



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

THIRD SECTION

CASE OF Z. v. SLOVENIA

(Application no. 43155/05)

JUDGMENT

STRASBOURG

30 November 2010

FINAL

28/02/2011

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

In the case of Z. v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 43155/05) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovenian nationals, S.Z. (“the first applicant”) and N.Z. (“the second applicant”), on 19 November 2005. The President of the Chamber granted the applicants' request not to have the second applicant's name disclosed. The President of the Chamber further decided of his own motion to grant the first applicant anonymity pursuant to Rule 47 § 3 of the Rules of Court.

2. The applicants were represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicants alleged under Article 6 § 1 of the Convention and under Article 7 of the European Convention on the Exercise of Children's Rights that the length of the domestic court proceedings relating to the child custody and contact arrangements had been excessive. They further alleged, in substance under Article 8 of the Convention that, as a result of the ineffectiveness of the proceedings, the first applicant was prevented from having contact with the second applicant and that the national authorities failed to protect the interests of the second applicant.

4. On 2 September 2008 the President of the Third Section decided to communicate the complaint concerning delays in the child custody and contact arrangements proceedings to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background of the case

5. The first applicant, S.Z., is a Slovenian national who was born in 1955 and lives in Celje. The first applicant is the father of the second applicant, N.Z.

6. The first applicant lived in an unmarried partnership (*zunajzakonska skupnost*) with O.Č. for several years. On 18 July 1997 their daughter, the second applicant, was born.

7. Following the separation of the first applicant and O.Č. in 2001, the second applicant lived with O.Č., her mother.

8. In 2001 and 2002 O.Č. was suffering from a mental disorder and was consequently treated in a psychiatric hospital in Vojnik. While she was hospitalised the first applicant took care of the second applicant.

B. Proceedings before the Civil Court concerning custody and contact arrangements

9. On 22 June 2004 O.Č. brought an action in the Celje District Court (*Okrožno sodišče v Celju*) seeking sole custody of the second applicant.

10. On 18 August 2004 the court requested the Celje Social Work Centre (*Center za socialno delo Celje*) to deliver an opinion establishing with which parent the child's interests would be better protected. The court received the report on 21 September 2004. The Celje Social Work Centre informed the court that the first applicant and O.Č. had not come to an agreement concerning the custody issue before 22 June 2004, the date the action was brought to the court by O.Č. It also observed that O.Č. had been taking care of the second applicant properly and that the first applicant had not expressed any objection to the second applicant's staying with her mother, on condition that he was granted contact rights. The Celje Social Work Centre also found that O. Č. was not preventing contact between the applicants.

11. On 7 March 2005 the court received an additional report from the Celje Social Work Centre. The latter informed the court that the first applicant wished to have joint custody of the second applicant. However, he would agree for O. Č. to be granted sole custody only if O. Č. informed him daily about how the second applicant was. On this occasion the Celje Social Work Centre also informed the court that a report had been requested from

the second applicant's school as well as from O. Č.'s psychiatrist. In this connection, on 14 March 2005, the court received a report from O. Č.'s psychiatrist, stating that O. Č. was refusing treatment. The psychiatrist further considered that the question of capacity to take care of the second applicant was very complex and that therefore only an expert in psychiatry could compile a credible report.

12. Also on 14 March 2005 the court held a hearing and decided to appoint an expert in psychiatry.

13. On 17 March 2005 the first applicant requested to be exempted from paying the court fees. On 28 March 2005 the court upheld the first applicant's request.

14. On 4 April 2005 the court appointed an expert in psychology, D.T., in order to determine which parent should be granted custody.

15. Subsequently, on 8 April 2005, O.Č. requested that the expert D.T. be relieved of his duties since he had previously treated her medically.

16. On 11 April 2005 the court appointed a new expert in clinical psychology, M.G.V.

17. On 9 May 2005 the court received a letter from O.Č.'s psychiatrist, stating that O.Č., who had been suffering from a productive psychosis, had been refusing treatment.

18. Relying on that letter, the first applicant, on 8 June 2005, requested that an interim contact order be issued pending the outcome of the main civil proceedings.

19. On 20 June 2005 the expert M.G.V. submitted her report. Assisted by a psychiatrist who was invited to participate in the examination process, the expert observed that both parents suffered from a mental disorder. She concluded that custody could nevertheless be granted to O.Č. on condition that she received appropriate medical treatment, while regular contact should be granted to the first applicant.

20. Also on 20 June 2005 the court requested the Celje Social Work Centre to inform it about the progress on the contact agreement between the first applicant and O.Č.

21. On 30 June 2005 the Celje Social Work Centre submitted a report in which it informed the court that the first applicant had, on 6 April 2005, requested a formal contact arrangement, claiming that O.Č. had, since 31 March 2005, prevented him from having contact with the second applicant. Subsequently, the Celje Social Work Centre had prepared a draft agreement but O.Č. had refused to sign it, claiming that the court would in any event arrange contact rights in contentious civil proceedings. In addition, the Celje Social Work Centre informed the court that O.Č. and the second applicant had recently moved out of their flat and had been living in special sheltered accommodation for homeless mothers (*materinski dom*).

22. On 5 July 2005, further to the above-mentioned report by the Celje Social Work Centre and relying on the fact that the second applicant had

been living in sheltered accommodation, the first applicant again requested that an interim measure be ordered granting him regular contact with the second applicant.

23. Meanwhile, on 1 July 2005, the court gave a decision concerning the expert's fees.

24. On 12 July 2005 the first applicant brought a counterclaim, seeking sole custody of the second applicant and child maintenance. He also proposed that contact should be granted between O.Č. and the second applicant.

25. On 23 August 2005 the first applicant cancelled the power of attorney in respect of his lawyer.

26. On 27 September 2005 the first applicant, represented by a new lawyer, lodged preliminary written submissions which modified and extended his claim seeking sole custody of the second applicant and child maintenance, granting, on the other hand, regular contact in respect of O.Č. As an alternative, he sought regular contact with the second applicant and also requested that other relatives have contact with the second applicant. He moreover asked that an interim measure be taken in respect of all his requests.

27. On 28 September 2005 the court held a hearing. Subsequently, the court gave a decision, finding that the first applicant's request concerning contact between the second applicant and other relatives as well as his request for an interim measure to that effect should have been considered in non-contentious proceedings. That part of the claim was thus declared to be outside the court's jurisdiction.

28. Meanwhile, on an undetermined date O.Č. lodged a criminal complaint against the first applicant alleging sexual abuse of the second applicant. It seems that, also on an undetermined date, the first applicant lodged a criminal complaint against O.Č. for neglecting the child.

29. On 4 October 2005 the court requested O.Č.'s psychiatrist to inform it whether O.Č. was receiving treatment. It further requested the Celje Social Work Centre to inform it as regards O.Č.'s state of health and also the fact that she was living in sheltered accommodation for homeless mothers. The court also requested the District Public Prosecutor's Office to update it on the progress of the criminal proceedings instituted against the first applicant.

30. Subsequently, on 19 October 2005, the District Public Prosecutor's Office informed the court that an expert would be appointed in order to determine whether the second applicant had been sexually abused.

31. On 24 October 2005 the court received a report from O.Č.'s psychiatrist stating that O.Č. had been refusing treatment. The psychiatrist also observed that she had been calmer since she and the second applicant had been living in sheltered accommodation.

32. On 25 October 2005 the first applicant lodged preliminary written submissions urging the court to order the interim measure sought on 27 September 2005.

33. On 28 November 2005 the court rejected the first applicant's request for an interim measure in respect of custody and child maintenance as well as his alternative claim to have contact granted with the second applicant (see paragraph 26 above). Nevertheless, the court, of its own motion and in different terms, granted contact between the two applicants (each Wednesday for one hour).

34. On 13 December 2005 the first applicant appealed against this decision.

35. On 14 December 2005 the court received a report from the Celje Social Work Centre in which the latter observed, *inter alia*, that contact between the applicants was in the child's best interest. It further observed that contact was taking place in accordance with the court decision of 28 November 2005.

36. On 5 January 2006 the Celje Higher Court (*Višje sodišče v Celju*) quashed the first-instance court's decision concerning the interim order and remitted the case for re-examination.

37. On 19 and 26 January and 3 February 2006 the first applicant urged the court to re-examine the case and order the requested interim measure.

38. Meanwhile, on 24 January 2006, O.Č. lodged a preliminary written submission in which she informed the court that her state of health had improved. As a result, she requested the court to again appoint an expert or to order an additional report to be drawn up. In addition, she submitted that, since criminal proceedings had been initiated against the first applicant, who was suspected of sexual abuse of a minor, he should not be trusted with long-term custody of the second applicant.

39. On 2 February 2006 the court scheduled a hearing. On the same day it requested the Celje Social Work Centre to inform it, *inter alia*, about the conditions in which the first applicant was living, O.Č.'s state of health, the second applicant's performance at school, and also to interview the second applicant. The court requested a swift response. In addition, the court requested O. Č.'s psychiatrist to provide information on her treatment and inquired at the District Public Prosecutor's Office about the criminal proceedings instituted against the first applicant. The District Public Prosecutor's Office responded on 6 February 2006. In its report it submitted that investigating measures against the first applicant for sexual assault were still in progress. They also informed the court about criminal proceedings instituted against O.Č. for fraud and forgery of documents. The Celje Social Work Centre responded on 7 February 2006, observing that the second applicant had expressed the wish to live with her mother. O.Č.'s psychiatrist responded on 10 February 2006 stating that O.Č. was continuing with her treatment and that her health had not worsened. The psychiatrist also

expressed the view that O.Č. was a good mother and was emotionally attached to the second applicant.

40. In the meantime, on 9 February 2006 the court held a hearing and requested the Psychiatric clinic (*Psihiatrična klinika*) to appoint an expert in psychiatry. Furthermore, the court issued a decision whereby it rejected the first applicant's request for an interim measure concerning custody and child maintenance but upheld his subsidiary request to have contact with the second applicant.

The decision was in the relevant part worded as follows.

“The child may see her father every Monday, Wednesday and Friday after school. Her father is to collect her from her mother's place at 4 p.m. and be with her until 6 p.m.

The child may also see her father every other Saturday; her father is to collect her from her mother's place at 9 a.m. and be with her until 6 p.m.

The child shall spend the winter holidays with her mother, the spring holidays (*prvomajske počitnice*) with her father, the autumn holidays (*krompirjeve počitnice*) with her mother, the Christmas holidays, from 24 December to 29 December, with her father and from 29 December to 2 January with her mother.

During the school summer holidays the child shall spend four weeks with her father (two weeks in July and two weeks in August)”

41. On 22 February 2006 O.Č. lodged a preliminary written submission in which she submitted to the court a lease contract for the new apartment in which she was now living with the second applicant.

42. On 25 April 2006, further to the court's request, the Celje Police Station informed the court that they had dealt with several matters concerning the second applicant. For example, O.Č. had alleged that the second applicant had been kidnapped when she was taken out of kindergarten by the first applicant. On another occasion she expressed the fear that the first applicant, who wanted to take the second applicant for a walk, would take her to an unknown destination. As to the first applicant, he has twice alleged that O.Č. took the first applicant away without telling him where.

43. On 11 and 24 May 2006 the first applicant lodged preliminary written submissions, in which he requested to be informed of the name of the expert appointed by the Psychiatric clinic (see paragraph 40 above).

44. On 15 May 2006 the court received a report from the Celje Social Work Centre in which the latter observed that O.Č.'s apartment was adequately furnished and clean.

45. On 7 June 2006 the first applicant requested the court to fine O.Č., since she had not complied with the court's decision of 9 February 2006 in that she had prevented contact between 27 April and 5 June 2006. On 20 June 2006 O.Č. lodged a preliminary written submission concerning the

first applicant's allegations in this regard. She claimed that the first applicant himself did not want to have contact with the second applicant.

46. Further to the first applicant's request to fine O.Č., the court requested the Celje Social Work Centre to draw up a report concerning the execution of the first applicant's contact rights. The report was submitted on 29 June 2006. The Celje Social Work Centre informed the court that it did not keep any official records in this regard. However, the first applicant had appeared on their premises, claiming that on 28 April 2006 the contact had not taken place. Furthermore, the Celje Social Work Centre informed the court that O.Č. had been counselled by a social worker and that she had been trying hard to ensure the healthy development of the second applicant. It appears from the report that during counselling O.Č. had told the social worker that the second applicant had not spent the whole period of the spring holidays (*prvomajske počitnice*) with the first applicant. On another occasion, on 12 May 2006, O.Č. alleged abusive behaviour by the first applicant towards the second applicant. It seems that the first applicant took the second applicant to the hairdresser, where they cut her hair. On 22 May 2006 O.Č. informed the Celje Social Work Centre that the contact had taken place as agreed, but that the second applicant did not wish to spend a night at the first applicant's place. The Celje Social Work Centre also pointed out that fining O.Č. would be an unnecessary burden on O.Č.'s financial situation.

47. On 21 August 2006 the first applicant lodged preliminary written submissions in which he stated that O.Č. was suffering from a mental illness and therefore had a distorted sense of reality. He again sought sole custody of the second applicant and requested the court to urge the appointed expert to submit a report.

48. On 25 September 2006 the first applicant for the second time requested the court to fine O.Č. as she had again prevented contact, on twenty-three occasions between 9 June and 22 September 2006.

49. On 5 October 2006 the appointed expert in clinical psychology, (B.Z.), submitted his report. He found that the second applicant wished to have unrestricted contact with the first applicant and that any change in existing circumstances would complicate the situation.

50. On 25 October 2006 the court again requested the Celje Social Work Centre and the District Public Prosecutor's Office to provide similar information to that which had been requested on 4 October 2005 and 2 February 2006 (see paragraphs 29 and 39 above). In addition, the court asked the Celje Social Work Centre to interview the second applicant with a view to ascertaining where would she want to live and whether she would want to have contact with the first applicant.

51. On 8 November 2006 the District Public Prosecutor's Office informed the court that the request for a criminal investigation in connection with the alleged sexual abuse of the second applicant had been dismissed,

but the District Public Prosecutor's Office had lodged an appeal. All the charges against O.Č. concerning neglect of the child were dropped.

52. On 4 December 2006 the Celje Social Work Centre submitted its report concerning two interviews with the second applicant. During the first interview, the second applicant expressed the wish to live with her mother and to have regular contact with the first applicant, as she loved both her parents. The second interview was not successful, since the second applicant left the room in tears. The Celje Social Work Centre concluded that the second applicant was vulnerable and anxious; a psychological assessment would therefore be helpful to her. Further, the Celje Social Work Centre informed the court that the second applicant had been absent from school on several occasions. As regards O.Č.'s state of health, it observed that according to the O.Č.'s psychiatrist, her state of health had not worsened in the last year since she had been following the treatment.

53. On 5 December 2006 the first applicant lodged preliminary written submissions. He requested the court to explain why an expert in psychology had been appointed although the court had decided to appoint a psychiatrist.

54. On 6 December 2006 the court held a hearing. It decided to transfer the file again to the Psychiatric clinic, which submitted a report of an expert in psychology, in contradiction to the court's decision. On 12 December 2006 the court gave a decision ordering the Psychiatric clinic to appoint a psychiatrist. However, on 31 January 2007, the Psychiatric clinic informed the court that an expert in clinical psychology would be appointed. Further to the court's additional request, the Psychiatric clinic, on 22 February 2007, finally appointed a psychiatrist, M.Ž.T.

55. On 28 February 2007 the court again requested the Celje Social Work Centre to enquire about the second applicant, in particular whether she was absent from school. In its response of 13 March 2007 the Celje Social Work Centre observed that the second applicant was no longer absent from school and that O.Č. was taking good care of her. In addition, it submitted that O.Č. had bought a new apartment and that, according to O.Č., the first applicant had not paid child maintenance for several years.

56. In the meantime, on 2 March 2007 the first applicant lodged a supervisory appeal under the Act on the Protection of the Right to a Trial without Undue Delay ("the 2006 Act") in order to accelerate the proceedings.

57. On 6 March 2007 the expert M.Ž.T. submitted her report. She made a synthesis of O.Č.'s state of health: the latter had been suffering from a paranoid psychosis and who for that reason had been hospitalised five times between 1998 and 2007. The expert also observed that O.Č. had been refusing treatment for a long time and was not aware of her medical condition. In O.Č.'s interview the latter stated that she had not allowed the second applicant to have contact with the first applicant from 31 January 2007 on, as the second applicant was afraid of her father. The expert further

examined the second applicant, who told her that she liked spending time with the first applicant. The first applicant did not attend the interview with the psychiatrist. After the examination, the expert concluded that O.Č. had been taking good care of the second applicant, who could be in danger only if she was exposed to the active phase of O.Č.'s illness. However, if O.Č. followed her treatment the prognosis would be good for her. As far as the contact between the applicants is concerned she established that they should continue to have contact as they have up to now, or even spend more time together if the second applicant so wished. However, in the expert's view, the first applicant should be more creative and should share more activities with the second applicant.

58. On 26 March 2007 the court again requested the Celje Social Work Centre and O.Č.'s psychiatrist to provide similar information to that which had been requested on 2 February 2006 (see paragraph 39 above). In addition, the court asked the Celje Social Work Centre to make a recommendation as to which of the parents should be awarded custody and to establish whether the contact the non-custodial parent, whichever that may be, would have with the second applicant would be in the child's best interests. The Celje Social Work Centre's report of 23 May 2007 did not contain an answer as to which of the parents should be awarded custody. It stated that the opinion in this connection should have relied on the report concerning O.Č.'s state of health.

59. On 30 March 2007 the court was informed that criminal proceedings had been brought against the first applicant for endangering public safety and against O.Č. for fraud.

60. On 13 April 2007 the president of the court, relying on section 5, subsection 1, and section 6, subsection 4, of the 2006 Act, responded to the supervisory appeal (see paragraph 56 above), stating that a hearing would be held within four months of receipt of the supervisory appeal, namely on 7 May 2007. In the meantime, on 13 April 2007, the court called off that hearing since O.Č.'s attorney was not able to keep his appointment.

61. Also on 13 April 2007 the first applicant lodged preliminary written submissions. He requested an interim measure granting him custody to be issued immediately, while the contact between O.Č. and the second applicant be ceased or carried out under supervision.

62. On 16 April 2007 the court received a report from O.Č.'s psychiatrist, which revealed that O.Č. had been seeing her regularly and that the medical treatment she had been following had no impact on her cognitive or mental capacities and had therefore not impeded her relations with the second applicant.

63. On 18 April 2007 the court was informed that the first applicant had been told by the Celje Social Work Centre that it could not ensure that contact would take place in the way the court had determined it should. Subsequently, O.Č. lodged a written preliminary submission, emphasising,

inter alia, that she had not been preventing contact; but that it was rather the second applicant who had refused to have contact with the first applicant.

64. On 26 April 2007 the O.Č.'s psychiatrist informed the court that O.Č.'s mental illness seemed to be developing further and that she had been again refusing treatment.

65. In the meantime, the court scheduled an informal interview with the second applicant for 7 May 2007. However, the interview was adjourned *sine die* at the first applicant's request as the second applicant was in a state of shock owing to her mother's placement in a mental institution two days before the interview was due to take place. Subsequently, the court requested the mental institution where O.Č. had been placed to inform it as to how long the treatment would take and about her state of health when she was admitted to the hospital. The hospital was also requested to give an opinion as to whether O.Č. was capable of caring for the second applicant, given her state of health before she was admitted to hospital.

66. The hearing scheduled for 25 May 2007 was adjourned because the first applicant fell ill.

67. However, later on the same day and outside the hearing, the court interviewed the second applicant. The latter told the court that she did not like to spend time with the first applicant because there were no toys at his place, and that she did not want to stay with him while O.Č. was hospitalised. She preferred staying with her grandmother or her older brother. She also said that after the first applicant took her to the hairdresser to have her hair cut, she had refused to see him on two occasions. She was however willing to see him in future in order to ensure contact. Further to the interview, the court requested the Celje Social Work Centre to find a third person willing to step in as a foster parent as well as to prepare the second applicant psychologically for this possibility.

68. In the meantime, on 21 May 2007, O.Č. was released from the hospital.

69. On 12 June 2007 the court requested the expert, M.Ž.T., to draw up an additional report. The expert was asked to interview the first applicant and to determine whether it would be in the child's best interest to award him custody. The court also requested the expert to invite in the examination process an expert in psychology who should examine and interview the second applicant. In its request the court emphasised that the matter was very urgent.

70. On 16 August 2007 the expert M.Ž.T. submitted an additional report by which she informed the court that the first applicant had refused to appear at the interview. She also observed that the second applicant was emotionally attached to O.Č. Taking into consideration O.Č.'s state of health and the second applicant's attachment to her mother, the expert did not advocate placing the second applicant in foster care. She recommended that

the second applicant stay with O.Č. and be cared for by the first applicant during acute episodes of O.Č.'s illness.

71. The hearing scheduled for 29 August 2007 was called off due to the fact that the expert in psychology had not yet been able to examine the second applicant.

72. On 28 August 2007 the Celje Social Work Centre submitted a supplementary report to the one submitted on 23 May 2007 (see paragraph 58 above) and informed the court that O.Č. had in the meantime been examined by her psychiatrist, who had observed a deterioration in O.Č.'s state of mental health but however had the impression that O.Č. was willing to follow the treatment. The Celje Social Work Centre also informed the court that the first applicant had failed to appear at the interview scheduled to determine whether he could take care of the second applicant or whether the second applicant should rather be put in foster care, to which O.Č. was not opposed. Having regard to the fact that the first applicant refused to appear at the interview, that he had been preventing the second applicant from being included in the psychological assessment, and that O.Č.'s health was not stable, the Celje Social Work Centre concluded that the second applicant should preferably be put in foster care.

73. In September 2007, an expert in psychology, T.P., who had been invited to join the examination process (see paragraph 69 above), experienced difficulties in interviewing the second applicant, as O.Č. had twice failed to keep appointments.

74. On 19 September 2007 the first applicant lodged preliminary written submissions contesting the expert reports from 6 March 2007 and 16 August 2007 (see paragraphs 57 and 70 above) and requested that an interim measure be ordered granting him custody of the second applicant.

75. The hearing scheduled for 21 September 2007 was called off because the first applicant fell ill. The court scheduled a new hearing for 22 November 2007.

76. On 11 October 2007 O.Č. appeared at the court, stating that she had wanted to take the second applicant to the assessment but the first applicant had prevented her from doing so and had taken the second applicant to school.

77. On 7 November 2007 the Celje Social Work Centre informed the court that the person who had been summoned to the hearing scheduled for 22 November 2007 could not attend it due to an accident. The court immediately requested the Celje Social Work Centre to inform it who was replacing her in the case.

78. On 12 November 2007 the court again requested O.Č.'s psychiatrist to inform it whether she had been following the treatment and about her current state of health. The court also requested information concerning the criminal complaint lodged against the first applicant by O.Č. for having the second applicant's hair cut. On 16 November 2007 the District Public

Prosecutor's Office informed the court that the charges against the applicant had been dropped, as the request for prosecution made by O.Č. had been lodged out of time. O.Č.'s psychiatrist responded on 20 November 2007. In her letter she observed that O.Č.'s state of health had worsened since she had moved to a new apartment, where she constantly felt threatened.

79. The second applicant was again invited to attend an interview with the expert T.P., scheduled for 12 November 2007. However, the second applicant again failed to appear. Subsequently, the expert suggested interviewing the first applicant to establish whether he understood the role of a parent and the needs of a growing child, as well as to make a personal assessment. The expert also informed the court that he would not be able to attend the hearing scheduled for 22 November 2007.

80. On 22 November 2007 the court held a hearing at which the parties concluded a temporary settlement of the case. The first applicant was granted provisional custody of the second applicant pending the outcome of the proceedings, while O.Č. was granted regular weekly contact.

81. On 14 December 2007 the expert M.Ž.T., who had interviewed the first applicant in the meantime, submitted an additional psychiatric report, observing that it would be in the second applicant's best interest to have contact with both parents, as O.Č. did not seem to be reliable enough due to her illness, while the first applicant's personal characteristics made him unsuitable to raise a ten-year-old traumatised child.

82. Further to the interview with the second applicant on 21 December 2007, the expert T.P. submitted a report. He observed that the second applicant's best interests would be ensured by placing her in foster care, while retaining for both parents the opportunity to have contact with her.

83. On 6 February 2008 the court appointed a special representative to the second applicant (for the appointment of a special representative, see "Relevant domestic law" below, Civil Procedure Act, section 409) – hereinafter "the special representative".

84. On 21 February 2008 the court requested information on the second applicant's school performance and on O.Č.'s health. The second applicant's school submitted its reply on 14 March 2008. It informed the court that the second applicant's school performance had improved and that the first applicant had been helping the second applicant a lot. O.Č.'s psychiatrist responded on 21 March 2008, informing the court that O.Č. had been seeing her regularly but refusing treatment.

85. On 8 April 2008, further to the request of the special representative, the court ordered the re-examination of the second applicant by the expert in psychology. However, on 30 April 2008, the expert informed the court that both applicants had failed to appear. He explained that, having regard to the considerable documentation in the case, he could reach conclusions even without interviewing the second applicant. Nevertheless, he expressed

willingness to interview the second applicant if the court deemed it necessary. Further to this information, the court did not insist on interviewing the second applicant.

86. On 13 May 2008 the expert T.P. submitted an additional report. He concluded that the first applicant seemed to be a more suitable guardian of the second applicant than O.Č. or a foster family as the second applicant seemed to be happy, tidy and had good grades since she had been living with the first applicant. However, he refused to speculate as to what extent the first applicant would be able to offer the second applicant a warm and loving environment. On the contrary, on 28 May 2008, the Celje Social Work Centre submitted its report in which it came to the conclusion that neither of the parents was suitable to be granted custody and as a result the second applicant should be placed temporarily in foster care. In this connection, they also indicated a suitable person.

87. On 29 May 2008 the court held a hearing. The first applicant and O.Č. came to an agreement to change part of the temporary court settlement concluded at the hearing of 22 November 2007 (see paragraph 80 above), as far as the contact between the second applicant and O.Č. was concerned.

88. On 30 May 2008 the court again ordered an additional expert opinion to be drawn up by the expert T.P. He was requested to assess the emotional state of the second applicant as well as the relationship between the applicants and between the second applicant and O.Č.

89. On 2 September 2008 O.Č.'s psychiatrist informed the court that she had had no contact with O.Č. for several months.

90. On 3 September 2008 the second applicant's school informed the court that the second applicant's school performance had improved and that she had told her teacher that she wanted to live with the first applicant.

91. Also on 3 September 2008 the court was informed about O.Č.'s hospitalisation in the psychiatric stabilisation unit. It appeared that she had been taken to the hospital on 18 August 2008.

92. On 4 September 2008 the court held a hearing. The first applicant and O.Č. concluded an enforceable court settlement by which the first applicant was awarded full custody of the second applicant and O.Č. was ordered to pay child maintenance. She was also granted contact every weekend, on Saturdays from 9 a.m. to 4 p.m. and on Sundays from 10 a.m. to 2 p.m.

93. On 23 December 2008 the applicants lodged a claim for just satisfaction in respect of unreasonable length of proceedings with the State Attorney's Office. Their claim contained explicit reference to section 26 of the Constitution (see "Relevant domestic law" below).

94. On 6 February 2009 the State Attorney's Office responded to the applicants, observing that an identical claim for just satisfaction had already been lodged with the Court. They further informed the applicants that new domestic legislation had been enacted ("the 2006 Act") in order to remedy

any alleged unreasonable length of proceedings. As a result, the applicants were requested to confirm whether they wish the State Attorney's Office to examine the claim under the 2006 Act. On 18 February 2009 the applicants responded that the just satisfaction claim lodged with the State Attorney's Office was only a subsidiary one and that they wished to maintain their just satisfaction claim made before the Court. Consequently, the State Attorney's Office dismissed their claim. The part of the claim concerning the second applicant was dismissed because the second applicant was not party to the proceedings in question and could therefore not be considered a victim of the violation in respect of the undue length of the proceedings. The State Attorney's Office further dismissed the claim as a whole due to the fact that the claim was made under section 26 of the Constitution, which was from 1 January 2007, when the 2006 Act was enacted, no longer a legal basis for a claim for just satisfaction.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution

95. The relevant provisions of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) read as follows:

Article 26

“Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office. ...”

B. Family legislation in force at the material time

96. On 23 April 2003 the Constitutional Court delivered a landmark decision by which it found several provisions of the Marriage and Family Relationship Act (“the MFR Act”, *Zakon o zakonski zvezi in družinskih razmerjih*, Official Gazette SRS, no. 15/1976) concerning custody and contact arrangements to be unconstitutional. Subsequently, an amendment was enacted by Parliament in January 2004 (Official Gazette of the Republic of Slovenia, no. 16/2004). It entered into force on 1 May 2004.

97. Further to the above-mentioned legislative changes, the courts acquired jurisdiction to adjudicate on these issues. Since then, parents may reach agreements (outside divorce proceedings) in non-contentious civil proceedings. If an agreement cannot be reached, the issue of custody is determined in contentious civil proceedings. The issue of contact arrangements can be determined in non-contentious civil proceedings if it is

not raised together with the issue of custody (sections 78, 105 and 106 as amended in 2004). In particular, sections 105 and 106 provide, as far as relevant:

Section 105

“...

If the parents, with the assistance of the Social Work Centre, cannot reach an agreement on the custody of children (*varstvo in vzgoja otrok*), the court shall decide at the request of one or both parents that all the children are in the custody of one of them or that some children are in the custody of one and the others in the custody of the other parent. The court may, of its own motion, decide to place all or some of the children in the custody of a third person. Before the decision is taken by the court, the opinion of the Social Work Centre shall be obtained. The court shall take the child's view into account if the child expresses his or her view

Section 106

“A child has the right to have contact with both parents. Both parents have the right to have contact with their children. Contact should be in the child's interest first and foremost.

The parent with whom the child lives ... shall avoid anything that hinders or prevents such contact. He or she must strive to maintain an appropriate attitude in the child in respect of contact with the other parent...

...

The court can withdraw or limit the right to contact only if this is necessary for the protection of the child's interests...”

98. Section 106 of the amended MFR Act also states that, if the custodial parent denies the non-custodial parent contact with the child and contact cannot be secured with the assistance of the Social Work Centre, the court shall, at the request of the non-custodial parent, transfer custody to him or her if this is in the interests of the child.

99. Section 107 of the amended MFR Act provides, as far as relevant:

Section 107

“Minors shall be represented by their parents.

(...)

100. Section 113 provides that both parents shall mutually and in accordance with the child's best interests exercise parental rights. If they cannot reach an agreement, the Social Work Centre shall assist. It further states that when the parents do not live together and do not have joint custody, they shall decide mutually on all issues which are decisive for the

child's development in accordance with the child's best interest. If they cannot reach an agreement, the Social Work Centre shall assist. However, all questions concerning the child's everyday life shall be decided by the custodial parent. Finally, if the parents, even when assisted by the Social Work Centre, cannot reach an agreement, the court decides on these issues in non-contentious proceedings.

101. Section 116 states the circumstances in which parental rights can be withdrawn:

“The parent who abuses his or her parental rights or abandons a child or demonstrates unwillingness to take care of the child or in any other way neglects his or her responsibilities shall be deprived of his or her parental rights by a court judgment.”

102. Lastly, section 10a of the amended MFR Act provides that cases covered by the MRF Act should be processed as a matter of priority.

C. Relevant civil procedure rules

103. The relevant provisions of the Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette no. 26/1999, in force since 14 July 1999, as amended on 15 January 2004) read as follows:

Section 408

“In marital disputes and disputes concerning relationships between parents and children the courts shall of their own motion take all steps necessary to safeguard the rights and interests of the children...”

In disputes concerning custody and maintenance of children and in disputes concerning contact between children and parents or other persons, the panel is not bound by the parties' requests. Where so provided by the law, the panel may take decisions even without any request being made.

For the protection of the interests of persons mentioned in the first paragraph, the panel may investigate matters which have not been raised by the parties, and collect information necessary for its decision...”

Section 409

“...”

If there is a conflict of interests between the child and his or her statutory representative (*zakoniti zastopnik*), the court shall appoint a special representative for the child. The same shall be done if, in the circumstances of the case, the court deems this necessary for the protection of the child's interests.”

Section 410

“When deciding in disputes concerning custody and maintenance of children and in disputes concerning contact between children and parents or other persons, the court shall inform the child, if he or she is able to understand and assess the meaning of the proceedings and the consequences of the court's decision, that proceedings have been instituted and about his or her right to express an opinion. Taking into account the age of the child concerned and other circumstances of the case, the sitting judge may invite the child to be interviewed in the court's chambers or, if necessary, outside the court, with the assistance of the of Social Work Centre or school counsellor...”

Section 411

“During proceedings concerning marital disputes and disputes relating to relationships between parents and children, the court may, at the request of one of the parties or of its own motion, make interim orders (*začasne odredbe*) concerning child custody and maintenance as well as interim orders withdrawing or restricting contact arrangements.

...”

D. The Act on the Protection of the Right to a Trial without Undue Delay

104. The Act on the Protection of the Right to a Trial without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006 – “the 2006 Act”) has been implemented since 1 January 2007.

105. The 2006 Act provides for remedies to expedite pending proceedings – a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*). In addition to these acceleratory remedies, the 2006 Act also provides for the possibility of obtaining redress through a compensatory remedy, by instituting the proceedings for just satisfaction (*zahteva za pravično zadoščenje*) within nine months of the “final resolution” of the case.

106. For a detailed presentation of the 2006 Act, see *Nežirović v. Slovenia* (dec.) no. 16400/06, 25 November 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

107. The applicants complained that their right to have their family life respected had been breached on account of delays in the court proceedings concerning child custody and contact arrangements. They also complain that as a result of the ineffectiveness of the proceedings, the first applicant could not have contact with the second applicant and that the national authorities had failed to protect the interests of the second applicant.

108. The relevant part of Article 8 reads as follows:

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

A. Admissibility

1. Locus standi, Article 34 of the Convention

(a) The parties' arguments

109. The Government objected to the first applicant's capacity to act on behalf of the second applicant in the proceedings before the Court. They submitted that at the time the first applicant lodged the application O.Č. had custody of the second applicant, while the first applicant retained contact rights. Referring to the *Hokkanen v. Finland* case (23 September 1994, § 50, Series A no. 299-A), the Government argued that only O.Č., who had been the second applicant's statutory representative, was entitled to lodge an application on behalf of the second applicant.

110. The Government further claimed that the applicants had not had victim status as regards their complaint under Article 8 since November 2007, when the first applicant was granted custody of the second applicant.

111. The applicants did not comment on the issue but maintained that the first applicant was also the second applicant's statutory representative.

(b) Relevant principles

112. The Court reiterates that a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, *Nielsen v. Denmark*, judgment of 28 November 1988, Series A no. 144, §§ 56-57). Moreover, the conditions governing individual applications are not necessarily the same as the national criteria relating to

locus standi. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so (see *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142, § 31).

113. Whether a natural parent has standing to act on his child's behalf in proceedings before the Court is dependent on whether the party who opposes the natural parent and is entitled to represent the child under domestic law can be deemed to effectively protect the child's Convention rights (see *Siebert v. Germany* (dec.), no. 59008/00, 9 June 2005).

114. The Court has found in previous cases that in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, even though the parent has been deprived of parental rights, his or her standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf too, in order to protect his or her interests (see, for comparison, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, and *Siebert*, cited above).

115. On the contrary, the Court has drawn a different conclusion in certain cases concerning a dispute between a mother who had custody over a child and the child's natural father about the latter's contact with the child. It found that such conflicts concerning parental rights other than custody do not oppose parents and the State on the question of deprivation of custody where the State as holder of custodial rights cannot be deemed to ensure the children's Convention rights. In cases arising out of disputes between parents, it is the parent entitled to custody who is entrusted with safeguarding the child's interests. In these situations, the position as natural parent cannot be regarded as a sufficient basis to bring an application on behalf of a child (see *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, 1 December 2009; *Sahin v. Germany* (dec.), no. 30943/96, 12 December 2000; *Petersen v. Germany* (dec.), no. 31178/96, 6 December 2001; and *Wildgruber v. Germany* (dec.), no. 32817/02, 16 October 2006).

(c) The Court's assessment in the present case

116. The Court notes that the present case should be distinguished from the above-mentioned cases concerning disputes between a child's custodial and non-custodial parent. In the present case, although the second applicant was living with O.Č. at the time the application was lodged with the Court, no official decision granting her custody had been adopted by the domestic courts before the date of the lodging of the application. Moreover, on 22 November 2007, the first applicant obtained custody of the second applicant and continues to be her custodial parent.

117. In view of the above, the Court considers that effective protection of the second applicant's rights under the Convention requires that the first applicant has standing to apply to the Court on her behalf too.

118. As far as the second limb of the Government's objection is concerned (see paragraph 110 above) the Court firstly notes that the applicants complained mainly about the lack of contact between them. The Court further observes that from 22 November 2007 the first applicant was the second applicant's sole custodian and accordingly had from that date unfettered contact with the second applicant. In these circumstances, the Court accepts the preliminary objection and concludes that the applicants may no longer claim to be victims of the alleged violation of Article 8 in respect of the period of time after 22 November 2007. This part of the application is, in consequence, incompatible *ratione personae*. The Court will therefore limit its examination of the merits to the period before that date.

2. Exhaustion of domestic remedies

(a) The Government's arguments

119. The Government invited the Court to declare the application inadmissible for failure to exhaust domestic remedies.

120. They argued that as proceedings had been finally resolved on 4 September 2008, the first applicant, who successfully made use of the supervisory appeal, could have initiated proceedings for just satisfaction within nine months of the stated date, in accordance with the provisions of the 2006 Act. However, the applicant insisted on his request that the just satisfaction was to be awarded by the Court. He therefore failed to make use of the available domestic remedy, which should be considered an effective one in terms of the alleged violation of Article 6 as well as the alleged violation of Article 8 of the Convention, the latter being a consequence of the former.

121. In this connection the Government submitted that no cases in which the parties sought just satisfaction for delays in proceedings concerning custody disputes or contact arrangements had been brought before the domestic courts under the 2006 Act so far. This was due to the short period that had elapsed since the introduction of the 2006 Act. On the other hand, the Government submitted copies of eight domestic court decisions issued in family-related cases where the parties had successfully availed themselves of acceleratory remedies.

122. In their further observations, the Government contested the applicants' arguments submitted in reply to the above objection (see paragraphs 124-128 below). In particular, they argued that the allegation that the 2006 Act was applicable only to complaints concerning proceedings which were instituted after 1 January 2007 was without foundation. As

regards claims for just satisfaction brought in respect of delays under the previous legislation, that is before the 2006 Act became operational, they had been dealt with under the general rules of civil obligations and therefore the claimants had been required to establish the extent of the damage suffered. The domestic case-law submitted by the applicants related to that prior situation and therefore could by no means be used to challenge the effectiveness of the 2006 Act.

123. As regards the effectiveness of the claim for just satisfaction which had been available to the applicants under the 2006 Act, the Government disputed all the applicants' contentions. In particular, the statutory criteria used by the State Attorney's Office and the courts for assessing compensation for non-pecuniary damage were comparable to those of the Court. The Government also submitted a copy of a domestic court judgement issued under the 2006 Act in one of the cases the Court had previously declared inadmissible for being premature (see *Carević v. Slovenia* (dec.), no. 17314/03, 3 June 2008). In that case the domestic court had awarded the applicant compensation for non-pecuniary damage relying on comparable cases decided by the Court and applying the principle that the compensation was considered reasonable if it amounted to forty-five percent of the sum that would have been awarded by the Court.

(b) The applicants' arguments

124. The applicants argued that a constitutional appeal was an ineffective remedy and submitted one case in which a decision concerning an interim custody and contact order was challenged. The constitutional appeal was in this case rejected as manifestly ill-founded (decision number Up-498/08, 15 April 2008). In another case referred to by the applicants the constitutional court dismissed on procedural grounds a constitutional appeal concerning alleged inactivity of the court in proceedings concerning enforcement of an interim contact order. The Constitutional Court found that no constitutional appeal lay against a conduct or omissions, such as a court's inactivity, but only against legal acts issued by public authorities (decision number Up-1044/05, 21 December 2005).

125. The applicants further argued that the proceedings in the present case had been conducted, for the most part, before 1 January 2007, when the 2006 Act started to be implemented. Therefore, as regards the period before 1 January 2007, the applicants submitted that they did not dispose of any effective remedy, which was established also in the Court's *Lukenda* judgment (*Lukenda v. Slovenia*, no. 23032/02, ECHR 2005-X). As far as the 2006 Act is concerned, the applicants submitted that, according to the domestic case-law, the 2006 Act was applicable only to proceedings instituted after 1 January 2007.

126. Further, the applicants were of the opinion that the 2006 Act was an ineffective remedy in theory and practice. They had lodged acceleratory

remedies, as provided for in the 2006 Act, but to no avail. They argued that the lodging of acceleratory remedies was an unreasonable formality which was burdensome for the applicants and the courts. The length of proceedings was a systemic problem in Slovenia and the situation could not be improved by acceleratory remedies. In support of their contention, the applicants submitted copies of more than a hundred decisions by which supervisory appeals and motions for deadline lodged by the applicants' lawyer in other unrelated cases had been rejected.

127. The applicants went on to argue that a just satisfaction claim was an equally ineffective remedy. The compensation offered by the State Attorney's Office or awarded by the domestic courts was normally only about ten to fifteen percent of the amount that would have been awarded by the Court. The amount fixed by the 2006 Act as the maximum compensation available for violation of the right to a trial without unreasonable delay was also incompatible with the Court's practice. Moreover, the domestic courts would award reimbursement of lawyers' fees only in part. The applicants also alleged that the provisions of the 2006 Act concerning deadlines, the requirement to refer to the case number when instituting remedies and the provisions concerning the courts' territorial jurisdiction made the remedies even more difficult to use.

128. The applicants further complained that in proceedings for compensation for undue delay parties were required to prove the damage they had suffered; that the parties were normally required to testify before the court, which was a very traumatic experience, in particular in family-related cases; that the courts were assessing a particular judge's responsibility for delays instead of accepting that the delays were a systemic problem; and that the courts applied domestic law wrongly and were biased. In this connection, the applicants submitted more than fifty domestic decisions concerning compensation for alleged unreasonable length of proceedings sought in claims that had been lodged with the domestic courts before 1 January 2007.

(c) The Court's assessment

129. With regard to the Government's objection concerning the exhaustion of the remedies available under the 2006 Act, the Court notes that this legislation introduced remedies concerning specifically the right to have one's case examined within a reasonable time, within the meaning of Article 6 § 1 of the Convention. However, in the present case it is not merely the excessive length of civil proceedings which is in issue, but the question whether, in the circumstances of the case seen as a whole, the State can be said to have complied with its positive obligations under Article 8 of the Convention (see *Eberhard and M. v. Slovenia*, cited above, § 105). The Court therefore rejects this objection of the Government as far as Article 8 issues are concerned.

B. Merits

1. *The parties' arguments*

130. The Court notes that some of the parties' arguments which referred to Article 6 § 1 also concerned in substance the issues raised under Article 8 of the Convention. The Court deems it appropriate to examine these arguments in the context of the latter provision (see *Kutzner v. Germany*, no. 46544/99, §§ 56 and 57, ECHR 2002-I, and *V.A.M. v. Serbia*, no. 39177/05, § 115, 13 March 2007).

(a) The Government's arguments

131. The Government argued that in the present case the State had complied with its positive obligations under Article 8. There was a proper legislative framework in place, and the authorities, who were guided by the best interests of the child, were sufficiently active.

132. The Government further argued that the case was a very complex and sensitive one. Having regard to the serious illness of O.Č. and the first applicant's personal characteristics, the courts needed to collect a lot of information and opinions from different authorities. Furthermore, the courts also had to take into consideration the criminal proceedings instituted against the first applicant for having committed an alleged criminal offence against the second applicant.

133. The Government also pointed out that the conduct of the first applicant had significantly contributed to the delay. In particular, the first applicant had not displayed enough diligence in keeping his appointments on several occasions; he had failed to appear, either alone or with the second applicant, at four medical examinations and refused to respond to invitations from the Celje Social Work Centre and the second applicant's special representative. Moreover, the court had to adjourn several hearings because of the first applicant. In the Government's view, the first applicant thus obstructed the proceedings.

134. The Government further pointed out that in the course of the proceedings an interim order granting contact between the applicants had been issued and a temporary settlement of the case granting custody to the first applicant had been reached between the parties. According to the Government the contact between the applicants was only occasionally not carried out as agreed, which was due to both parties to the proceedings. In this connection, the Government argued that in considering measures to be taken against O.Č. for non-compliance with the interim contact order the authorities had been guided by the best interests of the child. For that reason the authorities considered that imposing a fine on O.Č. would endanger her already weak financial situation and that therefore it was not an appropriate measure to take.

135. Lastly, the Government argued that only one set of proceedings had been conducted in this case, in which both the interim order and the main issue were dealt with.

(b) The applicants' arguments

136. The applicants submitted that the case ought to have been given priority, as required also by the domestic legislation. Nonetheless, the proceedings concerning the interim order as well as the first applicant's claim to be granted custody and contact were not conducted within a reasonable time. In addition, the applicants claimed that despite the fact that O.Č. had been preventing contact between the applicants, the court had failed to enforce the interim order.

137. The applicants further submitted that as a result of the ineffectiveness of the above proceedings the first applicant had been unable to have contact with the second applicant, which had caused irremediable harm. Moreover, due to the court's inactivity, the second applicant was a victim of trauma and atrocity as she had been left with her mentally ill mother for several years.

138. The applicants further submitted that all State authorities were required to act promptly and of their own motion to protect the interest of the second applicant. In this connection, the applicants argued that the court should have appointed suitably qualified experts without delay, instead of gathering irrelevant information from different authorities, completely disregarding the seriousness of O.Č.'s mental state.

139. More generally, the applicants submitted that as a matter of practice the Slovenian courts did not pursue the enforcement of interim orders in cases such as the present one. In addition, the experts' work, which was necessary in this kind of disputes, was completely unregulated in Slovenia and the manipulative practice of making criminal complaints of harassment against estranged fathers had not been properly addressed by the State.

2. Relevant principles

140. The Court notes 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, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

141. Further, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of

appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

142. In relation to the State's obligation to implement positive measures, the Court has held that Article 8 includes for parents a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII; and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V). In addition, the Court has previously considered that ineffective, and in particular delayed, conduct of custody proceedings may give rise to a breach of Article 8 of the Convention (see *V.A.M.*, cited above, § 49).

143. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly found that what is decisive is whether the national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Hokkanen*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128; and *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003).

144. In this context, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit (see *Ignaccolo-Zenide*, cited above, § 102).

145. Finally, the Court has held that although coercive measures against the children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live (see *Ignaccolo-Zenide*, cited above, § 106).

3. The Court's assessment

146. The Court notes that following the separation of the first applicant and O.Č., the second applicant continued to live with O.Č., who had not officially obtained custody of her child. At that point, the first applicant did not disapprove of the second applicant staying with her mother.

147. The Court further notes that the proceedings in which O.Č. sought custody of the second applicant were instituted on 22 June 2004. Further to the first applicant's request of 8 June 2005, the court granted contact by means of an interim order on 28 November 2005. This order was subsequently quashed by the Higher Court and remitted for re-examination. The contact was eventually determined on 9 February 2006. On 22 November 2007 the first applicant and O.Č. reached a temporary settlement of the case, by which the first applicant gained provisional custody of the second applicant. As far as the final determination of custody and contact arrangements is concerned the proceedings terminated on 4 September 2008 with a settlement between the parties.

148. The Court reiterates that, according to its previous findings (see paragraph 118 above), it will limit its examination under Article 8 to the question as to whether the national authorities took the necessary adequate steps to facilitate the contact only in respect of the period between 22 June 2004 and 22 November 2007.

149. The Court's first task consists in determining whether the alleged delays in the custody and contact proceedings amounted to a breach of the applicants' rights under Article 8. In this connection, the Court first notes that the impugned proceedings lasted three years and five months and two levels of jurisdiction were involved. In this period the domestic courts considered the main issue and the first applicant's request for an interim contact order.

150. The Court would at the outset observe that there were two delays for which the State could be held responsible. Thus, nine months elapsed before the court held the first hearing (see paragraphs 9 and 12 above). The second delay of one year occurred in connection with the court's difficulties in appointing an expert in psychiatry (see paragraphs 40, 53 and 54 above). However, the facts demonstrate considerable procedural activity of the national authorities throughout these periods (see paragraphs 10, 11, 42, 44, 46, 50, 51 and 52 above).

151. The Court further observes that, apart from the aforementioned delays, the proceedings were in general conducted swiftly and effectively. The courts continuously gathered relevant information (see paragraphs 10, 11, 20, 29, 39, 50, 55, 58, 65 and 78 above), appointed three experts and scheduled eight hearings. Five hearings were held, while two hearings were adjourned due to the first applicant's illness.

152. More importantly, the first interim contact order was issued only five months after the initial request. In the subsequent three months, the domestic courts decided on the first applicant's appeal, quashed the first-instance court decision and re-examined his request. The final decision on a contact agreement was thus adopted in only eight months.

153. The Court further notes that the domestic courts were faced with a difficult task when deciding to which parent they should entrust the second applicant. While it eventually became clear that O.Č. was suffering from a serious mental illness, there were also indications that the first applicant, too, had been suffering from a mental disorder (see paragraph 19 above). In addition, the courts were confronted with a criminal complaint lodged against the first applicant for sexual abuse of the second applicant as well as with several criminal complaints concerning either the first applicant or O.Č. Having regard also to hesitations on the part of the experts as regards the question which of the second applicant's parents would be more appropriate to take care of her, the Court agrees with the Government that the case has to be regarded as complex and sensitive, which definitely contributed to the duration of the proceedings.

154. Turning to the question whether the length of the proceedings have had impact on the applicants' family life, the Court observes that the applicants failed to show in which periods exactly the contact was obstructed on account of length of the proceedings. As the case file shows, only two short periods of poor or obstructed contact could be discerned; from 27 April to 5 June 2006 and from 9 June to 22 September 2006 (see paragraphs 45 and 48 above). The Court notes that the applicants also claimed that contact was obstructed in March 2005, but there is nothing in the file corroborating these allegations (see paragraph 21 above).

155. The Court has not overlooked the first applicant's situation. Admittedly, the absence of contact with one's child may cause considerable suffering to the parent. However, the Court, having regard in particular to the outcome of the proceedings, believes that the period of at most five months of obstructed contact could not have had irreparable consequences for the applicants' relationship (see, by contrast, *Eberhard and M. v. Slovenia*, cited above, § 139).

156. In the light of the foregoing, the Court finds that in the particular circumstances of the case and, regard being had in particular to its complexity, the proceedings were conducted effectively and sufficiently promptly, as required by Article 8 of the Convention.

157. The Court must further determine whether, in the light of the relevant principles of its case-law, the national authorities took adequate and effective steps to facilitate the execution of the first applicant's contact rights specified in the order of 9 February 2006.

158. The Court firstly notes that the contact order contained a fine to be imposed in the event of O.Č.'s non-compliance. The Court further notes that the first applicant lodged two requests for enforcement within the periods of allegedly obstructed contact (see paragraphs 45 and 48 above) and that the domestic authorities responded immediately. Thus, the Celje Social Work Centre was requested to submit a report concerning the implementation of the first applicant's contact rights, whereby it recommended the court not to fine O.Č., since her financial situation was already delicate. Leaving aside the divergence of positions between the first applicant and O. Č. as to whether the contact took place, the Court cannot fail to observe that the Celje Social Work Centre and the court tried to find an adequate solution for all parties involved.

159. In the above-mentioned circumstances and having regard to the margin of appreciation afforded to the State, the Court concludes that the national authorities did not fail to take the necessary steps to enforce the contact rights which could reasonably be required in the difficult situation they had to deal with.

160. In so far as the first applicant stated that living with O. Č. was a traumatic experience for the second applicant, the Court sees no indication that the authorities acted in disregard of the vulnerability of the child or

failed to protect her. The Court reiterates that the domestic courts, when faced with O.Č.'s mental illness, the second applicant's alleged sexual abuse and the generally tense relations between the first applicant and O.Č., had a difficult task. Having already found that the decision-making process, seen as a whole, provided the applicants with the requisite protection of their interest (see paragraphs 149-156) and regard being had to the fact that the decisions were based on relevant reasons and supported by experts' opinions, the Court cannot find that the Slovenian courts did not sufficiently take the best interest of the child into account.

161. There has accordingly been no violation of Article 8 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

162. The applicants also complained that the length of the court proceedings concerning custody and contact arrangements had exceeded a reasonable time in breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a... hearing within a reasonable time by a ... tribunal...”

163. The Government and the applicants relied on the arguments outlined in paragraphs 119-123 and paragraphs 124-128 respectively.

164. The Court notes that for the reasons set out above in paragraphs 116 and 117, the first applicant is entitled to pursue proceedings on behalf of the second applicant also in respect of the complaint under Article 6.

165. The Court further observes that the 2006 Act provides the opportunity to bring a claim for just satisfaction within nine months of the final resolution of the case, provided that the applicants have successfully used the acceleratory remedies.

166. In this connection, the Court observes that the proceedings in the present case were finally resolved on 4 September 2008. It further observes that the applicants lodged a just satisfaction claim, which was dismissed for not being lodged in accordance with the 2006 Act. The Court also notes that the applicants were requested by the State Attorney's Office to pursue that claim, but expressly refused to do so (see paragraphs 93 and 94 above). Therefore, the Court concludes that the applicants failed to exhaust properly domestic remedies. In addition, the Court considers that there is no reason to conclude that the just satisfaction claim would not have had a reasonable prospect of success if pursued by the applicants in the prescribed manner.

167. This part of the application must thus be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the first limb of the Government's preliminary objection concerning a lack of the first applicant's standing to act on behalf of the second applicant;
2. *Declares* the complaint under Article 8 of the Convention as regards the period prior to 22 November 2007 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 30 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President