



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

FIFTH SECTION

CASE OF K. v. SLOVENIA

(Application no. 41293/05)

JUDGMENT

STRASBOURG

7 July 2011

FINAL

07/10/2011

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

In the case of K. v. Slovenia,

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

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 41293/05) 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 a Slovenian national, F.K., on his own behalf and on behalf of his daughter, A., on 10 November 2005. The President of the Chamber granted the applicant’s request not to have his daughter’s name disclosed. The President of the Chamber further decided of his own motion to grant the applicant anonymity under Rule 47 § 3 of the Rules of Court.

2. The applicant was represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Ms Neva Aleš Verdir, State Attorney.

3. The applicant 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 impugned domestic court proceedings concerning the contact arrangements with his daughter had been excessive. He further alleged, in substance under Article 8 of the Convention that, as a result of the ineffectiveness of these proceedings, he had been deprived of regular contact.

4. On 2 October 2008 the President of the Third Section decided to communicate the complaints under Article 6 concerning delays in domestic proceedings and under Article 8 concerning the adverse effect these proceedings allegedly had on the applicant’s family life to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The Court subsequently changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the

above application has been assigned to the newly composed Fifth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr F.K., is a Slovenian national who was born in 1971 and lives in Šentjur.

6. The applicant was married to I.V. On 19 August 2001 their daughter, A., was born.

7. On 28 November 2002 the Celje District Court granted the couple a divorce and awarded I.V. custody of A. The applicant obtained contact rights.

A. The initial contact arrangements determined in the administrative proceedings and related enforcement proceedings

8. On 3 March 2003 the applicant and I.V. concluded an enforceable agreement on contact arrangements at the Laško Welfare Centre, in which they agreed that the applicant and A. would have the right to spend every second weekend together (but only half of the weekend for the first three months).

9. On 24 November 2004 the applicant and I.V. reached another agreement whereby they slightly modified the scope of contact.

10. Beginning on 2 January 2005, I.V. was allegedly preventing contact between the applicant and A. As a result, on 30 January 2005, the applicant lodged a request for enforcement of the contact arrangements agreement of 3 March 2003 and 24 November 2004 with the Laško Administrative Unit. On 17 March 2005, the applicant's lawyer again requested enforcement of the contact arrangements agreement of 3 March 2003. The enforcement request was forwarded to the Laško Welfare Centre.

11. On 1 April 2005 the Laško Welfare Centre was informed that, on 11 January 2005 I.V. had lodged a criminal complaint against the applicant for sexual abuse of A. (see paragraph 57 below). For this reason, the Laško Welfare Centre on the same day stayed the proceedings pending the outcome of the criminal proceedings.

12. Further to the applicant's appeal, on 9 November 2005 the Ministry of Labour, Family and Social Affairs quashed the decision of the Laško Welfare Centre whereby the proceedings were stayed and decided to terminate the proceedings. It found that the contact agreement of 3 March

2003 was no longer enforceable, because the contact arrangements had been amended on 20 April 2005 by the Celje District Court in civil non-contentious proceedings (see paragraph 14 below).

B. Amendment of the contact arrangements in civil non-contentious proceedings (Pn 188/2005)

13. On 13 April 2005 I.V. lodged a request with the Celje District Court for amendment of the contact arrangements determined by the Laško Welfare Centre on 3 March 2003. Referring to the alleged sexual abuse of A. by the applicant, she sought less frequent contact between the two and requested that contact take place under supervision by a social worker. She also requested that an interim measure be adopted in this respect.

14. The Celje District Court found that on 23 February 2005 the Laško Welfare Centre had scheduled a meeting at which the applicant and I.V. had agreed that in March 2005 contact would take place under supervision. Another such meeting had been scheduled for 23 March 2005, but the applicant had failed to attend and no further agreement had been reached. Given that the applicant was suspected of sexual abuse, the court found it reasonable to uphold I.V.'s request in part. As a result, on 20 April 2005, it ordered the interim measure sought, pending the outcome of the proceedings. According to the court's decision, contact was to be authorised once a week for an hour and a half, under supervision.

15. On 26 April 2005 the applicant objected to the above decision, claiming that the court, by ordering the interim measure in question, had breached the principle of presumption of innocence and had not respected the adversarial nature of the proceedings. In his objection, he also requested that these proceedings be joined to the contentious proceedings (P 327/2005 – see below).

16. On 17 May 2005 the court held a hearing. Subsequently, it dismissed the applicant's objection as unfounded.

17. The applicant appealed.

18. On 10 August 2005 the Celje Higher Court dismissed his appeal and upheld the first-instance court's decision on the interim measure.

C. The applicant's claim for custody and his alternative request for new contact arrangements in civil contentious proceedings (P 327/2005)

19. On 24 March 2005, since I.V. was allegedly preventing the applicant from having contact with A., the applicant, on his own behalf and on behalf of A., lodged a claim with the Celje District Court whereby he sought sole custody of A. and child maintenance. He also proposed that contact rights should be granted to I.V. In the alternative, the applicant requested that

regular contact be granted between himself and A. and also between A. and other relatives. He further requested, also on A.'s behalf, that an interim measure be taken in respect of all his requests. Lastly, the applicant requested exemption from paying the court fees.

20. On 29 March and 7 April 2005 the court asked the applicant to complete his request for an exemption from obligation to pay the court fees. After the request was completed, on 8 April 2005, the court upheld it on 19 April 2005.

21. Meanwhile, on 14 April 2005 the applicant lodged preliminary written submissions, urging the court to order the interim measure sought on 24 March 2005.

22. On 7 June 2005 I.V. informed the court that the applicant was suspected of committing a criminal offence of sexual assault on a minor under the age of fifteen (see paragraph 58 below).

23. The court scheduled a hearing for 9 June 2005. The hearing was not held, on account of a request from the Administrative Court to examine the file (see paragraphs 52-56 below).

24. On 15 and 18 July 2005 the court requested the Šentjur Welfare Centre to deliver an opinion in the case. The request was transferred to the Laško Welfare Centre, which delivered the opinion on 7 September 2005.

25. On 18 July 2005 the applicant lodged preliminary written submissions in which he partly amended his alternative request for an interim measure, seeking, in the event that the court did not grant him custody, that A. be placed in foster care, since there was a risk of her being sexually abused by I.V.'s new partner. He requested, in the event of refusal of the above request, that I.V.'s partner be forbidden to have contact with A.

26. On 24 November 2005 the court issued a decision in which it joined the non-contentious proceedings (Pn 188/2005, see above) to these proceedings. It also dismissed the applicant's request for an interim measure on all points.

27. Following an appeal by the applicant, the Celje Higher Court, on 21 December 2005, quashed the first-instance decision and remitted it for re-examination, finding that the decision had not been sufficiently reasoned as far as the applicant was concerned. It also found that A. had not been adequately represented in the proceedings, as there was a risk of conflict of interest. Subsequently, on 11 January 2006, a lawyer was appointed as A.'s special representative.

28. On 21 March 2006 the first-instance court held a hearing in which the applicant and I.V. were heard and an expert in clinical psychology was appointed. However, the appointed expert fell ill and thus could not proceed with the examination.

29. On 9 May 2006 the Administrative Court again requested to examine the case file. The court sent photocopies of the file on 15 May 2006.

30. On 5 June 2006 the court appointed another expert in psychology in order to determine, among other things, whether it was likely that A. had been sexually abused and whether the applicant had paedophile tendencies. She was also asked to determine whether both parents possessed the personal qualities essential for raising a child.

31. On 14 June 2006 the applicant requested that the appointed expert be relieved of her duties.

32. On 4 July 2006 the court appointed a new expert, but the latter refused to take the case, stating that she would be absent for a long period of time. She was relieved of her duties by a court decision of 4 September 2006. On the same day, the court appointed the Commission for Expert Opinions at Ljubljana University ("the Expert Commission") to draw up relevant expert opinions.

33. The two experts appointed by the Expert Commission examined the applicant, A. and I.V. They observed that A. did not show any signs of sexual abuse or trauma. They also noted that both parents had the appropriate qualities for raising a child. In addition, the expert in psychology observed no signs of sexual deviance or peculiarity in the applicant's behaviour. The court received the report on 9 January 2007 after sending a reminder to the experts on 18 December 2006.

34. On 11 January 2007 the court urged the criminal court to speed up the proceedings.

35. Relying on the experts' opinions, on 12 February 2007, the applicant lodged preliminary submissions, seeking unsupervised and more frequent contact. A.'s special representative objected to the proposal for the court to issue the requested interim decision since, in her opinion, the expert could not indubitably rule out the alleged sexual abuse. I.V. also objected to the interim measure.

36. On 2 March 2007 the 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.

37. On 30 March 2007, after hearing the applicant and I.V. and relying on experts' opinions, the court issued a decision rejecting the applicant's request for an interim measure. It stated that contact was regulated by the interim measure of 20 April 2005 issued in the non-contentious proceedings (see paragraph 14 above) and that it was in the best interests of the child to maintain supervised visits, as the applicant was still suspected of child abuse. It also said that, albeit carried out under supervision, these visits allowed the emotional tie between the applicant and his daughter to be maintained. In addition, it terminated the proceedings in respect of A.'s request for an interim measure, since her special representative had withdrawn it. Finally, the court said that, in the particular circumstances of the case, notwithstanding the presumption of innocence, the necessary conditions for issuing the requested interim order had not been met.

38. On 5 April 2007 the applicant appealed against this decision. His appeal was dismissed by the Celje Higher Court on 6 June 2007. The Celje Higher Court considered that the material legal content of civil proceedings differed from the one in the criminal proceedings. As a result, the rejecting of the applicant's request for an interim measure cannot constitute a breach of the principle of presumption of innocence. However, the fact that criminal proceedings were instituted against the applicant for sexually abusing his own daughter could not have been overlooked by the first-instance court when deciding on the scope of the contact. It added that the first-instance court had been correct in deciding that, on the basis of experts' opinions, it could not be established with certainty whether a decision to immediately grant unsupervised contact would be in the child's best interest.

39. Meanwhile, on 13 April 2007 the president of the first-instance court, apparently in response to the supervisory appeal of 2 March 2007, informed the applicant that the court had given a decision within four months of receipt of the supervisory appeal, namely on 30 March 2007 (see paragraph 37 above).

40. Subsequently, on 10 July 2007, the applicant lodged a motion for a deadline under the 2006 Act, which was rejected as unfounded on 19 July 2007.

41. On 23 August 2007 the Administrative Court again requested to examine the case file.

42. On 28 September 2007 the applicant lodged preliminary written submissions stating that contact had been prevented on twenty occasions between 2 January and 1 September 2007.

43. On 18 October 2007 the court held a hearing at which the applicant and I.V. were heard. At 11.35 am the judge adjourned the hearing, since a hearing in the criminal proceedings was scheduled at 12 noon the same day.

44. On 19 October 2007 the court requested the transcript of the hearing held on 18 October 2007 in the criminal proceedings.

45. On 16 November 2007, since the applicant had been acquitted in the criminal proceedings (see paragraph 74 below), he lodged preliminary written submissions requesting the court to immediately adopt an interim measure in order to ensure unsupervised contact between him and his daughter.

46. Also on 16 November 2007 the court issued a decision concerning the expert's fees.

47. The hearing scheduled for 14 December 2007 was called off on account of other commitments of the expert in psychology. It was rescheduled for 29 January 2008. However, that hearing was not held, since the applicant's representative was absent on that day.

48. Meanwhile, on 15 January 2008 the applicant lodged two sets of preliminary written submissions.

49. On 28 January 2008 the court requested the Celje Higher Court to examine as a priority the appeal lodged by the District Prosecutor in the criminal proceedings (see paragraph 75 below) as the fact that those proceedings were pending constituted an obstacle to the civil proceedings.

50. On 17 April 2008 the court held a hearing. The parties concluded an enforceable court settlement concerning the contact rights. This was after the judgment acquitting the applicant had become final (see paragraph 78 below). Subsequently, on 23 April 2008 the court dismissed the applicant's request for an interim measure of 16 November 2007 (see paragraph 45 above).

51. On 18 December 2008 the applicant lodged a just satisfaction claim under the 2006 Act, which was dismissed on 4 February 2009 as the State Attorney's Office considered that the conditions set for reaching a friendly settlement had not been met in the applicant's case.

D. Administrative proceedings concerning the right to trial without undue delay in contentious civil proceedings (U 93/2005)

52. On 18 May 2005, the applicant, on his own behalf and on behalf of A., brought an action before the Administrative Court, Celje Unit against the Celje District Court for breach of the principle of procedural economy and expedition of proceedings and the constitutional right to trial without undue delay, in connection with the contentious civil proceedings instituted on 24 March 2005 (see paragraph 19 above). He claimed just satisfaction for the damages sustained in this respect.

53. On 14 June 2005 the Administrative Court dismissed the action as unfounded.

54. The applicant appealed on 18 July 2005.

55. On 8 December 2005 the Supreme Court quashed the first-instance decision. The case was remitted for re-examination in the part concerning the applicant. The Supreme Court further rejected the part of the decision concerning A.

56. On 7 September 2007 the Administrative Court rejected the applicant's action, as the Celje District Court had already decided in the case (see paragraphs 37 and 38 above).

E. Criminal proceedings (Kpr 54/2005, K 78/2006)

57. On 11 January 2005 I.V. lodged a criminal complaint against the applicant alleging sexual abuse of A.

58. On 16 March 2005 the Celje District Public Prosecutor lodged a request for a criminal investigation on the basis of the reasonable suspicion that the applicant had committed a criminal offence of sexual assault on a minor under the age of fifteen.

59. On 17 March 2005 the applicant lodged a criminal complaint against I.V. for providing false information with the effect of preventing him from having contact with A. The Celje District Public Prosecutor dismissed this complaint as premature on 23 May 2005, and no charges were brought against I.V.

60. Meanwhile, on 26 April and 18 July 2005 the applicant urged the Celje District Court to open a criminal investigation without delay in order to determine his innocence and, as a result, ensure regular contact between him and his daughter, which had been restricted by the court decision of 20 April 2005 (see paragraph 14 above) on account of the criminal complaint lodged against the applicant.

61. On 9 September 2005, after questioning the applicant, the investigating judge decided to open a criminal investigation.

62. On 8 November 2005 the investigating judge heard I.V. and her new partner. The same day the judge appointed two experts in order to determine the overall state of mind of both, the applicant and his daughter. The first expert submitted his report on 7 December 2005 and the second one on 16 December 2005.

63. On 10 November 2005 the judge in the civil proceedings requested the court to send the criminal file for examination. The file was returned on 22 November 2005.

64. On 8 December 2005 and 10 January 2006 the applicant submitted his defence in writing.

65. On 27 March 2006 the applicant was indicted for the criminal offence of sexual abuse of a minor under fifteen.

66. On 29 May 2006 the applicant submitted his additional defence in writing and urged the court to hold a hearing.

67. On 5 June 2006 the judge in the civil proceedings again requested to examine the criminal file. The file was sent back to the criminal court on 4 September 2006.

68. On 21 February 2007 the applicant again submitted his defence in writing.

69. On 2 March 2007 the applicant lodged a supervisory appeal under the 2006 Act in order to accelerate the proceedings. The supervisory appeal was dismissed on 23 March 2007 since the applicant had not been a party to the proceedings. However, it seems that the court wrongly examined the supervisory appeal under proceedings number P 78/2006 instead of K 78/2006. On 10 July 2007 the applicant lodged a motion for a deadline. On 13 July 2007 the Higher Court decided that the applicant's motion for a deadline should be considered by the district court as a supervisory appeal. However, this remedy remained unanswered until 22 January 2009, when the president of the district court dismissed it.

70. Meanwhile, on 20 March 2007 the judge in the civil proceedings again requested to examine the file, which was sent back to the criminal court on 16 August 2007.

71. The hearing scheduled for 19 September 2007 was called off on account of flooding in the presiding judge's home town.

72. On 11 October 2007 the court held a hearing at which evidence was heard from several witnesses and experts. The applicant was also heard.

73. On 15 October 2007 the judge in the civil proceedings again requested to examine the case file.

74. After the hearing held on 18 October 2007, the court delivered a judgment acquitting the applicant.

75. On 22 November 2007 the District Public Prosecutor lodged an appeal.

76. On 12 December 2007 the court gave two decisions concerning the experts' fees.

77. On 15 January 2008 the applicant sought reimbursement of the costs and expenses he had incurred in the proceedings.

78. On 4 March 2008 the Celje Higher Court dismissed the appeal and upheld the first-instance judgment. The judgment was served on the applicant on 20 March 2008.

79. On 8 April 2008 the presiding judge decided on costs and expenses. The applicant appealed against that decision. The interlocutory-proceedings panel quashed that decision and remitted it for re-examination. On 22 December 2008 additional costs were awarded to the applicant.

F. Administrative proceedings concerning the right to trial without undue delay in criminal proceedings (U 91/2005)

80. In parallel, on 17 May 2005, the applicant, on his own behalf and on behalf of A., brought an action before the Administrative Court, Celje Unit against the Celje District Court for breach of the principle of procedural economy and expedition of proceedings and the constitutional right to trial without undue delay, in connection with the above criminal proceedings. He claimed just satisfaction for the damages sustained in this respect.

81. On 14 June 2005 the Administrative Court dismissed the action as unfounded, since the charges against the applicant had been brought only two months before the action was lodged; hence the relevant period was not in breach of the reasonable-time requirement.

82. The applicant appealed.

83. On 8 December 2005 the Supreme Court quashed the first-instance decision. The case was remitted for re-examination in the part concerning the applicant. The Supreme Court further rejected the part of the decision concerning A.

84. On 4 April 2006 the Administrative court dismissed the remaining part of the action concerning the applicant.

II. RELEVANT DOMESTIC LAW

85. A summary of the relevant domestic law may be found in *Z. v. Slovenia* (no. 43155/05, §§ 96-103, 30 November 2010) and *Nezirović v. Slovenia* ((dec.), no.16400/06, §§ 14-20, 25 November 2008).

THE LAW

I. *LOCUS STANDI* OF THE APPLICANT'S CHILD

86. The Government objected to the applicant's capacity to act on behalf of his daughter A. in the proceedings before the Court. They submitted that at the time the applicant lodged the application I.V. had custody of A., while the 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 I.V., who had been A.'s statutory representative, was entitled to lodge an application on her behalf.

87. The applicant did not comment on the issue.

88. The Court notes that on 28 November 2002 I.V. was granted sole custody of A. Having regard to the fact that the present case concerns the proceedings in which contact arrangements were determined and to the case-law on the subject matter, the Court concludes that the applicant has no standing to act on A.'s behalf (see *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, §§ 89-90, 1 December 2009; *Sahin v. Germany* (dec.), no. 30943/96, 12 December 2000; and *Petersen v. Germany* (dec.), no. 31178/96, 6 December 2001).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

89. The applicant complained that the length of the civil and criminal proceedings was unreasonable, 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...”

90. The Court reiterates at the outset that, according to Article 35 § 1 of the Convention, it may only deal with an individual application lodged with

it after all domestic remedies have been exhausted, according to generally recognised rules of international law, and within six months of the date on which the final decision was taken.

91. As regards the civil proceedings, the Court notes that the applicant availed himself of a supervisory appeal under the 2006 Act and subsequently, on 18 December 2008, lodged a just satisfaction claim with the State Attorney's Office. That claim was dismissed on 4 February 2009, as the State Attorney's Office considered that the conditions for reaching a settlement had not been met. The Court further notes that, given the fact that no settlement was reached, the applicant was consequently able to bring an action in respect of non-pecuniary damage suffered due to the length of the proceedings before the domestic court, in accordance with section 20 of the 2006 Act.

92. As to the criminal proceedings, the Court observes that the applicant first lodged a supervisory appeal, which was wrongly dismissed. The applicant then lodged a motion for a deadline, which was eventually considered as a supervisory appeal but which has remained unanswered until 22 January 2009. The Court notes that, according to the relevant provisions of the 2006 Act, the applicant was entitled to lodge a motion for a deadline provided that the supervisory appeal remained unanswered for two months, at least to secure his access to a compensation claim (see, *mutatis mutandis*, *Nezirović v. Slovenia*, cited above, § 41). However, he failed to do so.

93. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

94. The applicant also complained that his right to have his family life respected had been breached on account of delays in the proceedings concerning child custody and contact arrangements as well as in the criminal proceedings. He also complained that as a result of the ineffectiveness of the proceedings he could not have had regular contact with A., which had impeded A.'s psychological development and their relationship as father and daughter. In this connection, he further complained that the national authorities had failed to make sufficient efforts to expedite the criminal proceedings in order to determine the applicant's innocence and, as a result, to ensure unsupervised contact. According to the applicant, the national authorities had also failed to order the interim measures sought in civil proceedings. To this end, the applicant invoked Article 6 of the Convention and Article 7 of the European Convention on the Exercise of Children's Rights.

95. The Court first recalls that it has no power to supervise the compliance with the European Convention on the Exercise of Children's Rights. In accordance with Article 19 of the Convention the Court's role is to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. In this connection, the Court notes that the applicant's complaints made under the European Convention on the Exercise of Children's Rights and under Article 6 of the Convention concerned in substance Article 8 of the Convention. Being the master of the characterisation to be given in law to the facts of any case before it, the Court therefore deems it appropriate to examine these complaints in the context of the latter provision (see *V.A.M. v. Serbia*, no. 39177/05, § 115, 13 March 2007; *Eberhard and M. v. Slovenia*, cited above, § 111, and *Z. v. Slovenia*, cited above, § 130).

96. 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

97. The Government invited the Court to declare the application inadmissible as the applicant did not avail himself of all available domestic remedies under the 2006 Act.

98. The applicant contested that argument, claiming that the remedies available were not effective.

99. The Court notes that the present application is in this part similar to the cases of *Eberhard and M. v. Slovenia* and *Z. v. Slovenia* judgments (cited above), in which the Court dismissed the Government's objection of non-exhaustion of domestic remedies. The Court found that 2006 Act 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, while in the cases such as the present one, 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, and *Z. v. Slovenia*, cited above, § 129).

100. The Court finds that the Government have not submitted any convincing arguments which would require the Court to depart from its established case-law, and therefore rejects this objection on the part of the Government as far as Article 8 issues are concerned.

101. The Court further notes that the complaint about the lack of respect for family life is not manifestly ill-founded within the meaning of Article 35

§ 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The Government's arguments

102. 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.

103. The Government further argued that both proceedings, civil and criminal, were factually very complex, bearing in mind in particular the number of experts and witnesses heard. To this must be added the intertwining of several sets of proceedings, including the administrative proceedings, which made the task of the relevant courts more difficult.

104. As to the civil proceedings, the Government argued that the conduct of the applicant had contributed to the delay. In particular, the applicant had not displayed enough diligence in submitting his request for tax exemption and had requested an adjournment of the hearing scheduled for 29 January 2008, which had caused a delay of four months and nine days. According to the Government, no periods of inactivity on the part of the authorities could be observed.

105. As to the criminal proceedings, the Government acknowledged that there had been three minor periods of inactivity, which were due to the requests of the civil judge to examine the case file. The Government argued that these delays should be considered as objective circumstances of the case and should thus not be attributed to the State. In addition, the Government argued that the duration of the criminal proceedings had not affected the required positive obligations for respect of family life under Article 8.

106. The Government further pointed out that the State had struck a fair balance between the interests of all parties involved, in particular those of A., when deciding that contact be restricted to one and a half hours a week and carried out under the supervision of a social worker. Moreover, it was very important that the contact did not cease completely during the criminal proceedings, but continued, albeit under supervision, until the parents had reached a settlement, on 17 April 2008, when contact became more frequent and unsupervised. According to the Government, the contact between the applicant and A. was only occasionally not carried out as agreed, which was due to A.'s other commitments or to illness.

(b) The applicant's arguments

107. The applicant submitted that the case ought to have been given priority, as required also by the domestic legislation. Nonetheless, the proceedings were lengthy, and as a result of the ineffectiveness of the proceedings he had been unable to see his daughter A. for three and a half years. Moreover, the applicant stressed that he had been regarded as a paedophile, which had damaged his reputation and caused him psychological anguish.

108. The applicant also criticised the way the civil proceedings had been conducted. In his submissions, the civil courts should have heard experts and decide on contact arrangements without waiting for the decision in criminal proceedings. Thus, the decision restricting the contact to one hour and a half a week, to be supervised, was based solely on the assumption that the applicant had committed an offence.

109. Finally, the applicant more generally 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.

2. Relevant principles

110. Summaries of the relevant principles may be found in paragraphs 140-45 of the Court's judgment in *Z. v. Slovenia* (cited above).

3. The Court's assessment

111. The Court first notes that the civil contentious proceedings in which the applicant sought custody and, in the alternative, for contact to be granted, were instituted on 24 March 2005. The Court further observes that in parallel, I.V. instituted civil non-contentious proceedings requesting that, owing to possible sexual abuse, contact should be less frequent and visits should take place under supervision. As a result, on 20 April 2005 the court restricted the scope of the contact arrangements to one hour and a half a week, and secondly, ordered that contact was to take place under supervision. This decision was upheld by the Celje Higher Court on 10 August 2005. In the course of proceedings, on 24 November 2005, the court joined both those sets of proceedings. The final determination of contact arrangements was made on 17 April 2008 with a settlement between the parties.

112. The Court observes that the criminal proceedings began on 16 March 2005, when the request for an investigation was lodged against the applicant by the public prosecutor. On 18 October 2007 the applicant was acquitted. The proceedings terminated on 4 March 2008, the date the decision acquitting the applicant was upheld by the Celje Higher Court.

113. In the present case, the Court's task consists in determining whether the alleged delays in the custody and contact arrangements

proceedings and in the criminal proceedings have had an impact on the applicant's family life which would amount to a breach of the applicant's rights under Article 8.

114. As to the civil proceedings, the Court first notes that they lasted three years and one month and involved two levels of jurisdiction. In this period the domestic courts considered the main issue as well as several requests for an interim contact order.

115. The Court further observes that these proceedings were in general conducted swiftly. The court appointed four experts. Three of them could not ultimately compile a report, for different reasons (see paragraphs 28, 31 and 32 above); however, none of these reasons were imputable to the State. Moreover, the courts scheduled seven hearings. Four hearings were held, while three were called off (see paragraphs 23 and 47 above).

116. The criminal proceedings, which lasted nearly three years at two levels of jurisdiction, on the other hand, could not be considered to have been conducted within a reasonable time. They were pending for two years and seven months at the first level of jurisdiction alone. The Court attaches importance to two periods of inactivity for which the State could be held responsible; the delay of nearly six months between the request for an investigation and the investigating judge's decision (see paragraphs 58 and 61 above) and, in particular, the delay of one year and five months between the bill of indictment and the date the court scheduled the first hearing (see paragraphs 65 and 71 above).

117. Turning to the question whether the conduct of the proceedings have had impact on the applicant's family life, the Court first notes that in so far as the applicant could be understood as complaining about not having had any contact with A. for a certain period of time (see paragraph 42 above) the applicant failed to submit at least a detailed account of this matter by showing in which periods exactly the contact had not happened and what measures he had taken in this respect. Thus, the Court cannot make any inference on this particular question. The Court further notes that the applicant's complaint relates chiefly to the fact that, by virtue of the interim decision of 20 April 2005, he could only have had a very limited contact with A., which was moreover conducted under supervision by social workers. The applicant alleged that this situation lasted for an excessive period of time. In this connection, the Court notes that owing to the fact that he was suspected of child abuse, the interim decision of 20 April 2005 was maintained until the final decision in the criminal proceedings. The Court would emphasise that the fact that the civil court was awaiting the criminal court's judgment before allowing regular contact did not release the domestic authorities, including the criminal court, from their obligation to examine the case promptly (see *Šilih v. Slovenia* [GC], no. 71463/01, § 205, 9 April 2009). The criminal court nevertheless took almost three years to decide on the charges against the applicant; a period in which the

applicant's opportunities to enjoy family life with A. were severely curtailed.

118. Finally, the Court notes that some delays may have occurred due to frequent circulation of the case files relating to civil and criminal proceedings between the courts (see paragraphs 23, 41, 63, 67, 70 and 73 above). However, in urgent cases such as this one a delay caused on that account may be justified only if limited to a few days as there is no reason why copying the file would not be an appropriate solution if certain documents are needed for examination in another set of proceedings. In this connection, the Court would reiterate that it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of the Convention, including those enshrined in Article 8 of the Convention (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, 26 September 1997, § 54, *Reports* 1997-VI).

119. In the light of the foregoing, the Court concludes that the Slovenian authorities failed to meet their positive obligations arising from Article 8 of the Convention, as a result of which the applicant's contact with his daughter A. was severely restricted for three years (see, *mutatis mutandis*, *Schaal v. Luxembourg*, no. 51773/99, § 48, 18 February 2003).

120. There has accordingly been a breach of the applicant's right to respect for his family life, in violation of Article 8 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. The applicant further complained under Article 6 § 2 of an infringement of the principle of the presumption of innocence, stating that contact should not have taken place under supervision as he had not been found guilty of any charges. In addition, without citing any Article of the Convention, the applicant argued that the national authorities, by not taking the appropriate measures, had failed to protect A.'s interests, given that she was exposed to a risk of sexual abuse by her mother's new partner. Invoking Article 14, the applicant complained that, while a criminal investigation had been opened against him for alleged abuse of A., the State had failed to open a criminal investigation against A.'s mother's new partner on the basis of the same type of allegations, made by the applicant himself. Finally, the applicant complained that he had been discriminated against in the proceedings because the courts had decided on his ex-wife's case within a few weeks, while his case was at the time still pending.

122. Having regard to all the material in its possession and in so far as the matters fall within its competence, the Court considers that, even assuming that the applicant has complied with the requirement of exhaustion of domestic remedies in this respect, this part of the application does not disclose any appearance of a violation of the Convention.

123. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 330,000 euros (EUR) in respect of non-pecuniary damage.

126. The Government disputed the claim.

127. The Court awards the applicant EUR 6,000 in respect of non-pecuniary damage suffered as a result of the violation of Article 8 of the Convention.

B. Costs and expenses

128. The applicant also claimed 3,900,000 Slovenian tolar (SIT), which is approximately EUR 16,300, for the preparation of the application form. In addition, he claimed EUR 20,000 for costs and expenses incurred before the domestic courts and EUR 8,880 for those incurred in the proceedings before the Court subsequent to the lodging of the application. This claim was supported by an itemised list of expenses with reference to domestic statutory rates, similar to the lists normally submitted to the courts in domestic proceedings.

129. The Government disputed the claim as being exaggerated.

130. 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. The Court also notes that the applicant's lawyers lodged other applications, which are for the most part the same as this one. Accordingly, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred in the domestic proceedings and considers it reasonable to award the applicant the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

131. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of respect for family life under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) EUR 6,000 (six thousand euros) to the applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) to the applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President