



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

FIFTH SECTION

CASE OF V. v. SLOVENIA

(Application no. 26971/07)

JUDGMENT

STRASBOURG

1 December 2011

FINAL

01/03/2012

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

In the case of V. v. Slovenia,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 26971/07) 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, Ms D.V. and Mr J.V. (“the applicants”), on 19 June 2007. The President of the Chamber granted anonymity to the applicants of his own motion under Rule 47 § 3 of the Rules of Court.

2. The applicants were represented by Odvetniška Družba Čeferin, a law firm practising in Grosuplje. The Slovenian Government (“the Government”) were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

3. The applicants alleged, in particular, that their right to respect for family life has been violated because of the removal of X and Y and restrictions on their contact rights.

4. On 8 July 2010 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and to give priority to the application under Rule 41 of the Rules of the Court. The Court subsequently changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the present case has been assigned to the newly composed Fifth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The first applicant has four children from previous relationships; one of them is a girl, X, born in October 1995, whose biological father's identity remains unconfirmed. The other three daughters are grown up. They have never lived with the applicants.

6. The applicants have been in a relationship since 1999 and were married in May 2004. In December 2001 twins, a girl W and a boy Y, were born to the applicants. On 5 May 2003, W died in suspicious circumstances. The autopsy report showed that she had several bone fractures and had sustained severe injuries to her internal organs. On 28 September 2009, the first applicant was found guilty of continuously causing severe bodily harm to W and of negligent manslaughter of W. She was sentenced to eight years and six months in prison. The second applicant was found guilty of negligent manslaughter of W and was sentenced to three years in prison. The Higher Court confirmed the verdict and the proceedings are currently pending before the Supreme Court following the request for protection of legality (extraordinary remedy) lodged by the applicants. The first applicant started serving her sentence on 8 October 2010. The second applicant has a serious heart condition and his prison sentence has been temporarily suspended.

B. The taking of the applicants' children and the care orders

7. On 14 May 2003, following W's death, a social worker from the Maribor Welfare Authority (hereinafter referred to as "the Maribor Authority") called the applicants and asked them to bring X and Y, who both lived with the applicants, to the paediatric hospital for examination. The children stayed in the hospital until 2 June 2003. In the meantime, it was established that X was traumatised by the death of W and that Y had delayed psychophysical development. Measures were taken by the social workers to find a suitable foster family that would receive X and Y.

8. Following several meetings with the applicants and in view of psychological reports prepared during X's and Y's hospitalisation, the Maribor Authority, on 2 June 2003, issued an emergency care order removing Y, then two years old, from the applicants and X, then seven years old, from the first applicant, and placing them in foster care. In the

emergency care order, the Maribor Authority referred to suspicious circumstances of W's death and found that there were indications of possible domestic violence and neglect. It also noted that the applicants had not been critical of their situation and that X and Y would have been at risk if left at home. The order stated that contact between the applicants and Y as well as between the first applicant and X be allowed for one hour every two weeks under supervision, beginning on 25 June 2003.

9. On 3 June 2003, presumably before the children were taken to the foster home, the Maribor Administrative Unit issued a decision allowing the enforcement of the Maribor Authority's emergency care order. The applicants were verbally informed of the order on the same day. They received it in writing on 4 June 2003.

10. On 17 June 2003 the applicants appealed against the emergency care order stating, *inter alia*, that a medical examination had not shown any signs of maltreatment, that no measures had previously been taken against them by the Maribor Authority and that they had taken proper care of X and Y. They also submitted that three of the first applicant's children had been successful in school and were now already grown up, and also that X had no learning difficulties. Their appeal was dismissed by the Ministry for Labour, Family and Social Affairs (hereinafter referred to as "the Ministry") on 20 October 2003.

11. The applicants challenged that decision before the Administrative Court. The latter, relying on the Maribor Authority's findings, rejected their claim on 16 March 2004. It found that the procedure had been conducted properly.

12. In the meantime, the Maribor Authority established an internal expert panel consisting of three employees, namely a sociologist, a lawyer and a social worker (hereinafter referred to as "the Maribor panel"). It also obtained a psychological report concerning X and Y. After each contact between the applicants and the children took place, a record was made by the social workers. The applicants were offered counselling, which they refused. On 4 December 2003 a hearing was held before the Maribor Authority, at which the applicants were present. On 18 December 2003 the Maribor Authority issued an ordinary care order, by which Y was removed from the applicants, X was removed from the first applicant, and both were placed in foster care. At the same time, the Maribor Authority set out contact arrangements, stating that the applicants could see Y and the first applicant could see X under the Maribor Authority's supervision for one hour every two weeks. It found that the children were living under psychological pressure and were neglected, in that they did not have a proper behaviour model at home. Y needed more support to catch up in his development and X needed therapy due to being under severe psychological pressure. Her psychological needs were entirely ignored by her mother, who

was extremely egocentric. The applicants were advised to undergo parenting counselling.

13. The applicants appealed against the care order. On 13 August 2004 the Ministry dismissed their appeal, by which the order became enforceable.

14. The applicants challenged this decision in a claim before the Administrative Court. On 5 July 2005 the court issued a judgment rejecting their claim.

15. On a further appeal the Supreme Court, on 16 November 2005, quashed the Administrative Court's judgment and ordered a re-examination of the case in so far as the removal of the children and their placement into foster care were concerned. They found that a removal order could only be issued if supported by a report from an independent expert. In the instant case, however, the psychologist who had drawn up the report was an employee of the Maribor Authority.

16. Subsequently, the Administrative Court again considered the case and quashed the Ministry's decision on 17 January 2006. It ordered that an independent expert be appointed and that the applicants' ability to ensure the normal mental and physical development of X and Y, which was crucial for the care order, be further assessed. On 9 March 2006 the Ministry ordered the Maribor Authority to re-examine the case.

17. On 23 March 2006, following the quashing of the ordinary care order by the Ministry, the Maribor Authority issued a new emergency care order, by which the children were to remain in the foster home. In the written grounds, it stated that the reason for re-examination of the matter concerning the ordinary care order was the fact that no independent expert had been appointed and that the higher courts had given no indication that the children should be returned to their parents. In addition, the Maribor Authority referred to the fact that an indictment had been lodged against the applicants, alleging that they had caused the death of W by negligence, which would have in itself been a sufficient reason for taking their remaining minor children into public care. The order did not set out any new contact arrangements, as this issue was pending before the Maribor District Court (see paragraph 43 below).

18. The applicants appealed against the emergency removal, on the grounds that it was unjustified. The appeal was rejected by the Ministry, which found that there were sufficient grounds for emergency placement of the children in foster care. On 23 August 2006 the applicants lodged a claim with the Administrative Court, which was rejected on 13 March 2007, as the court agreed that the facts as established by the Maribor Authority and its panel were sufficient to justify the emergency placement of the children in foster care pending the outcome of the proceedings concerning the ordinary care order.

19. In the meantime, on 14 April 2006, the Maribor Authority appointed a forensic expert in psychology to draw up a report on the applicants'

capacity for parenting. He submitted his report on 10 September 2006. On the basis of the examination of the applicants, Y and X, the first applicant's other daughters, the social workers and neighbours, and having regard to the circumstances surrounding W's death, the expert found that Y's and X's psychophysical development would be at a serious risk if they stayed with the applicants, who were unable to satisfy their basic needs. It found that the second applicant was passive and as such unable to take an active role in the family, and that the first applicant had developed an "emotionally unstable personality disorder with querulous and socially inadaptative behaviour". He also found that the contact should certainly not be extended and that the applicants should be given clear limits as regards their contact with Y and X.

20. On 13 October 2006 a hearing was held before the Maribor Authority, at which the applicants were present.

21. On 11 January 2007 the Ministry allowed the applicants' request for a change of venue. The case concerning the care order was consequently allocated to the Ptuj Welfare Authority (hereinafter referred to as the "Ptuj Authority"), which appointed their internal expert panel (hereinafter referred to as the "Ptuj panel") on 25 April 2007. After the change of venue, the Maribor Authority regularly reported to the Ptuj Authority on the contact between the applicants and the children.

22. On 20 June 2007, on the basis of the reports collected so far, the Ptuj panel issued an opinion that the applicants were unfit parents. It also noted that the children could potentially be returned to their parents if the latter underwent appropriate therapy.

23. A hearing was held on 19 July 2007 before the Ptuj Authority, which allowed the evidence proposed by the applicants - an opinion of another independent expert, reports from the primary school, an interview with X - and ordered a home visit to be carried out. An interview was also held with the applicants, foster parents and a social worker with responsibility in the case.

24. The expert in psychology requested by the applicants was appointed on 20 July 2007. She was asked to assess the applicants' capacity for parenting, whether the return of the children would be in the latter's interest, and what the children's wishes were. On 26 July 2007 additional questions proposed by the applicants were forwarded to the expert for reply. Subsequently, a forensic expert in psychiatry was also requested to prepare a report.

25. On 14 December 2007 the expert in psychology submitted her report. She concluded that the applicants were unable to take proper care of X and Y, and that it was in the children's interest to stay with the foster family. She also noted that contact should continue to be supervised and should not be extended. According to the opinion of the psychiatrist, both applicants had a personality disorder although the first applicant's disorder

was particularly severe. The report suggested that the normal development of the children was likely to be jeopardised if they returned to their primary family.

26. On 3 January 2008 the Ptuj panel, on the basis of the new expert reports, issued another report proposing that a care order be issued and that the children remain in foster care. The Ptuj panel also took into account the social workers' reports drawn up after each contact between the applicants and the children, and noted that the applicants had not improved their behaviour towards the children, despite being constantly provided with advice in this respect.

27. On 12 March 2008 a hearing was held before the Ptuj Authority at which the applicants, who contested the experts' reports and the report by the Ptuj panel, were also present.

28. On 19 May 2008 the Ptuj Authority, having regard to the evidence obtained in the proceedings, delivered a care order by which it decided that Y and X should be taken from the first applicant and Y should also be taken from the second applicant. Both should remain in foster care. It proposed that the parents undergo appropriate therapy, after which their parenting ability would be examined again.

29. The applicants lodged an appeal with the Ministry, which was dismissed. At that point the second ordinary care order became enforceable and replaced the emergency order of 23 March 2006.

30. On 18 December 2009 the applicants challenged this decision before the Administrative Court.

31. On 5 July 2010 the Administrative Court delivered a judgment rejecting the applicants' claim. The court, having regard to the evidence collected in the administrative proceedings, concurred with the findings of the administrative authorities and rejected the applicants' claim. The applicants did not appeal.

32. During the proceedings the applicants five times requested access to the Maribor Authority's file, which was granted.

C. The applicants' request for the return of the children

33. On 19 September 2005 the applicants requested the Maribor Authority to initiate proceedings for the return of the children. They stated that no measures had been taken with a view to reuniting the family; in particular, that a "project group", including them, should have been set up and had not been. It should also have included X and Y and the foster parents and should have aimed to draw up a schedule for the return of the children, as stipulated in the domestic law.

34. On 1 December 2005 the Maribor Authority dismissed the request as essentially the same as the issue of the children's care and contact, which

had already been decided by the decision of 18 December 2003, which was enforceable.

35. On 24 July 2006 the Ministry dismissed an appeal by the applicants. However, on 23 February 2007 the Administrative Court quashed that decision and ordered a re-examination of the case, finding that the applicants' request concerning the implementation of the foster care and the proceedings concerning the taking of the children were two separate issues with different legal bases.

36. On 8 June 2007 the applicants attended a meeting with the Maribor Authority, where they were invited to explain their request. On 31 July 2007 the Maribor Authority discontinued the proceedings. The applicants appealed, stating that the Maribor Authority had conducted proceedings arbitrarily and it should have invited them formally and in writing to correct the request if it considered it incomplete. On 15 November 2007 the Ministry set aside the Maribor Authority's decision of 31 July 2007, finding that the applicants had never withdrawn their request and that the Maribor Authority should therefore have decided on it. However, it stressed that although this was a separate request it was nevertheless connected to the issue of the taking of the children and should be decided at the same time. Consequently, the Ptuj Authority decided the issue in its decision of 19 May 2008, by which the children were to remain in foster care. The applicants' appeal and a claim to the Administrative Court was rejected (see paragraphs 28 to 31 above).

D. Contact arrangements and activities aimed at a possible reunification of the family

37. The Maribor Authority has remained responsible for the contact arrangements, counselling and monitoring of the children's foster care. It set out contact arrangements in its emergency order of 2 June 2003 and then in its ordinary care order of 18 December 2003. The applicants were allowed to see X and Y under the Authority's supervision for one hour every two weeks (see paragraphs 8 and 12 above). On 23 December 2003 the applicants requested contact with X and Y during weekends. This was rejected by the Maribor Authority as in breach of the valid decision on contact arrangements. On 19 August 2005 the applicants requested that their contact take place out of doors and to have X and Y at home at weekends. The latter request was transferred to the Maribor District Court on 28 August 2005 (see paragraph 43 below).

38. After the children were taken into foster care, reports were regularly prepared by social workers indicating several problems which occurred during the visits, in particular due to the first applicants' abrupt behaviour and the pressure she put on the children as regards their behaviour towards her, in particular on X, whom she pressured, among other things, to write

requests to return home. The first applicant was intensively involved in the organisation of the leisure activities and schooling of X and problems regularly occurred in this respect as well. On 3 October 2003 the Maribor Authority also decided that the first applicant should not have telephone conversations with X, to whom she had given a mobile phone and made frequent calls, as this was causing X a lot of stress. During the first years after the children were taken into foster care the applicants often tried to approach them at the foster parents' home or at school, for which reason a restraining order was requested by the Maribor Authority. In 2005 the Maribor Authority prepared a care plan, which included steps planned with a view to possible family reunification, such as assistance in order to improve contact, the applicants' attendance at special counselling and therapy sessions and attention to be given to the children's wishes as well as regular reviews of the situation with reunification in mind. The plan also noted that the return would depend on whether the applicants would be sentenced in the criminal proceedings.

39. The Maribor Authority regularly organised thematic meetings at which social workers discussed the situation regarding X and Y. The applicants had been regularly (often monthly and occasionally weekly) invited to discuss issues relating to X and Y as well as to attend consultations. The reports drawn up during or after these meetings indicated that the applicants did not have a constructive attitude and were unwilling to undergo therapy.

40. In addition to the above meeting, the "individual project group" was set up in 2005 and has held meetings since then. The applicants, foster parents and social workers dealing with the case were usually invited to these meetings, where they discussed issues relating to the day-to-day life of the children and the applicants' parenting and visiting arrangements.

41. The reports of the meetings between the applicants and the social workers show that both applicants were involved in contact arrangements and had the opportunity to express their opinion as regards X and Y. The reports also indicate that the applicants were normally also able to have contact with the children on special occasions such as birthdays, Y's first communion and the applicants' marriage ceremony.

42. It would appear that during the last two years or so the contact between the applicants and the children has improved and is now no longer being supervised. At the meeting of the "individual project group" held on 24 August 2010, at which the applicants were present, the following was agreed: contact would take place every two weeks, namely once on Sunday (from 10 a.m. to 7 p.m., with the applicants picking up and returning the children) and once on Wednesday (from 2 p.m. to 6 p.m., with a social worker bringing the children to the applicants' home and picking them up at the end of the visit). According to the information supplied by the applicants following the first applicant's incarceration, the second applicant takes Y

and X from the foster family and spends a day with them every two weeks. The Maribor Authority's report of 23 November 2010 also indicates that during each meeting the second applicant takes Y and X to visit the first applicant in prison and afterwards spends the rest of the day with them. The latter report also noted that Y expressed the wish to visit the first applicant once a month and the second applicant twice a month, and did not wish to visit the applicants without the presence of X. Likewise, X stressed in her letter to the first applicant dated 5 January 2011 that she wished to have contact with her no more than once a month.

E. Contact arrangement proceedings before the court

43. On 28 August 2005 the Maribor Authority forwarded to the Maribor District Court the applicants' request of 19 August 2005 for extended contact with X and Y (see paragraph 37 above). The court held two hearings and appointed an expert in psychology. The court regularly inquired about the progress of the criminal proceedings against the applicants: the latest inquiry was made on 18 January 2010. The proceedings appear still to be pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant provisions of the Slovenian Constitution read as follows:

Article 53 (Marriage and the Family)

“...

The state shall protect the family, motherhood, fatherhood, children and young people, and shall create the necessary conditions for such protection.”

Article 53 (Rights and Duties of Parents)

“Parents have the right and duty to maintain, educate and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests.

...”

45. The Constitutional Court Act (Official Gazette no. 64/2007 – official consolidated version) provides in so far as relevant:

“(1) A constitutional appeal alleging a violation of human rights or fundamental freedoms may, under the conditions determined by this Act, be lodged against

individual acts by which state authorities, local authorities, or holders of public power have decided on rights, obligations, or legal interests of individuals or legal entities.

...”

46. Relevant provisions concerning removal of children and foster care are included in the Marriage and Family Relations Act (Official Gazette no. 69/2004 - official consolidated version, hereinafter referred to as “the Family Act”). They read as follows:

Section 120

“(1) A welfare authority can remove a child from his or her parents and place him or her in the care of foster parents or an institution, if the parents have neglected him or her or if this is necessary for other reasons for the protection of the child’s interest.

(2) The removal of the child does not affect the other rights and responsibilities of the parents.

(3) The welfare authority is responsible for the monitoring of the implementation of the above measure.”

Section 157

(1) A welfare authority can place a child in foster care if he or she does not have his or her own family or cannot live with his or her own family for different reasons or if his or her physical and psychological development is at risk at home.

...”

Section 161

“Following the placement of a child in foster care, the welfare authority must strive to eliminate the reasons which led to the removal.”

47. Furthermore, section 88 of the Social Security Act (Official Gazette no. 3/2007 - official consolidated version) provides, in so far as relevant, as follows:

“When welfare authorities deal with the administrative matters concerning rights and interest of children according to sections 105, 106, 114, 120 and 121 of the Family Act, they shall, before taking any decision, ... obtain a report from an internal expert panel (*strokovna komisija*) and hold a hearing.

The panel referred to in the preceding paragraph is formed by the expert council of the welfare authority ...”

48. The Administrative Disputes Act (Official Gazette no. 105/2006) provides in its section 83 grounds on which an appeal on points of law can be lodged with the Supreme Court. The grounds are provided as alternatives. The relevant text reads as follows:

(1) A judgment of a first-instance court can be challenged by an appeal on points of law, which shall be lodged thirty days of the service of the judgment on the party.

(2) The appeal on points of law is admissible if:

...

2. it concerns an important legal questions ...;

3. it the impugned decision has serious consequences for the party;

...”

49. As regards the contact rights of parents and estranged children, the old section 106 of the Family Act (in force until 1 May 2004) provided that the parent who did not live with his or her child had a right to have contact with him or her unless the Welfare Authority decided otherwise.

50. However, the Constitutional Court set aside this provision in its decision no. U-I-312/00 delivered on 23 April 2003. This decision was primarily concerned with the contact rights of parents who did not live together but had never been married, and therefore the issue of contact arrangements could not have been part of divorce proceedings before a court. The Constitutional Court found that the system whereby the welfare authorities decided on contact arrangements was unconstitutional in that it did not provide for the same level of protection of the children’s rights to participate in the proceedings as would have been provided by way of court proceedings. The Constitutional Court however noted that the system was not problematic in respect of the protection of the parents’ rights of participation. Parents were able to be sufficiently involved in administrative proceedings by having the right to express their opinion, to request evidence, to comment on submissions by other participants, to participate in the hearing and to lodge appeals. Because it was determined that there was insufficient protection for children’s rights, the Constitutional Court ordered that new legislation should be adopted within a year with a view to transferring matters concerning contact arrangements to courts.

51. As a result of the above Constitutional Court’s decision, an amendment to the Family Act (Official Gazette no. 16/2004) was adopted and entered into force on 1 May 2004. According to the transitional provision, proceedings instituted before the entry into force of the amendment were to be completed before the administrative authorities. However, the requests concerned by the amendment made to welfare authorities after the above mentioned date should be automatically transferred to the court.

52. Section 106 of the amended Family Act reads, as far as relevant, as follows:

“(1) A child has a right to have contact with both parents. Both parents have a right to have contact with their children. The contact is meant primarily to serve the child’s interest.

...

(5) The court can withdraw or restrict the right to contact only if this is necessary for the protection of the child’s interest. Contact would not be in the child’s interest if it caused psychological pressure or if it caused risk to the child’s physical and psychological development. The Court can decide that the contact should be carried out under the supervision of a third person or by means other than visits if this is necessary in order to protect the child’s interests.

...

(7) Before taking a decision under the ... fifth paragraph of this section, the court must obtain an opinion from the welfare authority. The court shall consider also the child’s opinion, if he or she is able to express it himself or herself, or with the assistance of another person he or she trusts and has chosen ...”

53. Moreover, section 106.a was introduced with the above-mentioned amendment. It provides that the child has a right to have contact with the extended family members, apart from his or her parents, if he or she is personally attached to them. These included the current or previous spouse or partner of one of his parents. The contact should be agreed between the parents, the child, if he or she is able to understand the matter, and the persons in question. The welfare authorities should assist in the matter. If no agreement is reached, the court shall decide on the issue further to a request lodged by a child who is fifteen or older, the persons in question or the welfare authority.

THE LAW

I. SCOPE OF THE CASE

54. The Court notes that in her submissions lodged on 31 October 2010, that is after the communication of the application to the Government, the first applicant also complained about the length of the court proceedings concerning contact arrangements. The latter complaint is not an elaboration of the applicants’ original complaints, on which the parties had already commented. The Court considers therefore that it is not appropriate to take this matter up now. It will be dealt with in a separate case (see *Andriy Rudenko v. Ukraine*, no. 35041/05, § 21, 21 December 2010).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicants complained under Article 8 of the Convention that the domestic authorities had removed X and Y and placed them in foster care without having a legal basis to do so and without any justified reason. As regards the lack of a legal basis, the applicants refer to Constitutional Court decision no. U-I-312/00 (see paragraph 50 above).

56. The applicants further complained that their request for the return of their children had been entirely ineffective.

57. Lastly, the applicants complained that the contact restrictions were unjustified and that the welfare authorities were not competent to impose such restrictions on them.

58. Article 8 of the Convention reads as follows:

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

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

A. Admissibility

1. The Government objection concerning the second applicant's victim status in respect of the removal of and contact with X

59. The Government argued that the second applicant was not the biological nor the adoptive father of X. They further maintained that *de facto* family ties did not exist between the second applicant and X. They had lived together no more than three years prior to X's removal and the second applicant had in any event not been involved in her upbringing. They also submitted a recent letter from X, in which she referred to the second applicant by name.

60. The applicants argued that although formally speaking the second applicant and X were not in a family relationship, they had lived together as a family, and the second applicant had taken care of X as if she was his own child.

61. The Court notes that the second applicant never specified that his complaint related also to removal of and contact with X, who was not his natural child. Neither has he pursued any legal avenues available to him in the domestic system requesting contact on the basis that he had close ties with X (see paragraph 53 above). The Court therefore considers that his complaint is solely related to the removal and contact arrangements with Y.

It follows that it is not necessary to take cognisance of this Government's objection.

2. The issue of exhaustion of domestic remedies

(a) Proceedings concerning removal of the children

62. The Government argued that the applicants had failed to exhaust domestic remedies in respect of their complaint concerning the care order proceedings, as they had not appealed to the Supreme Court against the judgment of 5 July 2010. Had they done that, they could also have challenged the Supreme Court's decision before the Constitutional Court. That the appeal on points of law would be an effective remedy for the applicants was proven by the fact that the applicants had previously been successful by using this remedy.

63. The applicants did not provide any comments as to why they did not use the above-mentioned remedy.

64. The Court notes that it has not been disputed that any decision by the Administrative Court can be challenged before the Supreme Court. It further notes that the applicants did not challenge the emergency orders before the Supreme Court neither did they challenge the legality of the care order by means of appeal on points of law against the Administrative Court judgment of 5 July 2010 (see paragraph 48 above). The same applies to their request for the return of the children, which, after the Ministry's decision of 15 November 2007, was part of the same proceedings. The Court moreover notes that any decision by the Supreme Court could further be challenged by means of a constitutional appeal, in which an appellant can allege a violation of constitutional rights including those relating to family life (see paragraphs 44 and 45 above). Having regard to the foregoing, the Court concludes that the applicants failed to exhaust domestic remedies in respect of their complaint relating to the removal of the children and placing them in foster care. This part of the application should thus be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Proceedings concerning contact arrangements

65. The Government moreover argued that the applicants should have used civil remedies, namely a request for the termination or prevention of an infringement of personal rights under section 134 of the Civil Code and a claim for compensation under section 179 of the Civil Code. They also maintained that lack of jurisprudence showing how the above-mentioned provisions applied to the alleged violation of parental rights should not be sufficient for a finding that the aforementioned remedies were inadequate.

66. As regards the claim under section 134 of the Civil Code, the applicants argued that the family law as *lex specialis* applied to the applicants' situation, and that the proceedings were predominantly of an administrative nature. The Government's suggestion that the applicants should have used the aforementioned civil claim had no basis in law. Moreover, a compensation claim under section 179 of the Civil Code would not have been adequate, as it could have not led to the return of the children or a change of contact rights.

67. The Court, like the applicants, finds it difficult to see how the aforementioned remedies could have been applied in the context of the applicants' complaint concerning contact arrangements. However, even assuming that any of them could in theory have offered adequate redress, the Government failed to produce any case in which the courts had ruled on such a complaint. While it is not for the Court to give a ruling on an issue of domestic law that is as yet unsettled, the absence of any case-law does indicate the uncertainty of these remedies in practice (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII; *Marini v. Albania*, no. 3738/02, § 156, ECHR 2007-XIV (extracts); and *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77). The Court therefore concludes that by not making use of the civil remedies referred to by the Government the applicants did not fail to comply with the requirement of exhaustion of domestic remedies in respect of their complaint concerning contact arrangements.

3. Compliance with the six-month time-limit in respect of the period between 9 March 2006 and 23 March 2006

68. The Government argued that as regards the period between 9 March 2006 and 23 March 2006, in which the taking of the children was not based on any decision, the applicants have not complied with the six-month time-limit.

69. The applicants disputed this argument and maintained that the alleged violation was of a continuing nature.

70. The Court observes that in so far as the applicants could be understood to be complaining of a lack of legal basis for the removal of the children during the period between the quashing of the first ordinary care order and the issuing of the second emergency order (see paragraphs 16 and 17 above) this complaint should have been seen as of an autonomous nature. If the applicants considered that they had no effective remedy to challenge the situation during the aforementioned period, they should have introduced this complaint no later than six months after 23 March 2006, when the second emergency care order was issued providing a basis for the continuous placement of the children into foster care. By lodging their application only on 19 June 2007, the applicants failed to comply with the

six-month requirement set out in Article 35 § 1. This part of the application should be rejected under Article 35 § 4 of the Convention.

4. Conclusion

71. The Court finds that the complaints relating to the care orders and return of the children should be declared inadmissible under Article 35 § 4 of the Convention. As regards the remainder of the applicants' Article 8 complaints, which concerns restrictions imposed on their contact rights, the Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

72. The applicants argued that the contact with X and Y was excessively restricted by decisions which were issued by the welfare authorities. The latter, however, in their view had no competence to decide on the matter. In this connection, they referred to Constitutional Court decision no. U-I-312/00, and argued that as a result of this situation X's and Y's procedural rights were breached. Furthermore, they argued that there had been no specific reasons to restrict their contact with the children.

73. The Government argued that the restrictions on the applicants' contact rights were based on the findings of relevant experts. Although the first applicant was shown to be particularly problematic, the second applicant was unable to function independently of her. Contact restrictions therefore needed to be applied to both of them. The Government further maintained that the authorities were making continuous efforts to improve the relationship between the applicants and X and Y by providing counselling to the applicants at special meetings and during the children's visits. The applicants were, however, not willing to undergo therapy or to change their behaviour. It has been only recently that the relationship between the applicants and the children has improved, which was mostly due to the fact that the children had grown up in the meantime. Finally, the Government argued that the State cannot force parents to undergo therapy, and that this would in any event be non-productive.

2. The Court's assessment

74. The Court finds - and this was not contested by the Government - that the restrictions concerning the first applicant's contact with X and Y and the second applicant's contact with Y amounted to an interference with the applicants' right to respect for their family life.

75. For an interference to be justified according to the second paragraph of Article 8, it has to be shown to be “in accordance with the law”, to have an aim or aims that is or are legitimate under this paragraph and to be “necessary in a democratic society” for the aforesaid aim or aims.

(a) Whether the interference was “in accordance with the law”

76. As to whether the measure in question was “in accordance with the law”, the Court would first point out that its power to review compliance with domestic law is limited and that it is in the first place for the national authorities, notably the courts, to interpret and apply that law (see, for example, *Eriksson v. Sweden*, 22 June 1989, § 62, Series A no. 156).

77. The Court observes that the contact arrangements were determined by the Maribor Authority on 18 December 2003. At that time the welfare authorities had competence to decide on matters such as contact arrangements (see paragraph 49 above), which could subsequently be challenged before the Administrative and Supreme Court. The Court notes that on 1 May 2004 an amendment to the Family Act entered into force following Constitutional Court decision no. U-I-312/00 delivered on 23 April 2003 (see paragraph 50 above). According to that amendment, the courts acquired jurisdiction in matters concerning restriction of parents’ contact with their children. In line with the aforementioned amendment, the applicants’ subsequent request of 19 August 2005 was referred to the court (see paragraphs 51 and 52 above), which has not yet decided on it.

78. As regards the contact arrangements which had later been made before the Maribor Authority, it appears that these arrangements, which were favourable to the applicants, were not decided by the authority but were agreed among the participants, including the parents. There is nothing to suggest that such agreements could not have been reached with the participation of the welfare authority, which had remained responsible for the implantation of the foster care and for the measures with a view to reuniting the parents and the children (see paragraph 46 above).

79. The Court therefore concludes that the restriction on the applicants’ contact rights was “in accordance with the law”.

(b) Whether the interference pursued a legitimate aim

80. The Court finds that the restrictions were imposed with the legitimate aim of protecting Y’s and X’s interests.

(c) Whether the interference was “necessary in a democratic society”

81. It has also to be considered whether the measures at issue could be regarded as “necessary in a democratic society”. The notion of necessity implies that the interference must be proportionate to the legitimate aim pursued. In assessing whether the contact restrictions were a disproportionate interference with the applicants’ Article 8 rights, the Court

must consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII). In carrying out that assessment it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. The Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their powers (see, among others, *Johansen v. Norway*, 7 August 1996, § 64, *Reports of Judgments and Decisions* 1996-III).

82. The Court would also reiterate that, while national authorities enjoy a wide margin of appreciation in deciding whether a child should be taken into care, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental contact rights. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I). In this connection, the Court recalls the principles set out in *Neulinger and Shuruk v. Switzerland* case in so far as they are relevant also to the present context (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 134-6, 6 July 2010 and *R. and H. v. the United Kingdom*, no. 35348/06, §§ 73-4, 31 May 2011). In particular, in all decisions concerning children, their best interests must be paramount. The child's best interests may thus, depending on their nature and seriousness, override those of the parents. The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*Neulinger and Shuruk v. Switzerland*, cited above, § 134).

83. Turning to the present case, the Court notes that Y and X were taken into foster care on 2 June 2003, when the emergency care order was issued. The latter also set out contact arrangements, which were restricted to one hour every two weeks under supervision. Such arrangements were maintained until sometime in 2010. The Court notes that the restrictions on the contact between the applicants and the children were based essentially on two grounds. Originally, they related to the circumstances of the death of W, who was the same age as Y. These circumstances led to a suspicion of domestic violence and neglect of W, which was later confirmed by the criminal court finding both applicants guilty of negligent manslaughter and the first applicant guilty of causing severe injuries to W. In the face of the circumstances in which W died, it was only reasonable for the welfare

authority to be concerned about the risk the children could be exposed to at home and to take precautionary measures to protect X and Y, which included restricting contact with the applicants. Secondly, the reports drawn by the experts in psychology and psychiatry, one of whom was proposed by the applicants, all deemed the applicants unsuitable as parents and indicated their, in particular the first applicant's, negative influence on the children's well-being. The experts possessed the required skills and had been able to make a direct assessment of the situation: they were, apart from the first one, independent of the welfare authority. They all advised that the contact should not be extended beyond the initial arrangement, as this would be to the detriment of X and Y (see paragraphs 12, 19 and 25). The Court notes that in following the experts' proposal the welfare authorities were striving to safeguard the children's best interest. It finds that the reasons relied on in justifying the restriction imposed on the applicants' contact rights were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention

84. The Court further notes that the contact took place regularly, every two weeks, and that the applicants, who have retained their parental rights in respect of Y and the first applicant in respect of X, were continually involved in the children's life and education. Meetings between the applicants and the social workers were held regularly, and it would appear from the reports made in this connection that the applicants' wishes concerning the implementation of contact arrangements were adhered to as much as possible. The Court also observes that sustained efforts were made on the part of the authorities to facilitate contact and possible family reunification, and that the situation was regularly examined to see whether there had been any improvement in the family situation (see paragraphs 37-42 above). It would appear that for a number of years the situation had not improved, in large part due to the applicants' lack of a constructive attitude, which had been noted in the aforementioned reports as well as in the last expert's opinion from 2007 (see paragraphs 25, 26 and 39 above). The contact, one hour every two weeks, nevertheless took place. It would appear that in 2010 the situation improved, to which the authorities reacted by agreeing to extending the contact to the whole day without supervision. These arrangements appear to be agreed to by the applicants and in line with the wishes of the children, who have opposed more frequent contact (see paragraph 42 above). Since the first applicant started serving her prison sentence, the children continue to spend a day every two weeks with the second applicant and go with him to visit the first applicant in prison.

85. Having regard to the reasons adduced for the restriction of the applicants' contact with Y and the first applicant's contact with X, and to the steps taken by the authorities with a view of facilitating the contact and

possible reunification, the Court finds that there has been no violation of Article 8 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicants also complained about the length of the proceedings concerning the care order. Although they cited Article 13, this part of the application in substance concerns Article 6 § 1 of the Convention. Having said that, the Court notes that the applicants had at their disposal remedies to expedite proceedings as well as to claim compensation for the alleged undue delay under the relevant provisions of the Act on Protection of the Right to a Hearing without Undue Delay. They failed however to avail themselves of these remedies, and 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 (see *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, §§ 144-48, 1 December 2009, and *Nezirović v. Slovenia* ((dec.) no. 16400/06, 25 November 2008).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning restrictions on the applicants' contact with Y and the first applicant's contact with X admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 1 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President