



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

FIRST SECTION

**CASE OF VALIDITY FOUNDATION ON BEHALF OF T.J.
v. HUNGARY**

(Application no. 31970/20)

JUDGMENT

Art 34 • Standing of non-governmental organisation to lodge application on behalf of a person with a severe intellectual disability who died in a State-run social care home

Art 2 (substantive and procedural) • Respondent State's failure to account for the treatment of the deceased, who was under the State's exclusive control, and to demonstrate the existence of a requisite standard of protection to prevent the deterioration of her health and her untimely death • Domestic authorities fully aware of prevailing conditions of neglect and abandon in social care home as well as the particular risk the deceased faced • Inadequate living conditions, medical and therapeutic care and excessive use of means of restraint • Lack of effective investigation • Failure to subject deceased's case to careful scrutiny and absence of any appropriate reaction let alone redress

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

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

In the case of Validity Foundation on behalf of T.J. v. Hungary,

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

Alena Poláčková, *President*,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 31970/20) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian non-governmental organisation, Validity Foundation, on behalf of Ms T.J., on 14 July 2020;

the decision to give notice of the application to the Hungarian Government (“the Government”);

the parties’ observations;

the decision to grant anonymity of its own motion under Rule 47 § 4 of the Rules of Court;

Having deliberated in private on 16 April and 10 September 2024,

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

INTRODUCTION

1. The case concerns the death in a social care home of Ms T.J., who had been diagnosed with a severe intellectual disability, and the ensuing investigation. The late Ms T.J. was represented by Validity Foundation, which relied on Article 2 and Articles 13 and 14 taken in conjunction with Article 2 of the Convention.

THE FACTS

2. Validity Foundation was represented by Ms S. Florescu, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. Validity Foundation, previously Mental Disability Advocacy Centre, is an international non-governmental organisation based in Budapest, advancing the rights of persons with disabilities through litigation and advocacy work.

I. THE DEATH OF T.J.

6. Ms T.J. was born on 24 July 1973. She was diagnosed with a severe intellectual disability. She was unable to communicate verbally and was occasionally prone to aggressive behaviour. In 1983 she was placed in the Topház social care institution in Göd (Hungary).

7. In 1996 she was placed under the guardianship of her mother. In the Government's submission, because of her mother's inability or unwillingness to perform the duties of a guardian, an official guardian was appointed for Ms T.J. in 2012. As of 1 January 2018, a new guardian, K., was appointed for her.

8. According to the testimony given by one of her caregivers during the criminal investigation (see paragraph 14 below), until about 2015 Ms T.J. could walk and eat independently. She used an ordinary bed and, although she was unable to communicate, she socialised with the other residents and made herself understood.

9. Over the years, several injuries were recorded on Ms T.J.'s medical file, including wounds on her head and face, cuts on her eyelids and eyebrows, contusions and haematomas on her torso and limbs and a gash on her finger, caused either by falling or being pushed or by hitting herself. According to her medical records, while in hospital she was prescribed tranquillisers and anti-psychotic medication, including Haliperodol, Leponex, Rivotril, Gerordom and Tegretol. She had bacterial pneumonia in 2015, 2016 and 2018.

10. Between 15 February and 18 April 2017, a team of monitors from Validity Foundation visited Topház and noticed Ms T.J.'s condition. Ms T.J. was constantly tied to her bed and was emaciated. She had an open wound on her forehead and a black eye and was unresponsive.

11. On 3 May 2017 Validity Foundation published a report on the conditions in Topház, describing the excessive and unlawful use of restraints, the lack of proper heating, malnutrition, and physical neglect. The report contained testimonies of violence and abuse by staff and among residents.

12. Between 10 and 12 May 2017, representatives of the Ministry of Human Resources carried out an on-site inspection of Topház. As regards the living conditions, they reported that the residents' rooms were overcrowded and in breach of regulations: the doors and windows could not be opened by the residents, the shared therapy rooms were inadequate for their purpose, the bathroom facilities did not allow for privacy and the living environment was generally somewhat unsafe for the residents. There was an extremely low level of staffing in the institution, with a shortage of both therapeutic and medical personnel, in serious breach of the legal requirements. Understaffing hindered the provision of a professional care programme and adequate social services. The report stated that these circumstances should not have been allowed to result in the unjustified restriction of the residents' free movement,

namely by the sealing of certain areas to prevent aggressive or unpredictable behaviour. As regards the treatment and care of the residents, the report stated that the therapy provided to them was inadequate to maintain or develop their physical and mental capacities. Understaffing and overcrowding resulted in an insufficient level of care, in violation of the residents' rights. The therapy plans lacked any individualised treatment and were repetitive taking no account of the residents' individual needs. As a consequence, residents' difficulties, including unpredictable or aggressive behaviour, remained untreated; aggression between the residents was a recurring and unmanaged problem. As regards restraining measures, the inspection found that the use of "chemical restraints" (medication) had not been properly registered. The report documented the use of physical restraints in respect of three residents, including Ms T.J., whose situation was described in the report in the following terms:

"...

During the review of the medical records of [Ms T.J.], a female patient over the age of forty with an intellectual disability, we observed the use of additional physical restraints. A description of her from 2016 revealed that she was often agitated, abused her friends at night, undressed her roommates, did not sleep and walked around. It appears from the health records after 2016 that her condition deteriorated, she became emaciated, and there was a recommendation that she should be fed with baby formula.

She had fallen many times, and in 2016 she developed a haematoma on her left hip. In October 2016 she fell again, hit her forehead and was taken to the accident and emergency department. A CT [computed tomography] scan of her skull was taken and she required stitches to her forehead. During October and November 2016, each time she tried to walk, she collapsed. At this point an opinion issued by the institution's doctor stated: '... she can be seated in a wheelchair with a corset. It is recommended that she should be restrained for her own protection.'

In February 2017 she lost a lot of weight; she became weak, unstable and occasionally restless. On 7 May [2017] she fell and was diagnosed with a fractured nasal bone, and on 9 May [2017] she overbalanced as she leaned forward in her mobility aid. In the doctor's opinion, she should be restrained when lying in bed, allowing her minimal room for movement. Currently she is attached to the bed at her waist with the help of a sheet strip. According to the staff, that measure was necessary, given the low number of caregivers, to prevent her from falling again. The institution does not regard this measure as a restrictive measure, but as a nursing aid. Restraining a patient in this way with a medical aid is not legal, given that it is dangerous.

..."

13. On 18 May 2017 the Hungarian Commissioner for Fundamental Rights published a report on Topház, concluding that the institution lacked adequate care facilities, that the fundamental rights of the residents were being violated, and the living conditions could give rise to inhuman and degrading treatment. The Commissioner's report stated in particular:

"The inspection found that the institution only partially met the required provision of staff and equipment. The professional work in the institution is sloppy. The residents'

rights are infringed to an impermissibly extent. The institution gives the impression of neglect and abandonment. There is a failure to ensure a clean and sanitary environment. Mental health activities are lacking, or are not capable of aiding rehabilitation or maintaining residents' limited physical and mental functions.

...

The supply of medicines is not provided in accordance with the legal requirements. It is not permitted to keep or use expired medicines and food in the institution; nonetheless, during the inspection expired medicines and food were found. There is insufficient cooperation between staff and management, which has an adverse impact on the care of the residents. The care records are partially incomplete and do not comply with the legal requirements.

...

Conditions in the institution mean that the residents' fundamental rights are being seriously violated. They are not compliant with the right to human dignity, the requirement of equal treatment and the State's duty to provide special protection for persons with disabilities. The overall functioning – but also certain measures in themselves – could raise the issue of the prohibition of inhuman or degrading treatment, which would also entail a breach of the principle of non-discrimination under Article 4 of the [Convention on the Rights of People with Disabilities].

...”

14. According to the witness testimony of two caregivers provided during the investigation into Ms T.J.'s death (see paragraph 25 below), in the spring of 2018 Ms T.J. experienced insomnia regularly and would walk around the premises during the night. She fell often and to prevent further injuries she was transferred to a cage bed, where she was tied to the bed with a bedsheet across her body to stop her climbing out. During the day she was tied to her bed for between an hour and an hour and a half each day, while the caregivers looked after other residents. As her limbs were not restricted, she could move them freely, and she could eat and drink.

15. On 17 August 2018 Ms T.J. was taken to a hospital in Vác, where she was diagnosed with pneumonia and given treatment. When she was about to be released from the hospital, her condition suddenly deteriorated, and she died on 25 August 2018. The report of an autopsy on 30 August 2018 confirmed the cause of death as bacterial pneumonia.

II. DOMESTIC PROCEEDINGS

A. Access-to-information action

16. After the publication of its report, Validity Foundation sought access to the residents of the institution, including Ms T.J., with a view to providing them with legal and other assistance. It requested information on the names and contact details of the residents' legal guardians. However, on 21 July 2017 the director of the social care home refused the request even in respect

of those residents who had previously given Validity Foundation a letter of authority.

17. On 24 November 2017 Validity Foundation wrote to the Minister of Human Resources asking to be put in contact with certain residents of Topház, including Ms T.J.

18. On 4 February 2020 the Buda Surroundings District Court ordered Topház to provide Validity Foundation's legal representative with the contact details of the guardians of the people who had been residing at the institution on 26 March 2018. Validity Foundation received the information on 31 May 2022.

B. Criminal complaints lodged by Validity Foundation

19. On 2 May 2017 Validity Foundation lodged a criminal complaint with the Dunakeszi Police Department, alleging that multiple counts of unlawful deprivation of liberty, endangering of minors, causing gross bodily harm, sexual violence and professional misconduct had been committed in Topház. It submitted in evidence the description of specific events and testimonies in respect of twenty residents. As regards Ms T.J., the complaint stated that according to another resident, she was constantly restrained to avoid self-harm and that she was malnourished.

20. On 16 May 2018 Validity Foundation amended its criminal complaint, submitting that the professional misconduct of the employees of the institution had led to the death of a resident, P.D., and at least seven other residents in 2017.

21. On 29 January 2019 Validity Foundation amended its criminal complaint again, submitting that two further deaths – those of Ms T.J. and K.K. – had occurred in the institution because of the professional misconduct of the staff. Relying on the evidence submitted in its criminal complaint of 2 May 2017, Validity Foundation argued that there were grounds to believe that the inadequate conditions of care indirectly contributed to the death of Ms T.J. and K.K. Validity Foundation reiterated that based on the testimony of another resident, Ms T.J. had been tightened up and severely malnourished. It requested the Police Department to inquire into the care plan of Ms T.J. and K.K., to hear the resident in question as a witness to clarify the conditions of Ms T.J.'s case and to verify whether Topház had carried out any assessment of the care of its residents and had taken any steps in this respect.

22. On 31 January 2019 the Pest County Chief Police Department discontinued the investigation, finding that the alleged misconduct of the staff did not constitute a criminal offence. According to the findings of the Police Department, the residents referred to in Validity Foundation's submission of 16 May 2018 (see paragraph 19 above) had died because of their severe disabilities. On 19 March 2019 the Police Department amended its decision of 31 January 2019, adding that the circumstances of the deaths of Ms T.J.

and K.K., which the representative of Validity Foundation had complained about (see paragraph 21 above), had already been examined when the criminal complaint concerning the deaths of the other residents had been dismissed.

23. On 27 March 2019 Validity Foundation complained about the dismissal of the criminal complaint. Its legal representative submitted that the investigating authorities had not inquired into the circumstances of the care provided to Ms T.J. and the other residents. She asked for another resident, the legal representative of the deceased persons and an expert special needs educator to be heard as witnesses and for the investigating authorities to obtain Ms T.J.'s medical records from Topház.

24. On 11 March 2019 the Dunakeszi District Prosecutor's Office set aside the decision of the Police Department and ordered that an investigation in respect of Ms T.J. and K.K. be opened.

25. In June and July 2019 the Police Department questioned six Topház caregivers. According to the testimony of I. and E., only two caregivers were responsible for about forty residents, who all required constant surveillance. Physical restraint was necessary to prevent residents from self-harming. Three of the caregivers knew Ms T.J. and two of them, who had been directly involved in her daily care, gave a detailed description of her living conditions, as described above (see paragraph 14 above).

26. The Police Department commissioned a medical expert opinion to establish the cause of death of Ms T.J. and whether being tied to her bed or spending long periods lying down had contributed to it. The expert opinion of 15 September 2019 stated that the cause of death had been pneumonia and that Ms T.J.'s life could not have been saved by the hospital. Neither her physical restraint nor extended periods of lying down had contributed to her death. In any event, there had been no professional misconduct on the part of the hospital.

27. On 15 October 2019 the Pest County Chief Police Department discontinued the proceedings concerning the deaths of Ms T.J. and K.K., finding that the conduct complained about did not constitute a criminal offence, as – according to the forensic expert opinion – a connection could be made between the deaths of both Ms T.J. and K.K. and their illness. As regards Ms T.J., the decision further noted that there had been no causal link between her death and the restraints applied to her.

C. Collective complaint lodged by Validity Foundation

28. On 14 December 2017 Validity Foundation lodged a collective complaint against Topház, the Directorate of Social Affairs and Child Protection, the Pest County Government Authority, the Ministry of Human Resources and the Ministry of National Development, claiming that the respondents had infringed the residents' personality rights and had not

fulfilled their statutory obligation to supervise the functioning of the institution. Validity Foundation referred in particular to the excessive use of restraints, the lack of adequate social and health care, the degrading living conditions and the absence of rehabilitation and education. In support of its claims it provided photographs of the residents, including Ms T.J. Validity Foundation also asked the court to make interim orders prohibiting the use of physical restraints on the residents at Topház.

29. In an interim decision of 21 February 2019, the Budapest High Court declared that Validity Foundation had standing to lodge a collective complaint on behalf of the residents of Topház. On 20 September 2019 the Budapest Court of Appeal quashed that decision and remitted the case to the first-instance court ordering the lower-instance court to assess whether the issue of *locus standi* could be decided in an interim decision.

30. In the resumed proceedings the Budapest High Court appointed experts, who in their joint expert opinion of 12 November 2021 concluded that at the material time the operation of the care home had been in conformity with the law and had had regard to the need to promote and protect the human rights of all residents living with disabilities, including those in need of enhanced assistance.

31. On 12 January 2023 the Budapest High Court dismissed the request for interim orders, stating that considerable changes had been made to the residents' living conditions in recent years. Ms T.J.'s former guardian was heard at the same hearing. She stated that she had about thirty-five persons under her responsibility, of whom twenty-seven lived in Topház. She visited the institution once a month and spent about an hour there each time. She described being mostly unable to communicate with the residents and never having been approached by any of them to assist with any claims or complaints. She also explained that when a resident died, her duties as a guardian terminated and she was neither informed about the cause of death nor had the right to make any arrangements such as organising the funeral of the deceased person.

32. The Budapest High Court rendered a judgment on 27 February 2024. It held that the Directorate of Social Affairs and Child Protection, the Pest County Government Authority, and the legal successor of the Ministry of Human Resources, the Ministry of Culture and Innovation had failed to carry out their statutory obligation to supervise and manage Topház. Thereby they had infringed the personality rights, including the right to equal treatment and the right to dignity of the residents. They had maintained a humiliating and degrading environment, restrained the liberty of the residents in an inhuman manner, exposed the residents to indecent sanitary conditions, had not provided human living conditions, had not provided education, rehabilitation, participation in sport, cultural and social life, had not provided appropriate care and development and had not ensured the resident' right to access to healthcare.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

33. Under section 218 of Act No. CLIV of 1997 on Healthcare (henceforth: “the Healthcare Act”), a death is not natural if the circumstances cast doubt on whether it was by natural causes, for example, when there is evidence of a criminal offence, or an unexpected death occurs, such as one caused by an accident, or where the circumstances indicate suicide, or where the antecedents and circumstances of the death are unknown and no data are available to reasonably infer that the death came about by natural causes, or in the event of the death of a detained person. The Healthcare Act provides that where there is an unexpected death, the procedure relating to unexpected deaths must be initiated by the authorities of their own motion and an official autopsy must be ordered.

II. INTERNATIONAL MATERIAL

34. In its Concluding observations on the sixth periodic report of Hungary (CCPR/C/HUN/CO/6, 9 May 2018) the Human Rights Committee stated the following:

Persons with disabilities

“...The Committee is further concerned about reported violence and cruel, inhuman and degrading treatment and about allegations of a high number of deaths in closed institutions that have not been investigated. In that connection, it is particularly concerned about the reported evidence of the torture and ill-treatment of 220 children and adults with disabilities in the State-run Topház Special Home in the city of Göd. Furthermore, the Committee is concerned about reports that, despite a legal prohibition of the practice, some forced sterilization of persons with disabilities still occurs...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

35. Validity Foundation complained that Ms T.J., who had been placed in a State social care institution, had died there from long-term neglect and inadequate care. Validity Foundation also complained that the investigation into Ms T.J.’s death had concentrated on potential medical negligence on the part of the personnel in carrying out their duties and had not addressed the question of whether the death had been caused by the inadequate conditions in the social care home. It relied on Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. ...”

A. Admissibility

1. *Whether Validity Foundation had standing in the present case*

(a) The parties' submissions

(i) *The Government*

36. The Government submitted that Validity Foundation had no standing, for the purposes of Article 34 of the Convention, to lodge an application on behalf of Ms T.J. because the exceptional conditions set out in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, ECHR 2014) were not met. In contrast to the situation in that case, Ms T.J. had both a next of kin (her mother) and a legal guardian appointed by the Hungarian authorities. Validity Foundation had not represented Ms T.J. personally in domestic proceedings. It could have done so with the consent of Ms T.J.'s official guardian or by instructing its lawyers to file a request with the guardianship authority to be appointed as a guardian *ad litem*. In default of such an appointment, Validity Foundation could only institute proceedings of an *actio popularis* nature, which was possible under Hungarian law but precluded under Article 34 of the Convention. The public interest could not be relied upon in order to circumvent the requirements of Article 34. The fact that Validity Foundation could initiate *actio popularis* proceedings before the domestic authorities proved that there were means to hold domestic authorities to account for breaches of their obligations, making it unnecessary to grant Validity Foundation standing before the Court in the present case.

37. The Government further argued that the protection of the rights set out in the Convention did not necessitate the extension of Article 34 to an *actio popularis* application, since domestic law provided for sufficient safeguards for the examination of unexpected deaths irrespective of whether the victim had had legal capacity or not.

38. Moreover, Validity Foundation could have contacted the official guardian prior to Ms T.J.'s death by enquiring about the register kept by the National Judicial Office. Had the guardian been unwilling to act in the interests of Ms T.J., Validity Foundation could have complained to the Guardianship Authority. In any event, domestic law provided for various ways for an organisation to become a person's legal representative.

(ii) *Validity Foundation*

39. Validity Foundation contended that although Ms T.J. had formally had a legal guardian and a next of kin, they had taken no action to protect her life and well-being before her death and had shown no concern after her death, which demonstrated that they had not been prepared to act in pursuance of her rights and legitimate interests, despite their obligations under domestic law to do so.

40. On the other hand, Validity Foundation had made serious attempts to engage the legal responsibility of the public guardian and to obtain permission to represent Ms T.J. formally. It had been denied access to the legal guardian prior to Ms T.J.'s death, and on her death the guardian had lost the right to represent her in any event. Nevertheless, Validity Foundation had pursued every legal avenue possible on behalf of Ms T.J. in an effort to protect her interests. Lastly, Validity Foundation submitted that the Government had not demonstrated how the claimed guarantees in domestic law could have been effective to ensure the protection of Ms T.J.'s rights.

(b) The Court's assessment

41. The Court notes that Validity Foundation lodged the application on Ms T.J.'s behalf without producing a power of attorney or written authority from Ms T.J. herself, her legal guardian or any other appropriate person. In this connection, the Court reiterates that it is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 on whose behalf they purport to act in the proceedings before the Court (see *Post v. the Netherlands* (dec.), no 21727/08, 20 January 2009).

42. In *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, §§ 104-11), the Grand Chamber identified the following "exceptional circumstances" which could justify an association being recognised as having standing as the *de facto* representative of the direct victim of the alleged violations: the victim's vulnerability; the nature of the allegations brought before the Court; whether the direct victim had next of kin or a legal guardian to lodge an application with the Court; whether there had been contact between the direct victim and the representative; or whether the representative had been involved in any relevant domestic proceedings and recognised as having standing in those proceedings. The Court considers these elements to be determinative as to whether Validity Foundation can be recognised as having standing to act as Ms T.J.'s *de facto* representative in the present case.

43. It is undisputed that Ms T.J. was the direct victim, within the meaning of Article 34 of the Convention, of the circumstances complained of before the Court. Given her disabilities, as established by the national authorities and not contested by the Government, she was to be considered a highly vulnerable person who was manifestly incapable of expressing any wishes or views regarding her own needs and interests, let alone wishes and views on whether to pursue any remedies. Furthermore, the allegations brought before the Court raise serious issues under Article 2 of the Convention, which Ms T.J., although the direct victim, evidently could not pursue.

44. It is common ground between the parties that Ms T.J. had been in the care of State-run institutions since she was ten. As to the Government's argument that Ms T.J. could have been represented by her mother, the Court

observes that in the Government's own submission an official guardian was appointed for Ms T.J. in 2012 because of the inability or unwillingness of her mother to represent her. Furthermore, there is nothing to suggest that either her mother or any of her other close relatives contacted or visited her or showed any interest in her situation at any time while she was placed in public institutions. It does not appear that Ms T.J.'s next of kin sought contact with her after the publication of the report by Validity Foundation or after the report of the Commissioner for Fundamental Rights informed the public about the conditions in the institution Ms T.J. had been placed in. In any event, once the official guardian had been appointed to represent Ms T.J., her family members were no longer able to act on her behalf.

45. The Court further notes that, unlike the situation in *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, § 111), a legal guardian was appointed by the State to take care of Ms T.J.'s interests. It would normally be for the guardian to provide Validity Foundation with the requisite authority to represent Ms T.J. before the Court (*L.R. v. North Macedonia*, no. 38067/15, § 50, 23 January 2020). However, the Court attaches particular importance to the fact that Validity Foundation took steps to obtain information and to contact the residents' guardians, including the guardian of Ms T.J., while the latter was still alive, in order to obtain a letter of authority from them (see paragraph 17 above). The social care institution originally declined to provide the requested information and only provided the guardians' contact details in 2022 pursuant to a court order, four years after the death of Ms T.J. (see paragraph 18 above).

46. The Court further notes that K. had been appointed as Ms T.J.'s guardian only a few months before her death. In her testimony to the Budapest High Court, the guardian clarified that she had spent about an hour a month in Topház, where she had represented twenty-seven residents, with whom she had been unable to communicate (see paragraph 31 above). The guardian's view was that she had never encountered circumstances which would have required her to take action to protect residents' rights, and indeed she had not taken any steps following the publication of the reports of Validity Foundation (see paragraph 11 above) and the Commissioner for Fundamental Rights (see paragraph 13 above). In any event, her responsibilities ended on the death of a resident.

47. For the Court, the fact that her State-appointed guardian failed to pursue any available remedy to protect Ms T.J.'s interests and made no representations on her behalf to the social care home or the domestic authorities and was not in a position to lodge an application with the Court after Ms T.J.'s death cannot be allowed to prevent the serious allegations of a violation of Ms T.J.'s rights under the Convention from being examined by the Court.

48. The Court is aware of the report published by Validity Foundation and the class action it brought in the domestic courts challenging the conditions

in the Topház social care home. It observes in this respect that the subject matter of the class action was the general treatment, care and living conditions in the social care home. Neither the action itself, nor the first-instance judgment examined or accounted for the death of Ms T.J. (see paragraph 32 above).

49. Nonetheless, the Court also takes note of the fact that shortly after the visit of its monitors to Topház, Validity Foundation made a criminal complaint to the public prosecutor seeking to have someone held accountable for the restraints imposed on the residents, including Ms T.J., and their poor physical conditions and state of health. Following the death of Ms T.J., Validity Foundation extended its complaint to clarify the circumstances of her death (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 111, and *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, no. 2959/11, § 43, 24 March 2015). It pursued the case after the discontinuation of the investigations by the Pest County Chief Police Department arguing that the authorities had not inquired into the care provided to Ms T.J. (see paragraph 23 above). Validity Foundation’s complaint eventually led to the reopening of the investigation into the death of Ms T.J. and another resident, K.K. (see paragraphs 24-26 above). Validity Foundation’s focus in taking these issues up with the domestic authorities was on Ms T.J.’s individual circumstances and her alleged neglect by the social care home.

50. Against the above background, the Court considers that, in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, Validity Foundation should be granted standing to act as Ms T.J.’s representative.

51. Accordingly, the Court dismisses the Government’s objection concerning Validity Foundation’s lack of standing, and grants it standing as Ms T.J.’s *de facto* representative.

2. *Compliance with the six-month rule*

(a) **The parties’ submissions**

52. The Government asserted that the application had been lodged out of time as it should have been lodged within six months after the death of Ms T.J. They argued that the criminal complaint lodged by Validity Foundation could not have constituted an effective remedy in the present case, since it could only have been directed against the caregivers of the home and could only have led to establishing their criminal responsibility. However, the Government’s understanding was that the grievances about the living conditions in Topház were based on the alleged underfinancing of the social care home and an alleged lack of appropriate supervision of the institution, which was not a matter of criminal law. Furthermore, the

caregivers had clearly lacked any criminal intent, without which no criminal offence could be established.

53. Validity Foundation submitted that it had been obliged to exhaust only domestic remedies that were not manifestly futile. It argued that its pursuit of criminal proceedings was a reasonable choice, and it could not be said that the outcome of the criminal complaint, namely the finding that nobody was criminally liable, had been clearly foreseeable. It also suggested that physical neglect, failure to prevent violence and the excessive use of physical restraints were individual acts and omissions which were commonly considered to be ill-treatment and for which individuals could have been found criminally liable. Furthermore, in its criminal complaint it had referred to the general conditions in the social care home, for which the State could have been held liable.

(b) The Court's assessment

54. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. Where a situation is a continuing one, time begins to run once that situation ends. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to bring a complaint to the Court before his or her position in connection with the matter has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached. Where an applicant avails himself or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 259-60, ECHR 2014 (extracts)).

55. The Court notes that Validity Foundation alleged that illegal acts attributable to the State or its agents had led to the death of Ms T.J.: she had died as a result of inadequate and defective social and medical assistance in the social care institution, coupled with the physical restraint applied to her. Validity Foundation therefore submitted that Ms T.J.'s death was likely to have been caused by shortcomings on the part of the Topház staff and by a failure of the administrative bodies responsible for the maintenance and supervision of the social care home to comply with their supervisory duties.

56. Validity Foundation's first recourse was to criminal law remedies, which were capable in principle of shedding light on the course of the events leading to Ms T.J.'s death and establishing whether the State agents concerned were criminally liable, as is also evident from the fact that the

domestic authorities instituted criminal proceedings and carried out a criminal investigation into the possibility that Ms T.J.'s death had been caused by the negligent performance of professional obligations. In view of the facts of the case and the nature of the alleged grievances, the Court considers that Validity Foundation's choice of a criminal-law remedy was reasonable. It cannot be said that Validity Foundation deliberately tried to defer the time-limit set out in Article 35 § 1 by making use of inappropriate procedures that could not have offered effective redress for the complaint in issue under the Convention (see, *mutatis mutandis*, *Petrović v. Serbia*, no. 40485/08, § 60, 15 July 2014). Only if an applicant has recourse to a remedy that is doomed to failure from the outset can the decision in respect of such recourse not be taken into account for the purposes of the calculation of the six-month period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75 *in fine*, 5 July 2016); however, this was not so in the present case.

57. It follows that the six-month period started to run on 15 October 2019 when the Police Department dismissed Validity Foundation's criminal complaint, which means that, in the normal course of events, it would have expired six calendar months later, on 15 April 2020 (see *Ataykaya v. Turkey*, no. 50275/08, § 40, 22 July 2014). However, in the meantime, on 11 March 2020 the World Health Organisation declared a public health emergency of international concern – the highest level of alarm – in relation to the global outbreak of a new infectious and mostly respiratory disease (subsequently called COVID-19) caused by the SARS-CoV-2 coronavirus (see *Zambrano v. France* (dec.), no. 41994/21, § 3, 21 September 2021). In the light of those developments, on 16 March and 9 April 2020 the President of the Court announced a number of exceptional measures to allow applicants, High Contracting Parties and the Court to handle the difficulties to which the global pandemic and widespread lockdown gave rise. One effect of those measures, which were decided by the President in the exercise of his competence to direct the work and the administration of the Court under Rule 9 of the Rules of Court, was that the Registry of the Court, when registering newly received applications, and without prejudice to any subsequent judicial decision on the matter, was to add three months in total to the method of calculation of the six-month rule under Article 35 § 1 of the Convention whenever a calendar six-month period either started to run or, on the contrary, was due to expire at any time between 16 March and 15 June 2020. As the Court has previously held, if a calendar six-month period either started to run or was due to expire during the time frame specified in the decisions of the President of the Court (from 16 March until and including 15 June 2020), the six-month rule under Article 35 § 1 of the Convention should be exceptionally considered to have been suspended for three calendar months in total (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 49 and 58, 1 March 2022).

58. Having regard to the fact that in the present case the calendar six months expired on 15 April 2020, and the latter date fell within the time frame

indicated by the President (16 March -15 June 2020), the Court rules that the applicant had an additional three months – until and including 15 July 2020 – to lodge an application with the Court. Since the application was introduced on 14 July 2020, it cannot be dismissed as having been lodged outside the time-limit fixed by Article 35 of the Convention.

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

B. Merits

1. The parties' submissions

(a) Validity Foundation

60. Validity Foundation submitted that the conditions in the social care home had led to Ms T.J.'s death. Long-term neglect and unlawful physical restraint had contributed to the deterioration of her quality of life and had made her susceptible to injuries and more vulnerable to illnesses. Furthermore, bed-bound persons who took no exercise and remained inactive were likely to contract pneumonia. The domestic authorities had failed to address the systematic deficiencies in Ms T.J.'s care and to adopt appropriate measures to safeguard her life. Validity Foundation concluded that the overall neglect of Ms T.J. combined with her fragility had resulted in her contracting bacterial pneumonia, leading to her premature death.

61. Validity Foundation argued that Ms T.J. had been given sedatives and anti-psychotics without any diagnosis of a mental condition.

62. As regards the general conditions in the social care home, Validity Foundation asserted that the systemic deficiencies in the way Topház was run had put residents' lives at risk. They submitted that between 15 February 2017 and 25 September 2017 at least ten people had died in Topház.

63. Validity Foundation also submitted that the investigation into Ms T.J.'s death had been insufficient, since it had not inquired into the circumstances of her care and the use of physical restraints which could have contributed to her death.

64. Moreover, the investigation had not been prompt, thorough, and subject to public scrutiny. The death of Ms T.J. in the social care home should have been considered an unexpected death under the Health Care Act (see paragraph 33 above), and therefore required an autopsy and investigation.

65. However, a forensic examination had only been carried out after Validity Foundation had appealed against the decision to terminate the investigation of Ms T.J.'s death on 15 September 2019. At that point, the forensic medical expert could only refer to medical records and the autopsy report. The investigating authorities had taken their decision solely on the basis of medical documents, nursing records and other social care-related

records, the testimony of staff members of the social care institution and the forensic medical opinion given a year after the death. No other independent evidence had been taken in the case, although it had been available and repeatedly suggested by Validity Foundation. Finally, the investigation had not been open to public scrutiny, since Validity Foundation had not received any information about the investigative measures taken.

(b) The Government

66. The Government disputed that the conditions in the social care home had been inhuman or life-threatening or that the medical treatment provided by the institution had been inadequate. In the Government's view this was evident from the fact that Ms T.J. had lived in Topház for thirty-five years. Furthermore, no signs of restraint had been detected when the autopsy was carried out. Her illness had been properly treated in hospital and she was about to be discharged in good health. The sudden deterioration of her health and her resulting death had been due to her intellectual disability and not to the professional misconduct of the medical and social care staff.

67. The Government also disputed that Ms T.J. had been deprived of her liberty as she had not been confined to the care home by a court order, there had been no legal obstacles to her leaving the institution and her guardian could have taken her home or transferred her to another institution.

68. The Government argued that the authorities had promptly taken remedial measures when the allegedly life-threatening living conditions and treatment had been drawn to their attention.

69. The Government further submitted that the Hungarian authorities had fully complied with their procedural obligations under Article 2. An autopsy had been performed on 30 August 2018, contrary to Validity Foundation's allegations, and had determined that the cause of Ms T.J.'s death was bacterial pneumonia with a concomitant illness of extended cerebral softening. In their understanding, there had been no indication of any criminal misconduct which would have required the institution of criminal proceedings.

70. The Pest County Chief Police Department had obtained Ms T.J.'s medical documents and nursing records and had heard several staff members from the social care institution as witnesses. A forensic medical opinion of 19 September 2019 had confirmed that the death of Ms T.J. could be linked to her illness and that there had been no causal link between her death and the restraints applied to her. The medical expert had stated that no professional misconduct had occurred.

71. The Police Department had taken a number of investigative measures, including questioning witnesses, reviewing Ms T.J.'s medical documentation and commissioning a medical expert opinion.

2. *The Court's assessment*

(a) **Substantive limb of Article 2**

72. The general principles concerning the State's duty to safeguard the right to life are summarised in *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, §§ 130-31). In particular, the Court held that States were required to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives. This applies especially where patients' capacity to look after themselves is limited (*ibid.*, § 130). The Court also considered that Article 2 of the Convention may, in certain well-defined circumstances, place on the authorities a positive obligation to take preventive measures of practical nature to protect the individual against others or, in particular circumstances, against himself (see *Nencheva and Others v. Bulgaria*, no. 48609/06, § 108, 18 June 2013).

73. The Court has not excluded the possibility that the acts and omissions of the authorities in the field of healthcare policy may in certain circumstances engage their responsibility under the substantive limb of Article 2 (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V).

74. In assessing the case of Ms T.J., the Court finds it appropriate to refer to three aspects of her background.

75. It first points out that since the age of ten, Ms T.J. had lived in the hands of the domestic authorities: she had grown up in Topház, where she had continued to live as an adult in the female ward until her death at the age of forty-five on 25 August 2018. She had been placed in the social care home since she needed constant assistance, which apparently could not be provided by her family. Her intellectual disability was considered to compromise her ability to make an informed choice about remaining in the social care home.

76. In practice, she was fully dependent on the institution for her most basic human needs including her place of residence, her medical treatment, her daily activities, and her interaction with the outside world. The Court also considers that Ms T.J.'s long-term institutionalisation and her ensuing loss of contact with the outside world necessarily made such dependence even greater. Thus, contrary to the Government's argument, even if her guardian had sought her release from the social care home, Ms T.J. would have had no possibility – in any meaningful sense – of leaving the institution.

77. Secondly, the Court emphasises the particularly vulnerable situation of Ms T.J., as a person with disability (see *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012, and *Shtukaturov v. Russia* (just satisfaction), no. 44009/05, § 18, 4 March 2010) which has been recognised as a relevant consideration when assessing a State's responsibility under Article 2 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 131, with further references).

78. Thirdly, it is also significant that the domestic authorities considered, apparently because of her disability, that Ms T.J. lacked legal capacity to act for herself and appointed a legal guardian for her.

79. While in theory Ms T.J.'s guardian was supposed to represent her interests, take decisions about her placement and medical care, and provide legal assistance if necessary, no evidence has been produced by the parties to show that her guardian was notified of or consulted about the decisions on her medical treatment in the care home or her various admissions to hospital. The Court further notes that there is no evidence that Ms T.J. was ever informed about her care or assisted in understanding such information, apparently because the guardian herself considered that she was unable to communicate with her. Although there is no indication that Ms T.J.'s guardian acted in bad faith, there were serious shortcomings in the manner in which the guardianship system was implemented with respect to vulnerable patients admitted to social care institutions, who in practice were left without effective legal assistance or protection (see paragraph 31 above).

80. For the Court, the above elements indicate that Ms T.J. was under the exclusive control of the State authorities who therefore assumed direct responsibility for her welfare and safety and were under an obligation to account for her treatment and to give appropriate explanations concerning that treatment (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 140, and *Nencheva and Others*, cited above § 119).

81. The Court points out that the reasoning put forward by the Validity Foundation was not limited to establishing any individual liability of Ms T.J.'s caregivers for medical negligence or the denial of any specific life-saving emergency treatment, but concerned the deficiencies in the care system and the failure of the domestic authorities to make adequate provision to ensure the protection of Ms T.J.'s life in the social care home. They argued that although the direct cause of Ms T.J.'s death was pneumonia, long-term neglect was the decisive factor leading to her death.

82. The Court observes that according to the autopsy report Ms T.J. died of pneumonia (see paragraph 26 above) for which she had been treated in hospital (see paragraph 15 above). While this clarified the direct cause of Ms T.J.'s death, the Court refers to its findings in paragraph 104 below that the domestic investigation failed to address the systematic failure in the care system which had been reported by a number of actors, including State bodies and its potential effect on the individual circumstances of Ms T.J. However, it was for the authorities to account for Ms T.J.'s treatment and to demonstrate that her life had been adequately protected in the care home.

83. Nonetheless, the Court cannot but note the general context of Ms T.J.'s circumstances and the fact that the reports of the Ministry of Human Resources, the Commissioner for Fundamental Rights, and Validity Foundation (see paragraphs 11-13 above) were all in agreement that Topház

had been unable to provide the residents with care and treatment corresponding to their disability, state of health and needs.

84. According to the Ministry's report (see paragraph 12 above), the therapeutic assistance available had not been sufficient to maintain even a minimum standard of living conditions for the residents.

85. Moreover, although many of the residents needed constant supervision, the care home was understaffed and could not provide continuous assistance to those residents whose conditions clearly represented a danger to themselves or to others. As pointed out by the Ministry itself, the measures put in place by the care home to avoid residents' self-harming, aggressive behaviour or even injuries resulting from their fragile health included the seclusion of certain residents, or measures of physical restraint such as tying them up or placing them in beds where their movements were restricted. In the domestic authorities' assessment, such measures constituted an infringement of the residents' fundamental rights and violated their right to dignity.

86. Furthermore, deficiencies were found in respect of the food given, the medication available and the sanitary conditions.

87. The conditions in the home were characterised by the domestic authorities as neglect and abandon (see paragraph 13 above), indicating that they had persisted for a long period of time, and that they could not be attributed to exceptional circumstances.

88. For the Court, these conditions were a matter affecting not only the individual situation of Ms T.J., but the public interest in general. Therefore, the impugned circumstances go beyond negligence by the caregivers of Topház and concern the obligation of the domestic authorities to take appropriate measures to protect the lives of the residents (see, *mutatis mutandis*, *Nencheva and Others*, § 123).

89. The Court is also mindful of the fact that the circumstances of the residents of Topház and the risks faced by them were fully known to the authorities. More than a year before Ms T.J.'s death (see paragraph 11 above), Validity Foundation had provided a report with specific information and evidence about the alarming conditions at the care home. Furthermore, in May 2017 the Ministry itself had carried out an inquiry into the living conditions in the home and the care it provided (see paragraph 12 above). The Court also notes in this connection the submission of Validity Foundation, uncontested by the Government, that during the period between 15 February and 25 September 2017 at least ten residents had died in Topház (see paragraphs 20-21 above), which makes it implausible that the decline of Ms T.J.'s health and her death were sudden, isolated or unpredictable events which the authorities could not have prevented.

90. As regards the particular circumstances of Ms T.J., the Court observes that she had been diagnosed with a severe intellectual disability and was prone to aggressive behaviour. During her stay in Topház she had been

hospitalised a couple of times with pneumonia or with physical injuries which were caused by herself, by accidents, or by other residents. The Court also observes that she was transferred to a hospital shortly before her death, when she fell seriously ill with pneumonia again. Otherwise, her stay in the social care home was characterised by a disregard for her state of health, her medical needs and the needs resulting from her disability.

91. The facilities in Topház were not suited to Ms T.J.’s disability, which at the material time required constant supervision. According to the witness testimony of one of her caregivers, until around 2015 Ms T.J. had been able to walk independently and interact with others (see paragraph 8 above). The Ministry found that from 2016 her condition had deteriorated: she became restless, had to be fed with baby formula, and had frequent falls, injuring herself. According to the findings of the Ministry and her hospital medical records, she was severely malnourished (see paragraph 12 above). She received continuous medication in the form of tranquillisers and anti-psychotics without any evidence of a meaningful assessment or diagnosis of her mental state. Although according to their witness testimony, the caregivers made efforts to communicate with Ms T.J. and to understand her needs, in practice neither the staff in Topház nor her guardian were qualified to communicate with her. There is nothing in the case file suggesting that Ms T.J. had received any meaningful therapeutic treatment to accommodate her intellectual disability, which might have contributed to her overall condition worsening. It does not appear either that the care home had taken any measures once confronted with Ms T.J.’s deteriorating state of health.

92. The Court further notes that during their visit to Topház, the Validity Foundation monitors were alerted by another resident to the fact that Ms T.J. had frequently been tied to her bed, and included that factor in their report and referred to it in the domestic proceedings. In May 2017 the employees of the Ministry of Human Resources witnessed Ms T.J. being tied to her bed. In its report the Ministry stated that that restraint had been unlawful and noted that the staff had considered it necessary to keep Ms T.J. safe, in view of the fact that the institution was understaffed and could not look after her. The Court also refers to the testimony of two caregivers who were responsible for MS T.J. on a daily basis. The two employees stated that they had tied Ms T.J. up at night to prevent her from wandering about. They further stated that Ms T.J. was usually restrained when they had to look after other residents (see paragraph 14 above).

93. The Court has previously found that such a “measure” is in itself incompatible with human dignity and has considered that persons with disabilities are even more vulnerable as they cannot make any complaint about how they have been affected by treatment of this kind (see *L.R. v. North Macedonia*, cited above, § 80). The Court notes with particular concern that Ms T.J. was already in an extremely vulnerable situation and that the inadequate treatment which she received while in Topház was made

worse by the fact that she was tied to her bed when the staff could not ensure her supervision.

94. In conclusion, the Court finds that the domestic authorities were fully aware of the conditions at the social care home, including the shortage of medical staff, the insufficient medical and therapeutic care, the inappropriate living conditions, the excessive use of means of restraint, and the high number of deaths in 2017. The Government however failed to demonstrate that the authorities had provided an adequate response to the generally difficult situation in Topház: amongst other things, there is no evidence in the case file indicating that the management of the institution voiced any concerns to the appropriate authorities about the general conditions in the social care home or that the authorities took any measures to improve them.

95. It is particularly striking that Ms T.J.'s guardian and the relevant authorities, including the Ministry of Human Resources, had full knowledge of the particular risk Ms T.J. was facing, including her heightened vulnerability, the years of neglect of her care and treatment, her declining health, and the restraints she had been subjected to. Nevertheless, the Government provided no clarification about the measures taken by the authorities in response to their own findings, so that Ms T.J.'s situation continued unchanged and even deteriorated.

96. For the Court, the foregoing considerations, taken as a whole, lead to the conclusion that the Government failed to account for the treatment of Ms T.J., who was under the exclusive control of the State, and failed to demonstrate that the domestic authorities had had the requisite standard of protection that would have enabled them to prevent the deterioration in health and untimely death of Ms T.J.

97. There has accordingly been a violation of the substantive limb of Article 2 of the Convention.

(b) Procedural limb of Article 2

98. The general principles relevant to the complaint under this head were summarised in *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, §§ 132-33). The State's duty to safeguard the right to life must be considered to involve having in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. This obligation does not necessarily require the provision of a criminal-law remedy in every case (*ibid.*, § 132).

99. Turning to the present case, the Court has already noted that a criminal law remedy was available (see paragraph 56 above). On 2 May 2017 Validity Foundation complained to the Pest County Police Department that the living conditions of the residents in Topház, including Ms T.J., were unlawful since their basic needs were not met, they were extremely malnourished, physical restraints had been used against them, and no proper care had been provided

for them. As regards Ms T.J., Validity Foundation specified that she was severely malnourished and was often restrained (see paragraph 19 above). Following the death of Ms T.J., Validity Foundation amended its criminal complaint on 29 January 2019 and claimed that Ms T.J.'s death had been due to her living conditions in the social care home (see paragraph 21 above). Validity Foundation's complaint was rejected since the investigating authorities found no grounds to consider that a criminal offence subject to State prosecution had been committed. In its brief reasoning the police department stated that the direct cause of Ms T.J.'s death had been pneumonia.

100. The Court observes that Validity Foundation's complaint was made against unidentified perpetrators. The complaint was dealt with by the Pest County Police Department and the Dunakeszi District Prosecutor's Office; the examination of the complaint went on until 15 October 2019, when the Police Department discontinued the investigations (see paragraph 27 above). Accordingly, it met the requirement of promptness.

101. The investigating authorities rejected the complaint after examining the witness testimony of six Topház employees, of whom two had been directly involved in Ms T.J.'s care. The investigators had reviewed Ms T.J.'s medical records and the autopsy report. Despite a request from the legal representative of Validity Foundation, the investigation was not extended to include questioning a resident of the social care home as a witness, or an assessment of the provision of care in the institution. The investigating authorities apparently considered that such inquiries would only have been required if they had been necessary to clarify the circumstances of the physical restraint applied to Ms T.J., which, relying on the autopsy report, they considered to be irrelevant to her death.

102. The police investigation was focused essentially on establishing the direct cause of Ms T.J.'s death and whether the restraint measures used on her had contributed causally to her death. The domestic authorities did not establish the facts concerning the level and quality of care in Topház, and did not examine the adequacy of Ms T.J.'s living conditions or whether there were shortcomings in her medical and therapeutic care.

103. Consequently, they did not carry out any assessment of whether those alleged shortcomings had a bearing on Ms T.J.'s death and whether any crime had been committed in that regard. The Court notes that the conclusions of the police department were reached in the context of the criminal complaint brought against unidentified individuals.

104. The Court has not been informed that the investigations led to any effective attempt to verify whether the alleged systematic failures in the care system which had been reported by a number of actors including State bodies (see paragraphs 11-13 above) were the result of actions or omissions of the authorities' representatives or any other public employee and whether they could be held accountable for such conduct.

105. The Court considers that these omissions are to be viewed in the context of the State's duty under Article 2 of the Convention to carry out an effective investigation. It reiterates in this connection that its task is not to address issues of domestic law concerning individual criminal responsibility, or to deliver guilty or not guilty verdicts, but to determine whether the respondent Government have fulfilled their international-law responsibility under the Convention (see, *Leparskienė v. Lithuania*, no. 4860/02, § 52, 7 July 2009). The Court must therefore concentrate on the purpose of the obligation to carry out an effective investigation, which is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII).

106. In the Court's view, the authorities' overall response in investigating the allegations of serious human rights violations made in the present case cannot be regarded as adequate as they failed to subject Ms T.J.'s case to the careful scrutiny required by Article 2 of the Convention. The absence of any appropriate reaction, let alone redress, with respect to the events complained of cannot be said to be compatible with the procedural obligation of the State under Article 2 of the Convention.

107. Accordingly, and having regard to the particular circumstances of the present case, there has been a violation of the procedural limb of Article 2 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. Validity Foundation complained under Article 13 taken in conjunction with Article 2 that people with disabilities who were confined in institutions had no access to justice and that instances of torture, ill-treatment and death in social care institutions remained without investigation and redress. Persons such as Ms T.J. had no one to protect their rights and they were unable to claim justice on their own behalf.

109. Validity Foundation further argued under Article 14 taken in conjunction with Article 2 of the Convention that depriving Ms T.J. of her liberty and her legal capacity had constituted discriminatory treatment. Moreover, the State had failed to adopt appropriate measures to safeguard her life and she had been subjected to that treatment because of her disability.

110. The Government argued that Article 13 of Convention did not require that there should be an effective domestic remedy available in respect of an alleged violation of a third person's right to life under Article 2. Should the Court consider that no effective remedy was available for Validity Foundation in respect of Ms T.J.'s death, the application must be considered

to have been submitted outside the six-month time-limit, given that the remedy pursued had been ineffective.

111. The Government further submitted that Ms T.J.'s death had been investigated in accordance with the law and irrespective of her disability. In their view, Ms T.J.'s placement in the social care institution had not been a restriction of her liberty but had offered her a chance of survival, providing her with assistance and care without which she could not have lived as long as she had. She had been a beneficiary of supportive social services which could not be construed as discrimination.

112. Having regard to the facts of the case, the submissions of the parties, its findings under Article 2 of the Convention in paragraphs 44-47 and 79 and its conclusions in paragraphs 97 and 106 above, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on these complaints (see *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea*, cited above, § 81).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. Validity Foundation did not submit any claims in respect of pecuniary or non-pecuniary damage.

B. Costs and expenses

115. Validity Foundation claimed 18,342 euros (EUR) for the costs and expenses incurred before the domestic courts and before the Court. An itemised schedule of those costs was submitted.

116. The Government contended that not all the costs and expenses were related to the proceedings, and that in any event they were excessive.

117. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). Regard being had to the documents in its possession, to the number and complexity of the issues of fact and law dealt with and the above criteria, the Court considers it reasonable to award EUR 10,000 to Validity Foundation covering costs under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 2 of the Convention admissible;
2. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention;
3. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention;
4. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Articles 13 and 14 taken in conjunction with Article 2 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay Validity Foundation, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to it, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of Validity Foundation's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Alena Poláčková
President