traumatised by the conflictual situation between her parents, who, according to the experts, were both equally unfit to take care of their daughter, and she inflicted injury on herself because the authorities failed to take sufficient account of her views during proceedings that lasted too long. The complaints should have been examined exclusively under Article 8 of the Convention, which guarantees the right to respect for private and family life.