



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

1959 • 50 • 2009

THIRD SECTION

CASE OF EBERHARD AND M. v. SLOVENIA

(Applications nos. 8673/05 and 9733/05)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

01/03/2010

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

In the case of Eberhard and M. v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 November 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 8673/05 and 9733/05) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovenian nationals, Mr Johann Ivan Eberhard and Ms M. (“the applicants”), on 18 February 2005. The President of the Chamber acceded to the applicants’ request not to have the second applicant’s name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 24 June 2008 the Court joined the applications, declared them partly inadmissible and decided to communicate the complaints concerning the non-enforcement of access arrangements decided in administrative proceedings, and the delays in the court proceedings concerning child custody and access arrangements, to the Government. It also decided to examine the merits of the parts of the applications that were communicated to the Government at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant, Mr Eberhard, was born in 1968 and lives in Ponikva. The second applicant, M., is his daughter.

5. On 8 April 2001 the first applicant's wife, M.E., together with the second applicant, then aged four, moved out of the flat in which they had been living with the first applicant. M.E. subsequently filed a petition for divorce.

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

6. On 4 May 2001 the first applicant and his wife, with whom the second applicant was living, signed an agreement on access arrangements.

7. On 12 June 2001 the first applicant filed a request with the Šentjur Social Welfare Centre ("the Šentjur Centre") seeking formal determination of the access arrangements, claiming that since 12 May 2001 M.E. had denied him access to the second applicant.

8. During the following month M.E. gave a number of statements at the Šentjur Centre, opposing contact between the applicants, stating that the first applicant represented a danger to her and the second applicant. She also lodged a criminal complaint against the first applicant for endangering their safety.

9. On 11 July 2001 the expert committee of the Šentjur Centre submitted an opinion in the case.

10. On 31 July 2001 a hearing was held at the Šentjur Centre. While the first applicant attended the hearing, M.E. refused to attend, claiming that she did not feel safe in the presence of the first applicant.

11. On 1 August 2001 the Šentjur Centre issued an order granting the first applicant four hours a week with the second applicant, taking into account the expert committee's opinion and the fact that, at the supervised meeting between the applicants, the second applicant had not appeared to be afraid of the first applicant but, on the contrary, pleased to see him. The Šentjur Centre did not follow the first applicant's proposal that he should be allowed to pick the second applicant up at her nursery; instead it ordered M.E. to bring the second applicant to a meeting point at a local train station.

12. On 3 October 2002, further to an appeal by M.E., the Ministry of Labour, Family and Social Affairs ("the Ministry") modified the order in part. However, in essence, the access arrangements remained unaffected.

The access order therefore became final and enforceable on 16 October 2002.

13. M.E. failed to comply with the order. She did not bring the second applicant to the meeting-point specified therein.

14. On 22 November 2002 the first applicant requested enforcement of the order. After hearing evidence from both parties, on 31 January 2003 the Šentjur Administrative Unit ("the Unit") allowed the enforcement and ordered M.E. to hand the second applicant over to the first applicant at the next meeting. In addition, the Unit decided that if M.E. failed to do so she would be ordered to pay a fine of 5,000 Slovenian tolar (SIT) (approximately 25 euros (EUR)). It also noted that the fine could be increased in the event of further failure to comply.

15. M.E. continued to refuse the first applicant all access to the second applicant.

16. Further to the first applicant's thirteen notices of non-compliance by M.E., on 3, 18, 23 and 30 April, 13 May and 9 June 2003 the Unit issued orders imposing fines which increased from SIT 5,000 to SIT 35,000 (approximately EUR 145). The orders were forwarded to the tax authorities for execution.

17. M.E. appealed against the orders.

18. According to letters addressed to the court by the Šentjur Centre on 8 September 2003 and 3 May 2004, in the context of proceedings no. P 667/2003, the Šentjur Centre and the Unit attempted to organise supervised meetings between the applicants, but M.E. refused to cooperate.

19. On 15 June 2004 the Ministry quashed the impugned enforcement orders, finding that M.E. had not been informed of the first applicant's notices concerning non-compliance and had had no opportunity of participating in the proceedings and presenting arguments in her favour. The Ministry also found that the Unit had not examined the situation by verifying whether the meetings had actually failed to take place, and, if so, whether there had been justifiable reasons for such failure. The Ministry, however, noted that the order determining access arrangements remained enforceable and could not be challenged in those proceedings. The Unit was ordered to re-examine the notices. Neither of the parties challenged the decision before the Administrative Court and it therefore became final on 29 June 2004.

20. Further to changes in legislation which stipulated that the first-instance authority should be in charge of enforcement, the Unit transferred the file to the Šentjur Centre on 7 April 2005. There are no indications in the case file that any steps were subsequently taken by the Šentjur Centre in the context of these proceedings.

B. The divorce and related determination of child custody (P 380/2001)

21. On 14 June 2001, further to the divorce petition filed by M.E., the Celje District Court issued an interim decision granting M.E. provisional custody (*varstvo in vzgoja*) of the second applicant pending the outcome of the proceedings. This decision was upheld by the Celje Higher Court on 15 November 2001.

22. On 11 February 2002 the Celje District Court issued a judgment granting the first applicant and M.E. a divorce, granting M.E. custody of the second applicant and fixing the amount the first applicant had to pay in child support.

23. On 4 December 2002 the Celje Higher Court upheld M.E.'s appeal in part and increased the child support. This was a final decision in these proceedings.

C. The first applicant's application for child custody and his alternative request for new access arrangements (court proceedings P 667/2003)

24. On 6 June 2003 the first applicant lodged an application for custody of the second applicant, relying on the fact that M.E. was denying them contact. He also requested an interim order under which the second applicant would be placed in his custody pending the outcome of the proceedings, and the appointment of a *curator ad litem* to represent the second applicant's interests in the proceedings. He further requested that the case be granted priority. On 7 July 2003 the applicant submitted documents in support of his request for exemption from obligation to pay the court fees.

25. The hearing scheduled for 30 September 2003 was cancelled at the first applicant's request.

26. At a hearing held on 20 November 2003 the first applicant requested to have the case dealt with through mediation. The request was allowed by the court. However, it would appear that M.E. showed no interest in resolving the issues in that manner.

27. On 3 March 2004 the first applicant requested the President of the court to establish why no hearing had been scheduled. The next day a hearing was scheduled for 1 April 2004. That hearing was then adjourned as M.E. did not attend. The Šentjur Centre was requested to conduct an interview with M.E. and to inform the court about the implementation of contact between the applicants.

28. At the hearing of 13 May 2004, the first applicant requested that the proceedings be stayed, after having had an opportunity to see the second applicant at the school's parent-teacher meetings.

29. However, as M.E. continued to refuse any contact between the applicants, on 16 August 2004 the first applicant requested that the proceedings be resumed and a hearing was scheduled for 7 October 2004. It was adjourned as the court decided, further to the first applicant's request, to appoint an expert psychologist. On 19 October 2004 the court appointed expert D.T. to produce an opinion in the case.

30. On 24 May 2005 the first applicant lodged written submissions and requested the court to urge the expert to prepare the opinion. In addition, he made an alternative request seeking, *inter alia*, a change in the access arrangements and to have proceedings Pn 22/2005 (see paragraphs 52-62 below) joined to the current set of proceedings. In these and subsequent submissions the second applicant was also mentioned as a plaintiff.

31. On 16 June 2005 and 7 December 2005 the first applicant lodged further written submissions. In the first set, he submitted that he had had no access to the second applicant. He also asked the court to appoint another expert, as D.T. had failed to produce an opinion. In the second set of submissions the first applicant urged the court to issue the interim custody order (see paragraph 24 above) and added an alternative request for an interim access order. In the latter, he emphasised the need to organise the visits in a manner that would prevent M.E. from obstructing them. Accordingly, he proposed to pick the second applicant up from school, after her lessons. The first applicant also informed the court that, to his knowledge, M.E. was refusing to be examined by D.T., and complained about the passivity of the court. In addition, the first applicant alerted the court to the fact that he had had no access to the second applicant in the past four and a half years, except on one occasion at her school.

32. In the meantime, the appointed expert informed the court on 22 September 2005 that he was unable to prepare the opinion as M.E. had refused to cooperate. On 8 December 2005, the court informed the first applicant that it would decide on the interim orders only when the expert opinion was available.

33. On 22 February 2006 the first applicant lodged supervisory appeals with the President of the court and the Ministry of Justice complaining about the passivity of the judge.

34. On 23 February 2006 the first applicant again urged the court to decide on the case, stressing that M.E. was deliberately avoiding examination by the expert.

35. On 27 February 2006 the judge prepared a report in reply to supervisory appeal. The next day the President of the court replied to the first applicant. He noted that no interference with the judge's decision concerning the appointment of the expert was permitted and that there were no reasons for any measures to be taken in response to the first applicant's supervisory appeal. He also informed him that the main reason for the delay in the proceedings was M.E.'s failure to cooperate and reassured him that if

the expert could still not examine M.E. the court would decide on the interim access order in the absence of an expert opinion.

36. On 14 March 2006 the first applicant requested the expert, the judge and the President of the court to step down from the case, arguing that they were inactive. His requests were dismissed on the ground that the statutory conditions for withdrawal were not fulfilled.

37. On 20 March 2006 M.E. was examined by the expert.

38. On 19 May 2006 the court held a hearing concerning the interim orders. Beforehand, it acquired information concerning the first applicant's criminal record and relevant information from the Šentjur Centre and M.E.'s bank. All parties were present at the hearing. Subsequently, on 26 May 2006, the court issued a decision rejecting the first applicant's application for provisional custody and upholding his alternative request for an interim access order. It noted that "during the court proceedings the applicants had contact once in 2004 at the school in Celje and, subsequently, twice at the school in Ljubljana". The applicants were granted the right to spend, *inter alia*, one afternoon a week together, whereby the first applicant would pick the second applicant up after school and return her to M.E. at 5 p.m., plus every second weekend and part of the holidays. These arrangements were to be implemented after three weekly preparatory meetings. The court also decided that M.E. could be subjected to a fine of SIT 500,000 (approximately EUR 2,080) if she was found to be preventing or obstructing contact between the applicants. The second applicant was by then nine years old.

39. As M.E. and the second applicant moved to Ljubljana, the Ljubljana Vič-Rudnik Social Welfare Centre ("the Ljubljana Centre") obtained jurisdiction in the case. On 13, 20 and 27 June 2006 the applicants had contact in the context of the preparatory meetings held at the Ljubljana Centre. The Centre assessed the visits very positively. In answer to the court's request, the Ljubljana Centre informed it that subsequent contact between the applicants did not appear to have been hindered.

40. On 21 August 2006 the first applicant lodged written submissions complaining that on certain occasions he had been denied access to the second applicant. He also requested that M.E. be penalised as stipulated in the decision of 26 May 2006.

41. On 24 October 2006 the expert D.T. issued a report which assessed the relationship between the applicants in positive terms, finding that the second applicant showed affection for the first applicant and that there were no reasons to doubt the latter's capacity to be a parent. D.T. further found that M.E. had in the past year changed her attitude regarding the relationship between the applicants and gained some trust in the first applicant. D.T. also noted that the second applicant was growing up with her mother and had expressed a wish to continue living with her.

42. On 2 November 2006 the court ordered the first applicant to pay the expert's fees. The first applicant appealed on 10 November 2006. On 29 March 2007 the Celje Higher Court upheld the order of the first-instance court, finding that the first applicant had undertaken to pay the fees for the expert whose appointment he had proposed.

43. In the meantime, on 24 January 2007, the first applicant received the expert opinion.

44. On 27 February 2007 the court scheduled a hearing for 5 March 2007, which was adjourned *sine die* at M.E.'s request. M.E. stated that she would not be available during that period as she had given birth in December 2006 and was breastfeeding.

45. On 2 March 2007 the first applicant lodged a supervisory appeal, relying on section 6 of the Act on Protection of the Right to a Hearing without Undue Delay ("the 2006 Act").

46. On 23 March 2007 the President of the court, relying on section 6, paragraph 4 of the 2006 Act, replied to the supervisory appeal stating that the hearing had been held on 5 March 2007, that is, within four months of receipt of the supervisory appeal.

47. On 7 September 2007 the court held a hearing. It joined proceedings Pn 22/2005 to the existing proceedings. Since the first applicant insisted that the second applicant act as a second plaintiff and be represented in the proceedings by a *curator ad litem* (see paragraph 24 above), the court adjourned the hearing and appointed a lawyer to represent the second applicant.

48. On the same day the first applicant lodged preliminary written submissions in which he expressed his dissatisfaction with certain parts of the expert opinion and requested that a new expert be appointed.

49. On 3 October 2007 the first applicant lodged a motion for a deadline, relying on section 8 of the 2006 Act. On 15 October 2007 the President of the Celje Higher Court rejected (*zavreči*) the motion. He found that the first applicant had not sufficiently explained his allegations of undue delay and therefore failed to satisfy the requirements of section 5, paragraph 2, point 5 of the 2006 Act.

50. A hearing was scheduled for 9 November 2007 but was cancelled at the request of the second applicant's representative.

51. The next hearing was held on 10 January 2008. At the hearing the parties agreed on new access arrangements. Under the terms of that agreement, the first applicant also withdrew his application for custody rights. In addition, the parties withdrew two other claims – one criminal complaint for defamation lodged by M.E. against the first applicant and a civil complaint pursued by the first applicant against M.E. On that day the proceedings were "finally resolved" (see paragraph 79 below).

D. The first applicant's request for new access arrangements (court proceedings N 4/2004 and Pn 22/2005)

52. On 24 May 2004 the first applicant lodged a request for access arrangements in separate proceedings. In his request the first applicant noted that the access order issued in administrative proceedings had been ineffective and requested that the court grant an interim access order which would ensure contact between the applicants. In this connection, he requested to be granted the right to pick up the second applicant at her school, which would prevent M.E. from hindering the access. In July and September 2004 the court tried to serve the request on M.E., but to no avail. The court then ordered that the request be served through M.E.'s employer.

53. In his written submissions of 25 October 2004 the first applicant included the second applicant as a claimant.

54. On 26 October 2004 the Šentjur pri Celju Local Court held a hearing. It found that it lacked jurisdiction to decide in the case and referred it to the Celje District Court.

55. On 23 December 2004 the applicants requested the Šentjur pri Celju Local Court to transfer the case file to the Celje District Court.

56. On 29 December 2004 the Šentjur pri Celju Local Court informed the first applicant that the case could not be transferred as the decision concerning the court's lack of jurisdiction had not yet become final owing to the lack of success in serving it on M.E.

57. On 14 January 2005 the case was transferred to the Celje District Court and was registered under number Pn 22/2005.

58. On 11 February 2005 the first applicant requested priority.

59. The court held a hearing on 24 March 2005 in the absence of M.E. The first applicant testified that he had had access to the second applicant only on three occasions, namely on 12 May 2001, on 5 May 2004 and on 23 December 2004. The judge informed the first applicant that an interim access order could not be issued as the final access order issued in administrative proceedings was still in force.

60. On 24 and 25 March 2005 the first applicant filed written submissions.

61. On 4 April 2005 the Celje District Court asked the first applicant to enclose a confirmation from the social welfare centre that an attempt had been made to reach an agreement concerning access rights as stipulated in the Marriage and Family Relations Act. It also noted that the advance for the payment of expert fees had not been paid. It appears from this decision that the second applicant, represented by her father, was also considered a claimant in the proceedings.

62. On 17 May 2005 the court dismissed the request for new access arrangements as the first applicant had failed to submit the required documents. It seems, however, that this decision did not become final as on

25 May 2005 the first applicant successfully requested that the proceedings be joined to proceedings P 667/2003 (see paragraph 30 above).

II. RELEVANT DOMESTIC LAW

A. Family legislation in force at the material time

63. Until 1 May 2004 the Social Welfare Centres were in principle responsible for taking decisions concerning access arrangements. The enforcement of such decisions could then be requested only in administrative proceedings. As regards the sanctions, the Administrative Procedure Act (*Zakon o splošnem upravnem postopku*, Official Gazette no. 80/1999) provided in its section 299:

“If the enforcement of a non-pecuniary obligation cannot be achieved or achieved in time by the means specified in sections 297 and 298 of this law [such as the imposition of administrative fines], it may, depending on the nature of the obligation concerned, be secured by direct coercion unless otherwise stipulated in the applicable legislation.”

64. The Marriage and Family Relations Act (“the MFR Act”, *Zakon o zakonski zvezi in družinskih razmerjih*, (old) Official Gazette of the Socialist Republic of Slovenia no. 15/1976) stated in its section 114 that:

“... In the event of a divorce or annulment of marriage, parental rights (*roditeljska pravica*) shall be exercised by the parent who has custody of the child.

Decisions that are decisive for the development of a child, shall be taken by both parents together

If the parents cannot reach an agreement, the Social Welfare Centre shall decide.”

65. On 23 April 2003 the Constitutional Court delivered an important decision in which it found several provisions of the MFR Act concerning custody and access arrangements to be unconstitutional. Subsequently, an amendment was enacted by the Parliament (Official Gazette no. 16/2004). It entered into force on 1 May 2004.

66. Further to the above-mentioned legislative changes, the courts acquired jurisdiction to adjudicate custody and access arrangements. Since then, parents have been able to reach an agreement (outside divorce proceedings) in non-contentious civil proceedings. If no agreement can be reached with the assistance of the Social Welfare Centre, the issue of custody is decided in contentious civil proceedings. The issue of access arrangements can be decided in non-contentious civil proceedings if it is not raised together with the issue of custody (sections 78, 105 and 106 as

amended in 2004). In particular, sections 105 and 106 provide, as far as relevant:

Section 105

“ ...

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

Section 106

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

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

...

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

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

68. In addition, the amended MFR Act annulled the previous section 114 (see paragraph 64 above), providing instead, in sections 107 and 113:

Section 107

“Minors shall be represented by their parents.

Letters or information to be served on the minor may be served effectively on any of the parents; if the parents do not live together, they shall be served on the one with whom the child lives ...”

Section 113

“Parental rights shall be exercised mutually by both parents in accordance with the child’s best interests. If they cannot reach an agreement, the Social Welfare Centre shall assist.

When the parents do not live together and do not have joint custody, they shall decide mutually on all issues decisive for the child’s development in accordance with the child’s best interest. If they cannot reach an agreement, the Social Welfare Centre shall assist. Questions concerning the child’s everyday life shall be decided by the custodial parent.

If the parents, even with the assistance of the social welfare centre, do not reach an agreement, the court decides on these issues.

...”

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

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

70. Section 10a of the amended MFR Act provides that cases covered by the Act should be processed with priority.

71. Lastly, pursuant to the transitional provisions of the amended MFR Act, proceedings instituted before the entry into force of the amendments (that is, before 1 May 2004) were to be continued and completed before the Social Welfare Centre. In such cases any appeal against the first-instance decision was still to be examined by the Ministry. However, where the first-instance decision was quashed by the Ministry, the proceedings were to be continued before the district court with territorial jurisdiction in accordance with the amended MFR Act.

B. Relevant civil procedure rules

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

Section 408

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

In disputes concerning the custody and maintenance of children [and in disputes concerning contacts between children and parents or other persons – *added with the*

amendment of 5 January 2004, in force since 1 May 2004], the panel is not bound by the parties' requests. Where so provided by the law, the panel may take decisions even without any request being made.

For the protection of the interests of the persons mentioned in the first paragraph, the panel may investigate facts which were not provided by the parties, and collect the information necessary for its decision ..."

Section 409

"...

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

Section 411

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

..."

73. As regards the stay of proceedings, section 210 of the Civil Procedure Act provides:

"... the proceedings are stayed (*mirovanje postopka*) until a party proposes that they be continued. The proceedings may not be resumed until three months after they were stayed."

C. Administrative Disputes Act

74. Section 25 of the 1997 Administrative Disputes Act (*Zakon o upravnem sporu*, Official Gazette no. 50 /97) sets out the grounds on which an administrative act can be challenged before the administrative court. Among the grounds referred to are: incorrect application of the law, breach of the procedural rules, including the party's inability to provide arguments in his or her favour, and incorrect or insufficient establishment of the facts. Section 26 of the Administrative Disputes Act provides that the application must be lodged with the administrative court within thirty days of service of the impugned administrative act.

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

75. The Act on the Protection of the Right to a Hearing without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Gazette no. 49/2006 – “the 2006 Act”) was passed by the Parliament on 26 April 2006 and entered into force on 1 January 2007.

76. The 2006 Act provides for remedies to expedite pending proceedings (a supervisory appeal and a motion for a deadline). In addition to these acceleratory remedies, the 2006 Act also provides for the possibility of obtaining redress through a compensatory remedy, by instituting proceedings for just satisfaction within nine months of the “final resolution” of the case (see paragraph 79 below).

77. As regards the acceleratory remedies, a claimant may, during the first- and second-instance proceedings, that is the proceedings before the regular courts, use a supervisory appeal if he or she considers that the court is unduly protracting the decision-making. If the president of the court dismisses the supervisory appeal or, *inter alia*, fails to respond to the claimant within two months, the claimant can lodge a motion for a deadline with the court hearing the case. The motion for a deadline is dealt with by the president of the higher court. He or she shall decide on the motion for a deadline within fifteen days of receiving it.

78. As regards the obligatory elements which must be included in a supervisory appeal and a motion for a deadline, section 5 provides in the relevant part:

“(2) For the purposes of decision-making concerning the protection of the right to a trial without undue delay, the supervisory appeal [the same applies to a motion for a deadline] shall contain the following elements:

- personal or corporate name or any other name of the party, with address of permanent or temporary residence or registered office;
- personal or corporate name or any other name of the representative or lawyer, with address of permanent or temporary residence or registered office;
- indication of the court hearing the case;
- reference number of the case or date on which the case was filed in the court;
- indication of circumstances or other particulars concerning the case which demonstrate that the court is unduly protracting the decision-making;
- handwritten signature of the party, representative or lawyer.”

79. As to the claim for just satisfaction, sections 15, 19 and 20 of the 2006 Act provide that for the claimant to be able to lodge a claim for just satisfaction two cumulative conditions must be satisfied. Firstly, during the

first- and/or second-instance proceedings the claimant must have successfully availed himself of a supervisory appeal or have lodged a motion for a deadline, regardless of its outcome. Secondly, the proceedings must have been “finally resolved” (*pravnomočno končan postopek*). The final resolution of the case refers in principle to the final decision against which no ordinary appeal lies. This would normally be the first-, or if an appeal has been lodged, the second-instance court’s decision. The maximum amount of just satisfaction for non-pecuniary damage fixed by the 2006 Act is EUR 5,000.

80. As regards proceedings terminated before 1 January 2007, section 25 lays down the following transitional rules in relation to applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party has made a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney’s Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure.
...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney’s Office and the party fail to negotiate an agreement within four months of the date on which the party made its proposal, the party may lodge a claim [*for just satisfaction*] with the competent court under this Act ...”

81. For a more detailed presentation of the 2006 Act, see *Žunič v. Slovenia*, (dec.) no. 24342/04, 18 October 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

82. The applicants complained that their right to have their family life respected had been breached because of the State’s failure to enforce access arrangements decided in the administrative proceedings and of delays in the court proceedings concerning child custody and access arrangements.

The relevant part of Article 8 reads as follows:

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

A. Admissibility

1. *Locus standi*, Article 34 of the Convention

(a) The parties' arguments

83. The Government challenged the first applicant's capacity to act on behalf of the second applicant in the proceedings before the Court. They submitted that with the judgment of 11 February 2002 (see paragraphs 22 and 23 above), M.E. gained custody of M. The first applicant kept visiting rights. Referring to the *Hokkanen v. Finland* case (23 September 1994, § 50, Series A no. 299-A), the Government argued that in order to lodge an application on behalf of the second applicant, the first applicant would therefore need to submit an authority form signed by M.E., who was the second applicant's statutory representative.

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

(b) Relevant principles

85. The Court recalls that a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, *Nielsen v. Denmark*, judgment of 28 November 1988, Series A no. 144, §§ 56-57). Moreover, the conditions governing individual applications are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so (see *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142, § 31).

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

87. The Court has found in previous cases that in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, even though the parent has been deprived of parental rights, the standing as the natural parent suffices to afford him the necessary power to apply to the Court on the child's behalf, too, in order to

protect his or her interests (cf. *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, and *Siebert*, cited above).

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

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

89. The Court notes that M.E. has had sole custody of the second applicant since the interim order of 14 June 2001 (paragraphs 21, 22, 23, 38 and 51 above). It further notes that the applications concern non-enforcement of access arrangements and length of proceedings regarding access and custody rights. They do not, however, concern the merits of the decisions on the right to custody. Having regard to the above principles (paragraph 88 above), the Court concludes that the first applicant's position as a father cannot be regarded as a sufficient basis to bring the present applications also on behalf of the second applicant.

90. Consequently, the first applicant has no standing to act on the second applicant's behalf. This is, however, without prejudice to any proceedings which the second applicant may be entitled to bring in her own right for damages allegedly suffered by her by reason of the failure on the part of the authorities to enforce the access order. The Court will therefore limit its examination of the case to the part that concerns the first applicant, hereinafter referred to as "the applicant". The second applicant will hereinafter be referred to as "M."

2. Exhaustion of domestic remedies

(a) The Government's arguments

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

92. They maintained that the applicant had a possibility to challenge the Ministry's decision of 15 June 2004 in a claim before the administrative

court but failed to exhaust that remedy. They submitted five administrative court decisions issued in family-related disputes. Three of the claims were against the Ministry's decisions concerning enforcement orders, all brought by custodial parents against whom the enforcement orders had been issued. In two of the cases, the file was remitted to the Ministry for re-examination on the grounds that the facts had not been correctly established. In the remaining one, the custodial parent's claim was dismissed.

93. The Government further argued that the applicant had at his disposal a constitutional appeal, which he had failed to lodge.

94. Lastly, the Government argued that as proceedings no. P 667/2003 had been finally resolved on 10 January 2008, the applicant, who had successfully availed himself of a supervisory appeal, could have initiated proceedings for just satisfaction within nine months from the mentioned date in accordance with the provisions of the 2006 Act. He failed, however, to avail himself of this remedy, which should be considered to be an effective one in terms of the alleged violation of Article 6 as well as the alleged violation of Article 8 of the Convention, the latter being a consequence of the former.

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

96. In their further observations, the Government contested the applicant's arguments submitted in reply to the above objection (see paragraphs 98-102 below). They argued that the allegation that the 2006 Act was applicable only to complaints concerning proceedings which were instituted after 1 January 2007 was without any basis. As regards the claims for just satisfaction brought in respect of delays under the previous legislation, that is before the 2006 Act became operational, they had been dealt with under the general rules of civil obligations and therefore the claimants had been required to establish the damage suffered. The domestic case-law submitted by the applicant related to that prior situation and therefore could by no means be used to challenge the effectiveness of the 2006 Act.

97. As regards the effectiveness of the claim for just satisfaction which had been available to the applicant under the 2006 Act, the Government disputed all the applicant's contentions. In particular, the statutory criteria used by the State Attorney's Office and the courts for assessing compensation for non-pecuniary damage were comparable to those of the Court. In making settlement proposals the State Attorney's Office was

guided by the forty-five percent threshold established in the Court's case-law. The Court's decisions in such cases as *Zajc and 4 others v. Slovenia* (dec.), nos. 13992/03 etc., 6 May 2008, and *Kešelj and 6 others v. Slovenia* (dec.), nos. 20674/05, etc., 19 May 2009, in which the new remedies were assessed, showed that the just satisfaction claim offered sufficient redress to the applicants, including sufficient reimbursement of lawyers' fees. The Government also submitted a copy of a domestic court's judgement issued under the 2006 Act in one of the cases the Court had previously declared inadmissible for being premature (*Carević v. Slovenia* (dec.), no. 17314/03, 3 June 2008). In that case the domestic court had awarded the applicant compensation for non-pecuniary damage relying on comparable cases decided by the Court and applying the principle that the compensation was considered reasonable if it amounted to forty-five percent of the sum that would have been awarded by the Court.

(b) The applicant's arguments

98. The applicant argued that a constitutional appeal was an ineffective remedy and submitted one case in which a decision concerning interim access and custody had been challenged. The constitutional appeal had been rejected as manifestly ill-founded (decision no. Up-498/08, 15 April 2008). In another case referred to by the applicant the Constitutional Court had dismissed on procedural grounds a constitutional appeal concerning alleged inactivity of the court in proceedings concerning enforcement of an interim access order. The Constitutional Court found that a constitutional appeal did not lie against a conduct or omissions, such as a court's inactivity, but only against legal acts issued by public authorities (decision no. Up-1044/05, 21 December 2005).

99. The applicant further argued that the proceedings in the present case had been conducted, for the most part, before 1 January 2007, when the 2006 Act started to be implemented. He had lodged acceleratory remedies, as provided for in the 2006 Act, but to no avail. In his submission, according to the domestic case-law the 2006 Act was applicable only to proceedings instituted after 1 January 2007. As regards the period before 1 January 2007, the applicant submitted that the problem of lack of effective remedies stemmed from the fact that the courts refused to directly apply the Convention in this area. In any event, the applicant was of the opinion that the 2006 Act was an ineffective remedy in theory and practice.

100. He argued that the lodging of acceleratory remedies was an unreasonable formality, which was burdensome for the applicants and the courts. The length of proceedings was a systemic problem in Slovenia and the situation could not be improved by acceleratory remedies. In support of his contention, the applicant submitted copies of more than a hundred decisions by which supervisory appeals and motions for a deadline lodged by the applicant's lawyer in other, unrelated cases were rejected.

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

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

(c) The Court's assessment

103. The Court recalls that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system, regardless of whether the provisions of the Convention have been incorporated into national law (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

104. Under Article 35 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. However, there is no obligation to have recourse to remedies which are inadequate or ineffective. The Court would also recall that the exhaustion rule must be applied with due allowance for the fact that it is being applied in the context of machinery for the protection of human rights. Accordingly, Article 35 must be applied with some degree of

flexibility and without excessive formalism; in reviewing whether the rule has been observed it is essential to have regard to the particular circumstances of each individual case (ibid, §§ 66-69).

105. With regard to the Government's objection concerning the exhaustion of the remedies available under the 2006 Act, the Court notes that this legislation introduced remedies concerning specifically the right to have one's case examined within a reasonable time, within the meaning of Article 6 § 1 of the Convention. However, in the present case it is not merely the excessive length of civil proceedings which is in issue, but the question whether, in the circumstances of the case seen as a whole, the State can be said to have complied with its positive obligations under Article 8 of the Convention (see, *mutatis mutandis*, *Šilih v. Slovenia* [GC], no. 71463/01, §§ 169 and 170, 9 April 2009, and *Byrzykowski v. Poland*, no. 11562/05, § 90, 27 June 2006). The Court therefore rejects this objection of the Government as far as Article 8 issues are concerned.

106. As regards the objection that the applicant failed to challenge the Ministry's decision of 15 June 2004 in the claim before the administrative court, the Court observes that the applicant's complaint under Article 8 did not concern the grounds on which the Ministry had remitted the enforcement orders for re-examination. Since Article 35 requires applicants to exhaust remedies that relate to the alleged breaches of the Convention, which the mentioned remedy would not, the Court cannot dismiss the applicant's complaint on the basis that he failed to use it.

107. Finally, the Government also argued that the applicant ought to have lodged a constitutional appeal. The Court notes in this connection that the Government provided no explanation as to the accessibility of this remedy in the context of the applicant's complaint under Article 8 of the Convention, and produced no case-law to that effect. This objection must therefore be dismissed.

3. The Government's remaining objection

108. Without specifying the admissibility grounds on which they wished to rely, the Government argued that the applications should be declared inadmissible as the applicant had been convicted for failing to pay child support for M. However, the Government subsequently confirmed that the second-instance court had acquitted the applicant of those charges.

109. The Court notes that the Government relied on this argument also in respect of the merits of the case, and considers it appropriate to examine it there.

4. Conclusion

110. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further

notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

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

(a) The Government's arguments

112. The Government submitted that the applicant had failed to fulfil his fundamental obligation to pay child support for M. – an obligation which was inherently linked to the right to maintain a family life. However, in their later submissions they acknowledged that the applicant had been acquitted of the charges brought in that respect.

113. In any event, the Government argued that in the present case the State had complied with the positive obligations under Article 8. There was a proper legislative framework in place and the authorities were sufficiently active. The case, however, was a very complex one, involving emotional issues following divorce, and was impeded by M.E.'s fear of the applicant. As regards the latter, the Government argued that it appeared from M.E.'s statements given to the Šentjur Centre (see paragraph 8 above) that M.E. had prevented contact because of the applicant's threats.

114. The Government maintained that the authorities had ordered compulsory measures to ensure compliance with the decision on access arrangements, namely administrative fines which, due to the quashing of the enforcement orders, had remained unexecuted. The Administrative Unit had also tried to ensure contact between the applicant and M. with the assistance of the Šentjur Centre, which had proposed supervised meetings, but this too was of no avail as M.E. had refused to cooperate. In considering measures to be taken against M.E., the authorities had been guided by the best interests of the child. It would have been against those interests if a higher fine had been imposed on M.E. or physical force used to enforce the decisions.

115. The Government argued that responsibility for the lack of contact between the applicant and M. lay exclusively with M.E. The quashing of the enforcement orders, which was due to M.E.'s appeal, and the non-fulfilment of M.E.'s obligations could therefore not be attributed to the State.

116. As to the court proceedings, the Government argued that the conduct of the applicant had significantly contributed to the delay. In particular, the applicant had not displayed enough diligence in submitting his request for tax exemption; he had requested an adjournment of the hearing scheduled for 30 September 2003, which had caused a delay of one month and twenty days; he had requested that the proceedings be stayed from 13 May 2004 until 16 August 2004; he had unsuccessfully requested the withdrawal of the judge, the President of the court and the expert, which had caused a delay of twenty-three days; he had appealed against the decision to pay expert fees, which had caused a delay of almost five months. In addition the State could not be held responsible for the following facts: the time needed to collect relevant information from different authorities; M.E.'s move to Ljubljana with M., which had caused delays in acquiring relevant information from the Ljubljana Centre; and the adjournment of the hearing scheduled for 5 March 2007 because M.E. had had a baby and was breastfeeding.

117. The Government further pointed out that the interim access order had been issued on 26 May 2006 and that in June 2006 three meetings had taken place successfully at the Ljubljana Centre. Subsequent visits between the applicant and M. had taken place without supervision. Therefore, from the issuing of the interim access order until the end of the court proceedings, contacts between the applicant and M. had not been hindered.

118. Lastly, the Government submitted that M.E.'s prevention of contact had not caused long-term harm as contact between the applicant and M. had been restored since June 2006.

(b) The applicant's arguments

119. The applicant alleged that the domestic legislation did not set time-limits within which the courts had to take interim and final decisions in cases concerning custody and access arrangements. In his submissions, this situation resulted in a systemic problem. As regards the initial access arrangements, he argued that the previous legislative framework, by which access arrangements were determined and enforced in administrative proceedings, was completely ineffective and, in his case, had had irremediable consequences. This was made worse by the fact that the changes in the legislation applied only in proceedings instituted subsequent to adoption of the amendments.

120. Referring to the European Convention on the Exercise of Children's Rights and the United Nations Convention on the Rights of the Child, the applicant submitted that, as a result of the ineffectiveness of the above proceedings, he had been unable to see M. and exercise his parental rights for several years. No measures had been effectively taken during that period, and in particular monetary fines had not been enforced and no measure of physical force had been used against M.E.

121. With regard to the court proceedings, the applicant submitted that this kind of case ought to have been given priority, as required also by the domestic legislation. Nonetheless, the interim access order had not been issued until 9 June 2006, three years after the proceedings had started. Eventually, the proceedings were discontinued in 2008, as the applicant had no choice but to accept the settlement in order to make his access rights enforceable.

122. In reply to the Government's arguments, the applicant submitted that the request for tax exemption had nothing to do with the main proceedings; that the stay of the proceedings had been requested in an attempt to resolve the dispute constructively; that the appeal concerning the expert fees was a simple procedural matter which, given the urgency of the case, ought to have been resolved within a few days; that the request for the withdrawal of the judge, the president and the expert had been made in despair as all other steps had been without effect; that the issue of child support had nothing to do with the access and custody rights and in any event he had been acquitted on 7 October 2008 of the charges brought against him in that connection. He also submitted that the claims that he had been dangerous and violent were untrue and were not supported by any evidence or court finding. Moreover, these arguments, relied on by the Government, could in any event not be held against M.

123. The applicant also submitted that all State authorities were required to act promptly and of their own motion to protect the interest of M. The Government's argument that the State could not be held responsible for the delays which resulted from the court's gathering of information from the authorities was therefore invalid.

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

2. Relevant principles

125. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

126. Further, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both contexts, regard must be had to the fair balance which has to be

struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

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

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

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

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

3. *The Court's assessment*

131. The Government seemed to suggest that the applicant should not be considered to have a right to enjoy family life with M. due to his alleged non-payment of child support. The Court observes that the applicant was acquitted of the charges brought against him in this connection and that in any event this argument, which was not even relied on by the domestic authorities, could not be decisive in assessing the nature of the tie between the applicant and M.. Having regard to the facts of the case, the Court therefore considers that the tie between the applicant and M., who are a father and his daughter, falls within the scope of "family life" within the meaning of Article 8 of the Convention.

(a) Non-enforcement of access orders issued in administrative proceedings

132. The Court notes that following the separation of the applicant and M.E., M. continued to live with M.E., who also obtained custody of her. The applicant, however, kept his visiting rights and the authorities established that it was in M.'s interest to maintain contact with the applicant. Further to the applicant's request of 12 June 2001, arrangements for his access to M. were specified in the access order of 1 August 2001, which was in the most part upheld by the Ministry's order, issued on 3 October 2002, that is to say, more than a year later. The order became enforceable on 16 October 2002. Since M.E. failed to comply with the access arrangements set out in the order, the Unit, at the applicant's request, ordered their enforcement subject to an administrative fine of approximately EUR 25 being imposed on her. As this was of no avail, several further requests for enforcement were made by the applicant thereafter and further administrative fines amounting to up to EUR 145 were imposed on M.E. (see paragraphs 14-16 above). However, these fines were never executed and the related decisions were ultimately quashed on procedural grounds. The access order, which had been enforceable since October 2002, therefore remained unenforced. New access arrangements were then determined by the interim access order, which was issued in the court proceedings in May 2006.

133. It is true that the lack of contact between the applicant and M. was due to M.E.'s noncompliance with the obligations set out in the access arrangements. However, the Court cannot accept the Government's argument that the applicant's alleged threats had played a significant role in this. It notes that the applicant has never been considered unsuitable for maintaining contact with M. and for taking care of her during the visits. On the contrary, it has been found by the authorities that the contact was in M.'s interest. Furthermore, the threats were only reported by M.E. and not established as a fact by the domestic authorities. The question that therefore needs to be answered is whether the national authorities took the necessary adequate steps to facilitate the execution of the access order in the face of M.E.'s persistent refusal to comply.

134. In this connection, the Court would emphasise that it is not required to examine whether the domestic legal order allowed of effective sanctions against M.E. It is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its positive obligations under Article 8 of the Convention (see *Ignaccolo-Zenide*, cited above, § 108). Nor does the Court deem it necessary to deal with the applicant's arguments concerning the general situation in Slovenia. The Court's sole task is to consider whether in the instant case the measures taken by the Slovenian authorities were adequate and effective.

135. It observes in this respect that the fines, even if they were capable of compelling M.E. to comply with the access arrangements, were never actually executed. Further, the attempts by the Šentjur Centre to organise supervised meetings failed as M.E. refused to cooperate, but there is no indication in the case file that any measures were taken in response to her lack of cooperation or that this would have any consequences for her.

136. For the rest, the Court observes that no other measures were taken by the authorities to create the necessary conditions for executing the order in question, be they coercive measures against M.E. or preparatory steps for contact between the applicant and M.

137. Having regard to the facts of the case, including the passage of time, the best interests of M., the criteria laid down in its own case-law and the parties' submissions, the Court, notwithstanding the State's margin of appreciation, concludes that the Slovenian authorities have failed to make adequate and effective efforts to execute the access order of 1 August 2001 taken together with the Ministry's decision of 3 October 2002.

(b) The court proceedings concerning access arrangements and custody

138. The court proceedings in which the applicant sought custody of M. were instituted on 6 June 2003. On 24 May 2005, that is further to the change in legislation which entrusted the courts with jurisdiction in matters concerning access rights and after his requests in the above administrative proceedings and the other set of court proceedings (see paragraphs 52-62 above) had failed, the applicant lodged an alternative request for an access order. No decision was subsequently taken and on 7 December 2005 the applicant also filed an alternative request for an interim access order. An interim access order was issued on 26 May 2006 and as far as the final determination of custody and access arrangements is concerned the proceedings terminated on 10 January 2008 with a settlement between the parties. It has been submitted by the Government and not refuted by the applicant that he had quite regular contact with M. after June 2006.

139. The Court notes that the court proceedings at issue lasted for more than four years and six months. During the first three years the applicant had contact with M. on only three occasions (see paragraph 38 above). New access arrangements were provisionally specified in May 2006, which was three years after the proceedings had begun and one year after an alternative request for an access order had been made. The Court notes in this connection that the domestic legislation empowered the courts to take steps and adopt interim orders of their own motion for the protection of the child's interests (see paragraph 72 above) and considers that the arrangement of access should have been treated with the utmost urgency, given the ongoing lack of contact between the applicant and M. due to lack of enforcement of the access order issued in the administrative proceedings.

140. The Court does not consider that complexity could explain the length of these proceedings, in which only five hearings were held. It also notes that except for a request to cancel one hearing and a request to stay the proceedings between May 2004 and August 2004 (see paragraphs 28 and 73 above), the applicant took no steps that could have significantly contributed to the delay in the proceedings. On the contrary, he made several complaints and lodged supervisory appeals urging the court to speed up the proceedings, which seem to have been of no real avail. Nor does the Court consider that the facts independent of the applicant's and judge's conduct to which the Government referred (see paragraph 116 above) justified the length of the proceedings in issue.

141. The Court lastly notes that the court was in part impeded in progressing with the proceedings because M.E. avoided examination by the appointed expert. For that reason and despite the applicant's complaints, the expert psychologist prepared an opinion in the case two years after he had been requested to do so. In this connection, the Court observes that her refusal to cooperate in the proceedings appears to have had no consequences for M.E. (see, *mutatis mutandis*, *Ignaccolo-Zenide*, cited above, § 109).

142. In view of the duration of the impugned court proceedings and the conduct of the Slovenian authorities, and having regard to the consequences thereof for the applicant's family life, the Court considers that the proceedings were not conducted effectively, in particular promptly, as required by Article 8 of the Convention.

(c) Conclusion

143. The Court concludes that as regards the enforcement of the access order issued in the administrative proceedings and the conduct of the court proceedings concerning access and custody rights, the Slovenian authorities failed to meet their positive obligations arising from Article 8 of the Convention, as a result of which the applicant had almost no contact with M. for more than four years. There has accordingly been a breach of the applicant's right to respect for their family life, in violation of Article 8 of the Convention.

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

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

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

145. The Government and the applicant relied on the arguments outlined in paragraphs 94-97 and paragraphs 99-102, respectively.

146. The Court notes that the applicant was entitled under the 2006 Act to lodge a claim for just satisfaction within nine months of the discontinuation of the proceedings (see paragraphs 76 and 79 above), but he failed to do so. However, he disputes the effectiveness of such a claim and more generally of the 2006 Act.

147. The Court reiterates that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, *Akdivar*, cited above, § 68).

148. The Court notes that the applicant indeed had access to the claim for just satisfaction, which became available to him one year after the implementation of the 2006 Act. It recalls its findings from previous cases where it said that, if reasonably promptly available, the claim for just satisfaction under the 2006 Act was in principle capable of providing adequate redress for the violation of the right to a trial within a reasonable time (*Žunič*, cited above, § 53). Having regard to the parties' arguments on the subject matter and noting that the applicant did not produce any evidence relevant to the implementation of the 2006 Act which undermined the above finding, the Court considers that there is no reason to conclude that the just satisfaction claim would not have had a reasonable prospect of success if pursued by the applicant in respect of the alleged unreasonable length of the court proceedings. This part of the applications must thus be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The applicant claimed EUR 280,000 in respect of non-pecuniary damage.

151. The Government disputed the claim.

152. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage suffered as a result of the violation of Article 8 of the Convention.

B. Costs and expenses

153. The applicant also claimed SIT 1,140,624, which is approximately EUR 4,800, for the preparation of the application forms. In addition he claimed EUR 6,000 for costs and expenses incurred before the domestic courts and EUR 2,640 for those incurred in the proceedings before the Court subsequent to the lodging of the applications. This claim was supported by itemised list of expenses similar to the lists normally submitted to the courts in domestic proceedings.

154. The Government disputed the claim as being exaggerated.

155. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant, who was represented by the lawyer, EUR 3,000 for the proceedings before the Court.

C. Default interest

156. 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. *Decides* that the applicant has no standing to act on behalf of M.;
2. *Declares* the complaint lodged by the applicant on his own behalf under Article 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President