



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

FIRST SECTION

CASE OF X AND OTHERS v. SLOVENIA

(Applications nos. 27746/22 and 28291/22)

JUDGMENT

Art 8 • Family life • Removal of the applicant children from the first applicant, their mother, and the discontinuation of contact between them with the aim of preventing alienation from their father • Removal order not supported by relevant and sufficient reasons in breach of the applicant children's rights • Higher courts' failure to review whether the order was Convention compliant • Domestic courts' judgment and interim orders discontinuing contact between the applicants not justified by sufficient reasons • Failure to carry out an in-depth examination of the entire family situation, to evaluate the impact of the discontinuation of contact on the children and to consider other suitable and less severe measures • Domestic courts' failure to ensure proper representation of the applicant children's interests during the contact and custody proceedings

Art 6 § 1 (civil) • Assignment of the applicants' case to a particular judge in flagrant violation of domestic legislation and the Judicial Order • Criteria applied in the assignment neither set out in the relevant domestic law nor foreseeable on any other grounds • Case assigned contrary to objective pre-established criteria and in defiance of the domestic law's clear purpose to ensure randomness in the assignment of cases • Very essence of the first applicant's right to a "tribunal established by law" undermined • Domestic courts' review of the assignment did not adhere to Convention standards

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 December 2024

FINAL

19/03/2025

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

In the case of X and Others v. Slovenia,

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

Ivana Jelić, *President*,
Marko Bošnjak,
Alena Poláčeková,
Georgios A. Serghides,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

applications nos. 27746/22 and 28291/22 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 the first applicant (X) and her three children (the second, third and fourth applicants), on 1 and 8 June 2022 respectively;

the decision to give notice to the Slovenian Government (“the Government”) of the applicant children’s complaint under Article 3 of the Convention regarding their forcible removal based on the removal order of 16 March 2020, the first applicant’s complaint under Article 6 § 1 of the Convention concerning the requirement of an independent and impartial tribunal established by law, and the applicants’ complaints under Article 8 of the Convention, and to declare inadmissible the remainder of the applications;

the decision not to have the applicants’ names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by Human Rights Ombudsman of the Republic of Slovenia, who was granted leave to intervene by the Vice-President of the Section;

Having deliberated in private on 26 November 2024,

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

INTRODUCTION

1. The case concerns the removal of the first applicant’s children (“the applicant children”) from the first applicant (their mother) and the discontinuation of contact between them, which were allegedly in breach of Article 8 of the Convention. It also concerns the reassignment of the case to which the first applicant was a party to a particular judge, which was allegedly in breach of the first applicant’s right to be heard by a tribunal established by law (Article 6 § 1 of the Convention).

THE FACTS

2. The first applicant, born in 1976, lodged the applications on both her own and her children's behalf. The applicants were represented by Mr B. Žibret, a lawyer practising in Ljubljana.

3. The Government were represented by their Agent, Mrs J. Morela, Senior State Attorney.

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

5. The first applicant and Y have three children: a son (the second applicant) born in 2011, and two daughters (the third and fourth applicants) born in 2014. In 2018 the first applicant and Y separated. Both filed petitions for divorce and custody of the children. Following the separation, the relationship between the first applicant and her husband was highly conflictual, which made it very difficult and often impossible for them to agree on contact and custody arrangements and the implementation thereof, and other practical issues. Apart from the courts, two welfare centres (hereinafter referred to without distinction as "the welfare centre") and various experts were engaged in the proceedings.

6. The first applicant and Y used many remedies, and also lodged many applications during the impugned domestic proceedings (i) requesting interim orders, (ii) disputing court decisions, applications lodged by the other party, and the welfare centre's or experts' opinions, and (iii) requesting that the other parent be fined for his or her failure to comply with court orders. They also lodged numerous criminal complaints, making accusations of, *inter alia*, child abduction and child neglect. The first applicant also lodged criminal complaints against Judge P. (who had been dealing with the applicants' case), accusing her of, *inter alia*, abusing her position and mishandling the case. It would appear that none of these complaints resulted in any conviction. Moreover, the first applicant repeatedly requested that Judge P. be recused from the proceedings.

7. Given that the case file is very large the description below is limited to the most significant developments relevant for the consideration of the applications.

I. PROCEEDINGS PRIOR TO THE REMOVAL OF THE APPLICANT CHILDREN ON 17 MARCH 2020

8. Following the family breakup in 2018, the applicant children (then four and seven years old respectively) remained living with the first applicant and were to have regular contact with Y on the basis of an interim order issued by the Ljubljana District Court – sitting as a single judge (Judge H.) – on 20 September 2018. This order essentially accorded with the proposal set out in a report issued by the welfare centre to which the case had been allocated.

The order also set out that a fine of 200 euros (EUR) should be imposed in the event of non-compliance.

9. On 22 January 2019 the welfare centre informed the court that it had received numerous complaints from Y about the first applicant's alleged preventing or obstructing his contact with the applicant children. It emphasised the conflictual nature of the relationship between the first applicant and Y and proposed that the court (i) order that the parents undergo obligatory counselling aimed at helping them cope with the family breakup (ii) appoint experts, and (iii) request the Human Rights Ombudsman of the Republic of Slovenia (hereinafter "the Ombudsman") to appoint an "advocate for children" (*zagovornik otroka* – see paragraph 99 below). On the same day the Ljubljana District Court appointed an expert psychiatrist ("expert B") and clinical psychologist ("expert M") to prepare a report in respect of the case.

10. In applications that she lodged with the District Court, the first applicant disagreed with the welfare centre's proposals. Y on the other hand agreed that an "advocate for children" be appointed for the applicant children. The first applicant objected – unsuccessfully – to the appointment of expert B and did not attend an examination by expert M to which she had been summoned.

11. In the meantime, the first applicant requested the District Court to order that Y have no contact with the applicant children because she believed, *inter alia*, that he lacked empathy and that contact with him had been harmful for the applicant children. On 1 April 2019 the Ljubljana District Court dismissed her request. Subsequently, Judge H., who had been in charge of the proceedings, was assigned to work at the Supreme Court.

12. On 18 April 2019, the President of the Ljubljana District Court ordered that the family-related pending cases of Judge H. (twenty-one cases) be assigned to the judge who had on 16 April 2019 (the day on which the proposal for redistribution had been made by the head of the relevant court division) the lowest number of unresolved cases of this type compared to other judges. He noted that this reassignment was meant to ensure an equal distribution of caseloads amongst the judges and equal protection of the rights of participants in family-related proceedings. The case was allocated to Judge P. The first applicant's representative was informed of the President of the Ljubljana District Court's decree on 2 August 2019. In the meantime, on 25 April 2019 the President of the Ljubljana District Court issued a separate decree for redistribution of Judge H.'s cases which related to (other) civil law disputes (forty-six cases). As regards the latter decree, it included an instruction that the cases assigned to Judge H. be redistributed to judges whose pending caseloads were at or below the average, and to those judges who had experienced a lower influx of new cases. The assignment of cases to the aforementioned category of judges, employed as criteria, *inter alia*, the alphabetical orders of parties' names and those of the judges.

13. On 11 October 2019 the welfare centre submitted its report, in which it noted that there was evidence that the first applicant had been preventing contact between Y and the applicant children and that her conduct fulfilled the criteria set out in Article 141 (7) of the Family Code (see paragraph 97 below).

14. Y repeatedly informed the District Court that he believed that the first applicant had been manipulating the applicant children, had been trying to alienate them from him and had obstructed contact between them and him – often not directly but by creating situations that made it difficult or impossible for Y to pick the children up. Following the first hearing held by the District Court on 17 October 2019, Y proposed that he be granted the sole custody of the applicant’s children.

15. On 8 November 2019 the Ljubljana District Court – sitting as a single judge (Judge P.) – issued an interim order giving provisional custody of the applicants’ children to Y, finding that the first applicant had obstructed the execution of the applicant children’s contact with their father and had sought to alienate them from him. It observed that the latter could cause irreparable damage to the applicant children, for whom contact with Y had been shown to be in their interests. The District Court noted that the first applicant had obstructed the taking of expert evidence because she, unlike Y, had consistently failed to attend an interview with expert M (who had therefore been unable to prepare a report on the matter). The first applicant was allowed unsupervised contact with the children every other weekend and Wednesday. The court also ruled that a fine of EUR 500 would be imposed on either parent in the event that he or she failed to comply with the set arrangements. On 28 November 2019 the first applicant lodged an appeal and an objection against the interim order; both the appeal and the complaint were dismissed by the Ljubljana Higher Court in a decision of 16 June 2020.

16. On 20 December 2019 Y requested the District Court to order that the first applicant have contact with the children only under supervision and that the children be moved, respectively to a school or nursery in Y’s town, alleging that the first applicant was continuing to manipulate the applicant children against him and that the first applicant was not complying with the provisional contact arrangements. On 28 January 2020 the welfare centre submitted a report supporting Y’s request. It noted that the first applicant had often breached the contact arrangements by collecting the third and fourth applicant from their nursery earlier than scheduled. It further observed that Y and the first applicant continued to have a highly conflictual relationship and proposed that the children be appointed an “advocate for children”, in whom they could confide. The welfare centre also opined that if either parent were to breach the visiting arrangements, he or she should be fined.

17. On 12 February 2020 the Ljubljana District Court decided that the first applicant should be allowed to have visiting rights for one hour weekly under the supervision of the welfare worker and that the applicant children be

registered at the nurse and school in Y's town. It also stated that it would impose a fine of EUR 500 for any instance of non-compliance.

18. On 21 February 2020 Y lodged submissions with the court stating that the applicant children had continued to stay with the first applicant, and that he had been only able to see them rarely – despite the court decisions giving him custody of the children. He requested that the applicant children be physically removed from the first applicant so that they would live with him in accordance with the interim order (see paragraph 15 above). On the same day the first applicant requested that she be granted physical custody of the children.

19. It would appear that despite the above-mentioned submissions of Y, the applicant children did at some point return to Y. On 5 March 2020 supervised contact between the first applicant and the applicant children took place. At the end of the visit, the applicant children expressed their wish to remain with their mother, were upset and crying, and resisted going home with Y; this resulted in the first applicant taking the children with her to her own home. The welfare workers noted in the record of the contact visit that they had been unable to convince the children to go with Y, and that the situation (which had lasted about one hour) had been extremely intense and stressful for the applicant children.

20. On 10 March 2020 a second supervised contact visit between the first applicant and the applicant children took place. The record of the contact indicates the following. At the end of the contact the applicant children surrounded the first applicant and held onto her while she was moving towards the exit. The care workers advised the mother to calm the applicant children down, but she started filming the situation with her mobile phone. The second applicant at some point ran away and the care workers asked the parents to go after him. Y refused, referring to the fact that he was “on sick leave”. The first applicant went after the second applicant, followed by the remaining two applicant children. It is not clear from the case file what happened after that; however, it would appear that at some point the applicant children returned to the first applicant. In their record of the contact visit, the care workers noted their view that: the transfer of the children from the first applicant to Y had caused severe emotional stress for the children; the parents had been incapable of conducting the transfer; the first applicant had attributed the failure of the transfer to the children, who had been clinging onto her; neither of the parents had exercised the authority and decisiveness necessary to carry out the transfer; and the first applicant had lacked any emotional response during the situation, while Y had exhibited anxiety and helplessness.

21. On 11 March 2020 the welfare centre issued a report in which it noted that its workers had conducted an unannounced visit to Y's home. They observed that Y had been taking proper care of the applicant children. The report also noted that each of the parents believed that the other parent had

personality disorders that rendered him/her unsuitable for parenting. In the welfare centre's view, experts should be asked to assess these concerns.

22. On 16 March 2020 the Ljubljana District Court refused the first applicant's request for custody of the applicant children (see paragraph 18 above) and discontinued, by way of an interim order, any contact between them until further notice. It noted, *inter alia*, that the applicant children's intense reactions and resistance to going with Y resulted from their deep anxiety and the first applicant's active attempts to alienate them from Y. The court deemed that the first applicant was to blame for the situation and for the stress endured by the applicant children. An appeal lodged by the first applicant was rejected by the Ljubljana Higher Court on 16 June 2020. The latter court endorsed the reasons of the Ljubljana District Court for its decision and found that the first applicant's right to a family life had to give way to the applicant children's best interests. It also took note of the first applicant's failure to attend the interview with the expert M, which had impeded the preparation of the expert report. Referring to, *inter alia*, *A.V. v. Slovenia*, no. 878/13, 9 April 2019, it saw no obstacles for the first instance court to issue an interim decision ordering the parents to undergo family therapy, provided that the experts consider this necessary for the protection of the children's interest.

23. On the same day, the Ljubljana District Court also ruled that the order of 8 November 2019 (see paragraph 15 above) should be enforced by removing the applicant children from the first applicant, with the execution to be carried out by a bailiff (hereinafter "the removal order"). It noted that the first applicant had been preventing contact between Y and the applicant children by, for instance, collecting them from school or nursery at a time earlier than that scheduled, and that she had taken them to her own home after supervised visits. The court considered that the first applicant was trying to alienate the applicant children from Y, was causing them stress and was harming their development. The court designated a bailiff to carry out the removal in the presence of care workers.

24. The first applicant lodged repeated objections – including extraordinary objections (*ugovor po izteku roka*) – regarding the removal order, which she claimed was illegal, a result of Judge P.'s improper conduct and against the children's best interests. On 14 January 2021 the Ljubljana District Court dismissed one of her objections, finding that she had clearly demonstrated that she would not comply with the court's order and that forcing her to comply by way of imposing monetary fines would be ineffective and would only delay the measure – which was aimed at protecting the children's interests. The first applicant appealed arguing, *inter alia*, that: the applicant children were enduring torture as a result of the removal order; the removal order did not cite any reasons justifying the removal measure; the best interests of the children had been ignored; the court had not considered less severe and more humane measures; and she had not

been given a realistic chance to fulfil her obligation to transfer the children. Her appeal was rejected by the Ljubljana Higher Court on 8 March 2021. The Ljubljana Higher Court noted that in November 2020 a special protocol had been prepared concerning removals of children, in order to minimise the negative impact of such measure on them. However, in the Higher Court's opinion, the question of whether a removal order was justified and lawful was unrelated to the manner of enforcement and the circumstances related thereto. It noted that the removal order in respect of the instant case had had a proper legal basis, which had not required that less severe measures first be exhausted. While the District Court could have taken less severe measures, it had not acted against the law by ordering the applicant children's removal. The removal order in itself did not imply that its execution would be traumatic for the children. The Higher Court further noted that the valid interim custody order in question was not being respected by the first applicant. It therefore found unsubstantiated the argument that she had not been given an opportunity to comply with that custody order. The Higher Court also noted that an objection against the removal order did not have suspensive effect and found that there had been no obstacle to enforcing the order before it became final.

25. Appeals concerning certain other unsuccessful objections against the removal order were rejected by a decision of 10 July 2023 (see paragraph 66 below), in which the Ljubljana Higher Court found that the disputed decisions had a proper legal basis.

II. THE REMOVAL OF THE CHILDREN ON 17 MARCH 2020

26. The removal of the applicant children (who were at that point six and eight years old) from the first applicant was carried out on 17 March 2020, by a bailiff, starting at around 12.00 a.m. Four welfare workers were present at the scene. As the first applicant, according to the police report, did not "voluntarily fulfil the obligations set out in [...] the decision of 8 November 2019", the bailiff attempted to take the second applicant to Y's car, which was parked in front of the house, by force. The second applicant actively resisted (by using force); the other two applicant children likewise resisted and obstructed the removal, holding onto each other or onto the first applicant. The bailiff then sought further instructions from Judge P. According to the account given by the welfare workers, the bailiff asked Judge P. to postpone the removal, which she refused to do. Judge P. instead asked those police officers who were present at the spot to actively assist the bailiff, which they refused to do, explaining that they were not empowered to undertake such a measure. Having been unable to remove the applicant children, the bailiff telephoned two assistants and asked them to come and help him. The assistants arrived two hours later. At around 4 p.m. the children were physically removed and driven to Y's home. At some point during these

events, an ambulance was called because the second applicant said that he felt pain in his chest. Six police officers were present during the above-noted events.

27. A video recording of approximately sixteen minutes submitted by the first applicant shows the first applicant and the children standing in the yard of a house, surrounded by the bailiff and his assistants. The recording shows a car parked a few metres away and Y in or behind that car. The first applicant can be heard repeatedly saying to the applicant children to go to their father and talk to him; she also asks Y to come out of the car and talk to the applicant children. The first applicant can be heard in the recording saying to certain adults present at the scene that the judge had told her over the phone that she is from now on prohibited from having contact with the children. When prompted to deny this for the sake of her children, she refuses to tell the children otherwise, explaining that she would not lie to them. The recording shows her and the second applicant asking Y to stop the enforcement, to which he replies that he cannot as this is a decision that needs to be respected. He can then be seen approaching the applicant children and trying to convince them to come to the car. The second applicant (who appears to be the most affected of the children and is persistently crying), asks the bailiff how he would feel if he were unable to see his mother. In the recording, the applicant children (who have at some point left or have been made to leave the first applicant's side) are seen running back to her as she is standing at the door of the house. Towards the end of the recording the first applicant can be seen walking with the applicant children to the car, but they refuse to enter, while she remains passive. The children are practically all the time clinging to the first applicant, who does not release herself from their hold. Another very short video recording, probably recorded at the end of the removal measure, shows the second applicant crying and being carried or dragged by the bailiff and his assistant to the car, in which the other two applicant children are already sitting.

28. Pursuant to the welfare centre's report, which was prepared after the Government had been given notice of the applications, the first applicant had not behaved constructively and had not prepared the children for their removal. The bailiff noted in his report (likewise prepared after the Government had been given notice of the applications) that the first applicant had been passive; although she had occasionally encouraged the applicant children to go to their father, her voice and gestures had indicated that she wanted them to stay by her. The bailiff also noted that the police had initially helped to carry the children to the car but had then abruptly ceased their efforts following the arrival of their superior, which had prompted him to summon his assistants to help him to execute the removal.

III. SUBSEQUENT PROCEEDINGS AND THE IMPLEMENTATION OF CUSTODY ARRANGEMENTS

A. Relevant developments concerning custody and care prior to the judgment of 7 November 2022

29. On 28 May 2020 the court prohibited the first applicant and persons related to her from informing the public about the events related to the custody and contact proceedings and to remove any content that they had previously published on this topic on social media.

30. On 1 July 2020 the first applicant requested the District Court that contact between her and the applicant children be arranged by means of an interim order (see also paragraph 32 below). On 20 July, 17 November 2020 and 8 January 2021 the first applicant lodged requests with the District Court that she be granted custody of the applicant children and that they be moved to the school in her area; the court refused those requests.

31. In the meantime, on 10 July 2020 the District Court requested expert B to, *inter alia*, review the case file and to conduct interviews with the parties. It also appointed an expert in clinical psychology, S., to prepare a report concerning the first applicant's and Y's respective parental abilities and the children's needs.

32. On 30 July 2020 the welfare centre prepared a report in which it urged the court to issue an interim order allowing the first applicant to have contact with the applicant children. It noted that the contact between them should be gradually intensified and accompanied by appropriate measures (such as protocols agreed in advance) aimed at ensuring that the parents acted constructively.

33. On 4 August 2020 the District Court issued an interim order allowing the first applicant to have two one-hourly contact sessions with the applicant children every other week under the supervision of welfare workers. The court also specified that the welfare centre should keep it informed of the situation so that further orders could be issued accordingly. The first applicant appealed against the order (see paragraph 36 below).

34. Shortly thereafter two one-hour contacts between the first applicant and the applicant children took place. On 18 August 2020 the welfare centre informed the court that the contact between the first applicant and the applicant children had gone well and noted that a decision regarding further contact arrangements (whereby the length of each contact session would gradually increase), should be taken immediately.

35. On 15 September 2020 the court appointed an expert in child clinical psychology, A, to prepare a report.

36. On 21 September 2020 the Ljubljana Higher Court issued a decision concerning the interim order of 4 August 2020 (see paragraph 33 above). It pointed out the importance of contact between the applicants (which had been

recognised by the welfare centre), and the need to keep any interference with that contact to a minimum. It also referred to the welfare centre's report, which had suggested that contact be immediately arranged and gradually extended. It noted that no grounds had been presented to justify that only two contact sessions should occur. It modified the contact arrangements so that the supervised visits would take place each first and third Monday of the month and that each should last for a minimum of one hour and a maximum of two hours. The Higher Court further noted that the District Court had failed to decide on any future extension of the contact, as requested by the first applicant and proposed by the welfare centre (see paragraphs 32 and 34 above); the Higher Court found that the failure to decide on any future contact had not been justified and that it had been against the children's interests to reject the proposed extended contact without first examining the available evidence. The Higher Court remitted this matter to the first-instance court for re-examination.

37. It would appear that in October 2020, contact of ninety minutes between the applicants took place in two weeks interval.

38. On 15 November 2020 the welfare centre submitted a new report to the District Court with respect to the supervised visits that had occurred. The report notes that the visits went well; however, the children had been visibly anxious because of the lack of information regarding future contact arrangements with the first applicant, with whom they wished to spend more time.

39. Following the interim contact order of 4 August 2020, the first applicant repeatedly urged the court to extend the contact arrangements between her and the applicant children. She also requested that a new interim order granting her custody of the applicant children be issued. On 8 December 2020 the Ljubljana District Court refused the first applicant's request to be given custody of the children. It also found that the applicant children were not in danger and that it was therefore not necessary to issue a new interim order. The first applicant appealed, arguing that the children were subject to psychological damage given that they, *inter alia*, had "lost their mother". She also alleged that the District Court's impugned decision of 8 December 2020 had been in breach of the requirement of proportionality enshrined in Article 8 of the Convention, that the applicant children's opinion remained ignored and that the court had not ordered less restrictive measures.

40. Her appeal was rejected by the Ljubljana Higher Court on 5 February 2021. The Higher Court found that the claim that the children wished to be with the first applicant had already been assessed before the issuance of the interim order of 8 November 2019; it therefore could not constitute grounds for the amendment of that decision. In the Higher Court's view, the first applicant had not proved that the children were in danger under the current arrangements; any such danger would have called for a change to the interim order. In the same decision the Ljubljana Higher Court also upheld (after

examining them on the merits – see paragraph 77 below) several decisions refusing the first applicant’s requests for the recusal of Judge P. On 7 April 2021 the Supreme Court refused her request for leave to appeal on points of law. The first applicant subsequently lodged a constitutional complaint (see paragraph 85 below).

41. On 27 November 2020 the welfare centre sent a report to the District Court noting that the custody arrangements should be maintained in the same scope but that the above-mentioned expert report should be prepared without delay.

42. On 15 January 2021 an expert report was prepared by the three appointed experts, B, S, and A. It was based on, *inter alia*, (i) interviews conducted with the first applicant and Y, and (ii) examinations and observations in respect of the children (including while interacting with their parents), which were conducted at the end of 2020. The expert report observed that the first applicant had previously been the children’s primary caregiver, had been caring, loving and well-intentioned towards the children, and had been able to take care of their needs, but that those capacities had been considerably undermined when she had become emotionally affected by her conflict with Y. Under those circumstances, her disdain for Y had negatively influenced the applicant children, who had previously had a positive relationship with him. The report also found that the first applicant portrayed Y as an incapable parent and made the applicant children feel as though they had to “choose” between her or Y. Expert B considered that her behaviour had amounted to a form of psychological abuse of the applicant children. Given their age, the children were easily controlled and were prone to idealising their mother. Referring to her inability to reflect on her behaviour and her mistrust in the authorities and experts, the report found that without appropriate therapy the first applicant would likely continue her emotionally abusive behaviour towards the children and was therefore not capable of assuming the role of an autonomous (*samostojen*) caregiver. As regards Y, the report noted that he was able to take care of the applicant children, but reacted indecisively when confronted by emotionally challenging situations and was less able to calm the applicant children and to understand their emotional needs. However, unlike the first applicant, Y was able to distinguish his relationship with the first applicant from that with his children and did not cause them emotional strain. The report recommended that Y should have the primary custody of the applicant children, with the professional support (which had been already put in place). It also recommended that the first applicant should have contact with the applicant children once a week under supervision. The report suggested that the contact could be extended further and possibly to locations outside the premises of the welfare centre only once the parents learned how to transfer the children to each other without exposing them to stress. The report suggested that the situation be reassessed after three months with a view to determining further

arrangements. The report also commented on the wishes expressed by the children to be with the first applicant and not Y, and noted that they were a reflection of their distress and desire to please their mother and to put a stop to a very stressful situation. Both parents were advised to undergo therapy in order to learn how to establish a cooperative relationship. Y was advised to seek further support with a view to developing parenting skills. The first applicant was advised to undergo long-term psychotherapy in order to address her narcissistic personality disorder.

43. The first applicant disputed the experts' findings and requested that another expert report be prepared – preferably by experts from abroad. This request was later rejected by the District Court, which found that the already existing expert report was consistent and fully comprehensible. The experts supplemented their report on 16 March 2021 (following comments received from the parties), but their findings remained essentially the same.

44. In the meantime, on 19 January 2021 the Ljubljana District Court refused one of the first applicant's requests for provisional custody of the applicant children (lodged after provisional custody had been given to Y). The District Court stated that the applicant children, who at that point lived with Y, were not in any danger. The first applicant appealed, arguing that the first-instance court had disregarded the distress suffered by the applicant children – who at the end of the supervised visit had cried and held onto the first applicant, refusing to go to Y. She also disputed the District Court's finding that the children had not been in any danger. The Ljubljana Higher Court rejected the first applicant's appeal in the decision of 8 March 2021 (see paragraph 24 above), noting that their placement with Y had not put the applicant children in danger and noted that her requests for the recusal of Judge P. had already been refused.

45. On 20 May 2021 the court held a hearing at which the three appointed experts were examined. The parties reached a temporary settlement by which over the forthcoming five weeks contact between the first applicant and the children was to take place once weekly between 4:30 p.m. and 6:30 p.m. in a park or a facility nearby. It was also agreed that expert A would be present during those visits and would draw up a report after each visit and send it to the court. Until that point the first applicant had had contact with the children once every two weeks, under supervision (see paragraph 36 above).

46. On 28 May 2021 the welfare centre sent a report concerning the execution of the latest contact arrangements and noted they went well. According to the report, the children missed their mother and desired more contact with her. The welfare centre concluded that the first applicant was now capable of having contact with the applicant children without supervision.

47. On 24 June 2021 a hearing was held concerning provisional contact arrangements. Both parties, as well as the three appointed experts, were present. The parties reached a temporary court settlement concerning

arrangements regarding contact between the first applicant and the applicant children during the school summer holidays, which included the applicant children several times staying overnight at the first applicant's home. This arrangement concerned the period up to 25 August 2021.

48. On 30 August 2021 a new hearing was held before the District Court, at which the parties and experts were present. The first applicant requested that she be granted sole custody of the applicant children; Y opposed that request. The first applicant requested that the case be transferred to a different court; that request was refused by the Supreme Court on 15 September 2021.

49. On 10 September 2021 the experts submitted a report concerning the first applicant's request for interim custody; that report was based on the case file, the information from the hearing of 30 August 2021, and two visitation meetings during the summer at which expert A was present. They noted that the nature of the parents' communication with each other continued to be non-constructive and that they still failed to put the children's needs before their own. They also noted that neither of the parents had followed their advice and started the recommended therapy. The experts considered that for the time being it would not be in the children's best interests to live with the first applicant. There remained the likelihood that she would continue to alienate them from their father. However, it was equally not in the children's best interests to introduce a supervision or to interrupt the contact between them and the first applicant, because they were attached to her. The experts suggested that the contact be limited to one afternoon a week, and an overnight stay from Friday evening until Saturday evening every other week.

50. On 1 October 2021 the District Court refused the first applicant's request for an interim order (see paragraph 48 above) and of its own motion issued an interim order setting out new contact arrangements (since their last contact in August 2021, the applicants appear to have had no contact, as no new contact schedule had been issued in the meantime – see paragraph 47 above). The first applicant was allowed to have contact with the applicant children every Thursday from 4 p.m. until 7 p.m. A fine of EUR 1,000 would be imposed in the event of non-compliance. An objection and subsequent appeal lodged by the first applicant were dismissed.

51. On 12 October 2021 the Ljubljana District Court re-examined the decision of 4 August 2020 (see paragraph 33 above), with respect to the extension of the contact (see paragraph 36 above). Referring to the Ljubljana Higher Court's decision of 16 June 2020 (see paragraph 22 above) the District Court held that the first applicant was to blame for the situation – that is, for the placement of the children with Y and their restricted (and at times non-existent) contact with her. The court noted that at the time that she had made her request that contact between her and the applicant children be arranged by means of an interim order (see paragraph 30 above) the situation had not changed; it held that there were therefore no grounds to issue the requested interim order. The first applicant lodged an objection and an appeal

which, as asserted the first applicant (an assertion not challenged by the Government) have not been decided.

52. On 8 December 2021 Y requested the District Court that the contact between the first applicant and the applicant children be discontinued. On 7 January 2022 the court requested the appointed experts to prepare a report in connection with this request. On 27 May 2022 the court requested the appointed experts to prepare, within fifteen days, a supplementary report regarding long-term arrangements for custody and contact rights. It subsequently repeatedly urged them to start preparing the report.

53. On 27 May 2022 one of the applicant children, then eight years old, left Y's home late in the evening and was found at the service station at which she had been dropped off by an unknown woman. The first applicant and the police subsequently arrived there, followed by Y.

54. On 4 July 2022 the District Court issued an interim order setting out the first applicant's contact rights during the school summer holidays, which was appealed by the first applicant. The Ljubljana Higher Court in its decision of 10 July 2023 found that the interim order should be reviewed by the first-instance court in view of the fact that the first applicant had not been given an opportunity to state her view regarding the summer arrangements.

55. On 1 August 2022 the appointed experts submitted their supplementary report, which they had prepared on the basis of the information in the case file. They noted that the extended contacts had negatively influenced the applicant children because of the first applicant's continuous attempts to alienate them from Y and her unconstructive behaviour towards those who had been tasked with providing her with professional assistance. The report furthermore stated that owing to the first applicant's personality disorder and her inability to engage in self-reflection it was very unlikely that she would change her behaviour. The experts therefore considered that the children's father was more suited to the role of custodial parent. In the light of the negative influence exerted by the first applicant on the applicant children in respect of their relationship with Y and the resulting harm done to them, the experts suggested that the first applicant's contact with the children be discontinued and that any communication between her and the children and her and Y be likewise discontinued. The experts noted that any further escalation of the conflict between the parents and any increase in the pressure exerted by the first applicant on the children (including any new proceedings and further media coverage of the instant dispute) would be extremely harmful for the children.

56. On 5 August 2022 the court (by way of an interim order) ordered that contact between the first applicant and the applicant children be discontinued, relaying largely on the findings in the expert report (see paragraph 55 above). The first applicant lodged an appeal against this decision. On 10 July 2023 the Ljubljana Higher Court allowed her appeal (see paragraph 67 below).

B. Ljubljana District Court's judgment of 7 November 2022

57. Following a hearing at which the appointed experts were examined, the Ljubljana District Court on 7 November 2022 delivered a judgment. It granted a divorce to the first applicant and Y, awarded sole custody of the applicant children to Y, ended the contact between the first applicant and her children, and revoked (*odvzeti*) the former's right to contact. The first applicant was ordered to pay maintenance in respect of the applicant children. The District Court relied heavily on the expert opinions, but it also cited the conduct of the parties to the proceedings – in particular, the first applicant's unwillingness to change her behaviour. The court observed that the first applicant had repeatedly exposed the applicant children to media attention. Moreover, in its opinion, she had been undoubtedly involved in the incident during which one of the applicant children had left Y's home late in the evening (see paragraph 53 above) – about which she had subsequently (mis)informed media outlets, thus again exposing the children to public attention.

58. The District Court further noted that it had proposed, at the start of the proceedings, that an "advocate for children" be appointed to the applicant children (as suggested by the welfare centre). However, the first applicant had explicitly refused to give her consent to such an appointment, arguing that the children needed peace and understanding, which could not be provided by an advocate. In the District Court's opinion, her proposal of 4 August 2022 that a guardian *ad litem* (*kolizijski skrbnik*) be appointed could not be accepted. It noted in this connection that appointing an "advocate for children" would not be "productive", given that the proceedings were in their final stage, and would delay those proceedings for at least six months.

59. The District Court also explained that it had not interviewed the children in order to determine their wishes because they had only been eight and five years old respectively at the beginning of the first-instance proceedings. An interview was conducted by an expert psychologist, A – to whom all three children expressed their wish to live with the first applicant. The District Court further noted that had the children been interviewed at the end of the first-instance proceedings (when they had been aged eleven and eight years old respectively), it was likely that they would have expressed their wish to live with the first applicant. However, even in such a scenario the court would still have not reached a different conclusion. Having regard to the children's age, their involvement in the conflictual situation concerning their parents, the psychological pressure to which they had been exposed and the attempts of the first applicant to alienate them from their father, the District Court found that they were not able to understand the situation in which they found themselves and could not autonomously decide with which of their parents they should live. Their best interests required that they live with their father.

60. As regards the prohibition of any contact between the first applicant and the applicant children, the District Court noted that it had been prompted by a long period during which the first applicant had demonstrated that she had not been willing to change her behaviour, had continued to obstruct or prevent the execution of contact arrangements and had acted with a view to turning the children against their father. Both parties appealed.

C. Events following the above judgment

61. From January 2023 onwards the second applicant repeatedly ran away from Y to the first applicant's home. The first applicant informed the welfare centre on each occasion and asked that Y pick the second applicant up. When he did not do so, she would take the second applicant to the police station, and then return with him to her home. The third and fourth applicant also ran away on at least one occasion. In response, the welfare workers took measures aimed at the protection of the applicant children, such as interviewing the parents and school workers and conducting visits to Y's home. In the light of the information gathered during the interviews and during their visits to Y's home, the welfare workers became concerned about the applicant children's wellbeing and suspected that Y was engaging in alcohol abuse. According to the welfare workers, after at least one instance of the children's running away from Y during the night, Y had done nothing to ascertain their whereabouts.

62. In the meantime, on 1 February 2023, the first applicant requested that the District Court issue an interim order granting her custody of the applicant children, arguing that she had not had any contact with them since 4 August 2022, except for when the second applicant had run away from Y. She explained that on 29 January 2023 the second applicant had taken a train and cycled 5 km in order to reach her home; she had informed the police and the welfare centre of that incident. She believed that at Y's home the children were neglected and exposed to violence. The first applicant's request was refused on 3 February 2023. The Ljubljana District Court, sitting as Judge P., held that the fact that the second applicant had run away from Y's home did not justify the issuing of the requested interim order. Furthermore, the District Court did not find that the first applicant's allegations meant that the children were actually in danger. It opined that Y was preparing the children for autonomous life – something that was “very beneficial for them”.

63. On 9 February 2023, at Y's request, the Ljubljana District Court issued a removal order concerning the oldest child, who had run away from Y on 29 January 2023. The District Court noted that it did not believe that the oldest child had “run away” and had not wanted to return to Y (the transfer of the oldest child back into Y's custody had been attempted at the police station) because he would be in danger but because he had been negatively influenced by the first applicant. The court authorised the bailiff to remove the oldest child wherever he could be found and instructed that the Protocol

(see paragraph 102 below) be respected. The court noted that monetary fines would likely be ineffective and would delay the proceedings for too long. The removal was carried out on 17 February 2023, when the bailiff – who had informed the school beforehand – collected the second applicant at the end of a school trip. It would appear that the applicant children again ran away from Y on the same day. Subsequently, the second applicant continued to go to the first applicant's home after school; the first applicant informed the authorities of those visits. On 23 February 2023 the second applicant was temporarily accommodated in a crises centre for children.

64. On 24 February 2023 the welfare centre lodged a proposal with the court suggesting that custody of the children be transferred to the first applicant, and that an interim order be issued in this respect. The welfare centre referred to Y's conduct – in particular his refusal to accept assistance, allow visits by the welfare workers or constructively cooperate with the first applicant. On the basis of the gathered evidence and the visit conducted to Y's home the welfare centre concluded that he was unable to take care of the applicant children, who appeared to have been neglected and left to their own devices. The welfare centre also raised concerns that the second applicant might, owing to the unbearable living conditions at Y's home, harm himself. It was also noted that the first applicant had taken the necessary steps to improve her parental capacities and that she cooperated with the authorities. On 3, 6, 8 and 9 March 2023 the welfare centre urged the court to issue an interim order, noting that the children were possibly at risk of harm. The welfare centre noted that the second applicant had run away from the crisis centre to the first applicant, who had then brought him back. After that he had run away again – this time to the police station where he had asked to be allowed to live with the first applicant. On 8 March 2023 the third and fourth applicant also travelled by bus to the first applicant's home, of which the first applicant informed the welfare centre. After agreement was reached with Y and the welfare centre the third and fourth applicant slept over at the first applicant's home on that night. The applicant children told the welfare workers that they wanted to stay with the first applicant. On 23 and 27 March 2023 the welfare centre again urged the court to issue an interim order, noting that the second applicant had refused to stay with Y, had repeatedly gone to the first applicant and had been visibly distressed about the possibility of returning to Y. On 27 March 2023 the welfare centre also requested that the applicant children be appointed a guardian *ad litem* under Article 268 of the Family Code (see paragraph 97 below).

65. On 4 April 2023 the parents reached an agreement on the first applicant's contact rights that would remain valid until 3 May 2023. On the latter date they reached a further agreement concerning contact arrangements for the period up until the end of summer holidays (4 September 2023) and stated that a final settlement would be attempted on 22 August 2023. It would appear that in May 2023 the applicant children moved to live with the first

applicant for the rest of the school year, having regular contact with Y every other weekend and every Wednesday. However, from August 2023 the father refused to consent to a settlement and did not allow the children to be enrolled in the school near the first applicant's home.

D. The Ljubljana Higher Court's decision of 10 July 2023

66. On 10 July 2023 the Ljubljana Higher Court quashed the judgment of 7 November 2022 in so far it concerned custody and contact rights (see paragraphs 57-60 above). It endorsed its previous decisions regarding the first applicant's requests for the recusal of Judge P. (see paragraphs 76, 77 and 89 below). It found that since those decisions had concerned matters that had already been examined by courts at higher levels of jurisdiction (including the Constitutional Court), and because the contested judgment had in any case been quashed, the first applicant lacked any legal interest in having the legality of those decisions examined. However, the decision of 16 May 2022 (see paragraph 81 below) was appealed against for the first time. Finding that the first applicant had not been given an opportunity to respond to the statement made by Judge P. (on which the President of the District Court's decision relied), the Ljubljana Higher Court allowed the appeal. It also ordered that the case concerning custody and contact arrangements be remitted to the first-instance court and – given that Judge P. was about to finish her mandate – examined by a different judge.

67. The Higher Court also allowed the first applicant's appeal against the interim order of 5 August 2022 discontinuing contact between her and the applicant children (see paragraph 56 above). In this connection, the Higher Court noted that the facts had not been properly established; in particular, the arrangements regarding contact between the applicants after October 2021 had not been evaluated. It further noted that the impugned decision had not contained any reasons justifying such a radical interference with the applicant children's rights as the prohibition of contact between them and their mother before the conclusion of the proceedings. What is more, the parents had not been given an opportunity to state their respective positions regarding the experts' opinion on which the impugned decision had been based.

68. The Higher Court dismissed the first applicant's allegations that favouritism had been shown towards Y, that there had been deficiencies in the expert reports, and that the welfare centre's reports had been misinterpreted. It upheld the finding of the lower court that the first applicant had negatively influenced the children, turning them against their father (which it found to have constituted a form of psychological abuse). It also noted that there was a high probability that the information published in the media had come from the first applicant. Moreover, it agreed with the lower court's opinion that the children's wishes and their best interests had not necessarily overlapped – especially since they had at the time of the judgment

been eight and eleven years old respectively and had been intensively involved in the conflict between the parents. The children had therefore not been able to autonomously decide which parent would be the more appropriate choice to look after them.

69. However, the Higher Court also noted that, given the requirement that the least severe measure be employed, any prohibition on contact could last for only the shortest possible period of time and would need to be accompanied by a timeframe setting out instructions regarding the parents' expected conduct. The court observed that before it delivered its decision concerning long-term measures, the welfare centre was required to produce a plan setting out how the family would be provided with assistance. In the Higher Court's opinion, the judgment did not contain reasons substantiating the need for a prohibition on contact between the applicants. In particular, there were no arguments showing that the children (who loved their mother and were attached to her) would be able to accept the lack of contact with her and that the father would be able to support them in their struggle and assume full care of them. The Higher Court observed that the contact between the applicants had gone well for a certain period of time – as long as it had been supported by the welfare centre. Problems had arisen at the end of summer holidays in 2021, when the parents had been left to arrange transfers of the children by themselves – without any follow-up by court authorities or welfare authorities. The uncertainty of the outcome and the length of the proceedings had exacerbated the children's anxiety and undermined their sense of security – especially after the family had been left to deal with the contact arrangements on its own. Long-term and intensive follow-up measures and the evaluation of the contact arrangements might lead to a better outcome.

70. In view of the above-noted considerations, the Higher Court decided to remit the case for re-examination, instructing the first-instance court to supplement the gathering of evidence by involving experts and the welfare centre; in particular, it instructed the first-instance court to assess Y's capacity to look after the children and support them and prepare a plan to assist the family with the purpose of supporting the children in the event of the discontinuation of their contact with their mother or exploring the possibilities for the lessening or lifting a prohibition on such contact. It also observed that the welfare centre had put forward a new proposal concerning the contact and custody arrangements (see paragraph 64 above). Therefore, it would not be appropriate for the Higher Court to now take a decision on the matter that was pending before the first-instance court.

E. Decisions following the remittal of the case by the Higher Court on 10 July 2023

71. On 28 August 2023, in view of Y's refusal to agree to the above-mentioned proposed settlement (and taking account of the welfare centre's proposal – see paragraph 64 above), the Ljubljana District Court – still sitting as Judge P. – delivered a decision granting provisional custody of the applicant children to the first applicant; the decision set out the contact rights of the father (contact visits every other Wednesday and weekend), and authorised the applicant children's enrolment in the school near the first applicant's home. The court took account of the developments following the judgment of 7 November 2022 (see paragraph 61-65 above) and found that the father was not able to care properly for the applicant children. It noted that the mother – who had been fully capable of taking care of the children and to whom they were very attached – had previously obstructed contact between the children and their father; that had been decisive for the past decisions granting the custody of the children to the father and ultimately prohibiting any contact between her and the children. When the first applicant had failed to ensure contact between the applicant children and their father, the latter's interests had (temporarily) prevailed. Since the first applicant had now demonstrated that she had accepted Y exercising his role as the children's father and was no longer obstructing the children's contact with him, the best interests of the children were now at the forefront of the court's considerations and required that custody be granted to her. In the court's opinion, the mere fact that the applicant children had repeatedly run away posed a high level of threat to their well-being.

72. On 17 October 2023 the Ljubljana Higher Court allowed an appeal lodged by Y against the above-mentioned decision, finding that following its decision of 10 July 2023 Judge P. had not been authorised to adjudicate the instant case. It quashed the interim order and remitted the matter for re-examination.

73. The first applicant then repeatedly urged the Ljubljana District Court to issue a new interim order, pointing out that following the Higher Court's decision of 17 October 2023 the latest enforceable decision was that of 1 October 2021 (see paragraph 50 above).

74. On 1 December 2023, the Ljubljana District Court – sitting as Judge J. – issued an interim order granting joint custody to both parents, ordering that the applicant children live with the first applicant and have regular contact with Y every Wednesday and every other weekend and during school holidays. The order also provided that the applicant children attend the school near the first applicant's home, in which they had been enrolled since September 2023, and stipulated that a fine of EUR 500 would be imposed in the event of non-compliance with the new contact arrangements. The court noted that following the quashing of the decision of 28 August 2023, (i) the

custody arrangements had been, by default, those set out by the decision of 8 November 2019 (granting custody to the father), and (ii) the contact arrangements had been, by default, those set out the decision of 1 October 2021 (granting the first applicant the right to contact with the applicant children once a week for three hours); the court further noted that those arrangements were – given the current situation – both outdated. As regards the new joint-custody arrangements, the court noted that – pending a decision on long-term arrangements – they were meant to ensure the fair balancing of the rights of both parents and to encourage them to improve their cooperation.

75. According to the latest information available to the Court, the domestic court is yet to decide on the long-term custody and contact arrangements.

IV. REQUESTS FOR JUDGE P.'S RECUSAL

76. At a hearing of 17 October 2019 (see paragraph 14 above), the first applicant's lawyer requested that Judge P. be recused from the case on account of her allegedly biased conduct of the proceedings. On 24 October 2019 the Vice-President of the Ljubljana District Court refused a request lodged by the first applicant that Judge P. be recused. An appeal lodged by the first applicant was also rejected on the basis of the argument that the first applicant could have challenged the decision on non-recusal in her appeal against a final decision in the case. The first applicant lodged a number of further requests for the recusal of Judge P. and raised the matter in the numerous remedies that she proposed during the proceedings. She complained that Judge P. had not conducted the proceedings professionally and impartially but had instead favoured Y. She also argued that the assignment of her case to Judge P. and the related decree of 18 April 2019 (see paragraph 12 above), had not been compliant with the domestic law, that Judge P.'s brother was an acquaintance of Y and of a certain witness who had been examined during the proceedings, and that Judge P. had handled the removal of the children on 17 March 2020 in a biased manner. These requests were refused by the Vice-President of the Ljubljana District Court, who found, *inter alia*, that the criteria for the reassignment of cases were objective and transparent, that section 158 of the Judicial Order (*sodni red*) did not require that cases be assigned exclusively on the basis of the chronological and alphabetical order set out therein (see paragraph 96 below) and that Judge P. had on the relevant day (16 April 2019) the lowest pending caseload compared to other judges working in the field of family law.

77. The Ljubljana Higher Court dealt with the first applicant's appeals concerning the dismissals of her requests for Judge P.'s recusal in different decisions (often together with other issues raised in the remedies proposed by the first applicant or Y). In its decision of 5 February 2021, the Ljubljana Higher Court dismissed the first applicant's appeals after examining them on

the merits. It noted that section 158 of the Judicial Order allowed – in the event that a judge was absent from work for a prolonged period or was suffering from an over-large caseload – that his or her cases be assigned to other judges who were working on cases pertaining to the same legal field on the basis of the date of the lodging of the initial submission to the first-instance court and the alphabetical order of the surnames of those judges. The decree ordering such a reassignment of cases may be taken by the president of the court faced with such a situation. The Higher Court moreover referred to section 155 of the Judicial Order, which required that the caseload be equally distributed among the judges, and section 156 of the Judicial Order, which required that the rules regarding the assignment of cases be published in a yearly distribution of judges (*letni razpored sodnikov*, see paragraph 96 below). The Ljubljana Higher Court found that the decree of 18 April 2019 (see paragraph 12 above) had been based on a prior proposal of 16 April 2019 made by the President of the family-law division concerning the reassignment of cases and contained “verifiable and transparent objective criteria”. It had been aimed at ensuring that judges would be assigned to cases on a random basis and pursued the objective of ensuring the equal distribution of cases.

78. As regards the argument that Judge P. had lacked impartiality owing to her brother’s connections to Y and to one of the witnesses in the proceedings, the Ljubljana Higher Court agreed with the Ljubljana District Court that no facts had been put forward by the applicant that would have called into question Judge P.’s impartiality in that regard. The Higher Court deemed that the fact that Judge P.’s brother and Y both attended certain business events and that they were “friends” on Facebook was insufficient to undermine that finding.

79. With respect to the first applicant’s argument that Judge P.’s bias could be seen from the way she handled the instant case and behaved during the removal of the children on 17 March 2020, the Higher Court noted that in family-law matters judges played significantly active role and were required to take appropriate measures in order to secure a child’s best interests; those measures might comprise using means of communications other than those normally employed by the courts.

80. The first applicant lodged an application for leave to appeal on points of law against the Ljubljana Higher Court’s decision of 5 February 2021, but this application was rejected by the Supreme Court on 7 April 2021. She subsequently lodged a constitutional complaint (see paragraphs 85-90 below).

81. On 24 November 2021 the first applicant again requested that Judge P. be recused. On 16 May 2022 the President of the District Court rejected the first applicant’s request. An appeal lodged by her against that decision was allowed (see paragraph 66 above).

82. During the above-mentioned proceedings the Human Rights Ombudsman, to whom the first applicant had complained, sent extensive comments regarding the question of Judge P.'s impartiality to the President of the Ljubljana District Court, the Minister of Justice and the first applicant. He opined that the rules set out in the Courts Act and the Judicial Order did not comprise a stipulation that the cases be reassigned to a particular judge on the basis that that judge had the lowest number of unsolved cases compared to other judges working on the same type of cases. He also observed that such a stipulation was not set out in the 2019 "Distribution of Judges" (*razpored sodnikov*) of the Ljubljana District Court. Following the Constitutional Court's decision of 3 February 2022 (see paragraphs 85-90 below) and a letter from the President of the Ljubljana District Court calling on him to rectify his position, the Ombudsman issued a new statement in line with the Constitutional Court's decision and notified those who had received his earlier comments of that statement.

83. The first applicant also complained to the Judicial Council, which is an autonomous state body entrusted with the task of, *inter alia*, protecting the autonomy and independence of the judiciary. On 24 March 2020 the Judicial Council informed the first applicant that, in view of the President of the Ljubljana District Court's explanation, it considered that there had been no violation of the "right to a natural judge" (*pravica do naravnega sodnika*).

V. CONSTITUTIONAL COURT'S DECISIONS

84. The first applicant lodged several constitutional complaints during the proceedings. The below-noted two decisions directly underpin the present applications.

A. Decision of 3 February 2022

85. Following the Supreme Court's decision of 7 April 2021 (see paragraphs 40 and 80 above) the first applicant lodged a constitutional complaint and an application for review of constitutionality in respect of certain domestic-law provisions governing the use of remedies against decisions such as those delivered in the course of the instant case. It would appear that she lodged the complaint and the application on her own and on the applicant children's behalf.

86. In her constitutional complaint concerning the interim order of 8 December 2020, refusing the first applicant's request to be given custody of the children, which was upheld by the Higher Court on 5 February 2021 (see paragraphs 39 and 40 above), the first applicant invoked, among other provisions, Article 8 of the Convention and alleged, *inter alia*, that the District Court had failed to take into account the children's wish to live with her, had not taken into account the reports issued by the welfare centre

indicating that she had adequate parental skills, that the uncertainty about the future had presented a threat to the applicant children's well-being, and that the District Court had interpreted the conditions for issuing a new interim order too strictly (see paragraphs 39 and 40 above). She also argued that it was unconstitutional for the Supreme Court to hold that it could only decide on the alleged violation of her right to an impartial tribunal and to a family life after the delivery of a final judicial decision in the matter. She proposed that – given that, *inter alia*, the alleged violations had had irreparable harmful consequences for her and the applicant children – the Constitutional Court, should it consider that legal remedies had not been exhausted, exceptionally consider her complaint.

87. She furthermore complained of the non-recusal of Judge P., reiterating her arguments that the criteria used to assign her case to Judge P. had not been envisaged in the Judicial Order, but had rather been established during her pending court proceedings and had allowed for the choice of the judge to be predetermined (*v naprej predvidljiv*).

88. On 3 February 2022 the Constitutional Court delivered its decision. It dismissed the first applicant's application for review of constitutionality, in part because she lacked any legal interest in pursuing such proceedings, and in part because the application had not raised an important constitutional question.

89. As regards the first applicant's unsuccessful requests for the recusal of Judge P., the Constitutional Court found that even if the assignment of cases had not complied with certain rules, that would not have necessarily constituted a breach of Article 23 of the Constitution (Right to judicial protection). Such a breach could be said to have occurred if the assignment of a particular case to a particular judge could be considered arbitrary or could be said to objectively raise legitimate doubts about the impartiality or independence of the court in question. The Constitutional Court endorsed the reasoning of the Ljubljana Higher Court (see paragraph 77 above), noting that the Judicial Order allowed for the assignment of cases to the judge who had the lowest caseload on a particular day. In its view the criteria governing the order in which the first submissions to the first-instance court had been lodged coupled with the alphabetical order of the judges had not been the only criteria that had had to be observed. The equal distribution of judges' caseloads had also constituted a relevant criterion. It further deemed it relevant that (i) the reassignment had concerned all of Judge H.'s cases – and not only the first applicant's case, (ii) the reasons for and the criteria governing the reassignment, which had been objective and verifiable, had been set out in the decree issued by the President of the Ljubljana District Court, and (iii) the President of the Ljubljana District Court had been independent of the executive branch. In this connection the Constitutional Court also emphasised that it could not be expected that a case would always be decided by the judge initially appointed to it. It concluded that even though the President of the

District Court had not explicitly set out and published in advance the criteria governing the assignment of cases in the amendment to the Annual Distribution of Judges of the Ljubljana District Court, the nature of the breach of the rules on the assignment of cases in the present case had not been such as to indicate arbitrariness or a discretionary manner of decision-making on the part of the President of the Ljubljana District Court. As regards other aspects of the refusal of the first applicant's request for Judge P.'s recusal the Constitutional Court endorsed the lower courts' decisions. It noted that the principle of impartiality could not have been breached solely on account of possible errors or shortcomings in Judge P.'s handling of the case, which could be challenged via appropriate legal avenues, and observed that Judge P. had not expressed any opinion on the matter publicly.

90. As regards the dismissal of the first applicant's request for custody, the Constitutional Court endorsed the reasons given by the lower courts. It also noted that having regard to the applicant children's age and the finding that they had been manipulated by the first applicant, it had been acceptable to disregard their opinion when determining the interim arrangements.

B. Decision of 10 February 2022

91. Following the Ljubljana Higher Court's decision of 8 March 2021 (see paragraphs 24 and 44 above), dismissing the first applicant's appeal concerning the removal order of 16 March 2020, the first applicant lodged a constitutional complaint and an application for the review of the constitutionality of sections 238.č and 238.e of the Enforcement and Security Act (see paragraph 100 below). It is indicated in the Constitutional Court's decision that the first applicant had pursued these remedies on her and on the applicant children's behalf. In her constitutional complaint she complained of a violation of, *inter alia*, her right to dignity, a fair trial and respect for her and the applicant children's family life.

92. The Constitutional Court noted that the application essentially raised the issue of a child being the object of enforcement proceedings, without any rights, and of the lack of measures to ensure the proportionality in cases requiring removal of children. The Constitutional Court dismissed the application, finding that the law had been changed following the removal of the applicant children with a view to improving the procedure for the enforcement of care orders (see paragraph 101 below). It noted that the application could not be considered to have raised important constitutional questions since the problems raised had been in the meantime resolved on a systemic level. It declined to accept for consideration her constitutional complaint against the Ljubljana Higher Court's decision of 8 March 2021.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION

93. Article 23 of the Constitution, entitled “Right to Judicial Protection”, read as follows:

“Everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law.

Only a judge duly appointed pursuant to rules previously established by a statute [*zakon*] and by Judicial Order [*sodni red*] may judge such an individual.”

II. THE COURTS ACT

94. The Courts Act (adopted on 24 March 1994, with relevant subsequent amendments) lays down the rules for the assignment of cases to judges. Section 14 stipulates that a judge shall exercise judicial authority in one or more legal fields to which he or she has been assigned in the annual work schedule before the beginning of the calendar year. The method of assignment of cases is laid down in section 15, which, in so far as relevant, reads as follows:

“In a specific legal field where two or more judges are assigned, cases are allocated to individual judges in the order of the submission of the initial procedural motion, taking into account the alphabetical order of the initials of the judges’ surnames.

If multiple initial procedural motions are submitted on the same day in the same legal field or in predetermined types of cases within the same legal field, the cases are first sorted alphabetically by the initials of the surnames or names of the parties or participants against whom the procedural motion is filed.

...

Cases are assigned to judges in accordance with the rules [set out in] the previous paragraphs, on the basis of the order of submission of the initial procedural motion or received files immediately, but they may also be assigned later, in a manner predetermined by the Judicial Order.”

95. Section 17 stipulates that detailed rules governing the assignment of cases (including in the event that the assignment of cases to a particular judge needs to be stopped owing to his or her being overloaded with cases), shall be laid down in the Judicial Order. The assignment of judges and the rules for the assignment of cases should be published on the notice board and website of the court in question (section 17a).

III. JUDICIAL ORDER

96. The Judicial Order (adopted on 28 December 2016, with relevant subsequent amendments) governs the operations of the courts. It provides that

judges must be organised in different divisions (relating to different legal fields) on the basis of on the Annual Distribution of Judges, which should be set out in advance and published on the court's notice board before 15 December every year for the following year. The Annual Distribution of Judges can be amended in the event of an increase or decrease in the number of judges, longer absences of judges, or a significant change in the influx of cases. An amended distribution comes into force five days from its publication on the notice board. As regards the assignment and reassignment of cases, the following provisions (as worded at the relevant time) are relevant:

Section 155
(Assignment of a judge)

“(1) When assigning a judge to work in a specific legal field, the judge's interest in working in that particular legal field, work experience, and qualifications for [working in] that legal field are taken into account, while also ensuring an even distribution of the workload among judges.

...”

Section 156
(Lawful judge)

“...

(2) When two or more judges are assigned to a certain legal field, cases [in that field] are allocated to individual judges in the following manner:

- procedural motions received daily are assigned in the order of the submission of the initial procedural motion, taking account of the alphabetical order of the initials of the judges' surnames.

- If multiple initial procedural motions are submitted on the same day, the cases are first sorted by the alphabetical order of the initials of the surnames or names (*nazivov*) of the first-listed parties or participants against whom the procedural motion is filed and are assigned to the judges on the basis of the alphabetical order of the initials of the judges' surnames.

- If, in the [example raised in the] the previous point, there are no parties or participants against whom the procedural motion is filed, the cases are first sorted by the alphabetical order of the initials of the surnames or names of the parties or participants who submitted the procedural motion and are assigned to the judges on the basis of the alphabetical order of the initials of the judges' surnames.

- Urgent cases, defined as such by procedural regulations, are assigned in the same way, and a special record is kept for the assignment of such cases.

- If the court division maintains registries for different types of cases, the cases are assigned to the judges on the basis of the alphabetical order of the initials of the judges' surnames for each type of case separately.

(3) The assignment of a file to a judge is entered into the registry in such a way that the assignments follow the alphabetical order of the judges' surnames.

...

(5) Cases that are assigned with a delay must be sorted daily according to the alphabetical order of the initials of the surnames or names of the first-listed parties or participants and entered into the registries. The cases are assigned to judges on the basis of the alphabetical order of the initials of their surnames. Each judge is assigned enough cases to reach the number [...] specified by the annual distribution plan ...

(6) More detailed rules for case assignment in the manner described in the previous paragraph [*na način iz prejšnjega odstavka*] are determined by the annual distribution plan for judges.”

Section 158

(Allocation of cases in the event of a judge’s prolonged absence)

“(1) If a judge, owing to a prolonged absence [from work] or an overburdened schedule, is unable to handle the assigned cases in a timely fashion, the cases already assigned to him or her may be reassigned to other judges in the judicial division or legal field according to the chronological order of the filing of the initial procedural motion, taking account of the alphabetical order of the judges’ surnames.

(2) The reassignment of cases is decided by the president of the court [in question] – either on his or her own initiative or upon the proposal of the head of the judicial division or a judge.”

Section 160

(Temporary suspension of case assignment to a judge)

“(1) If a judge is unable to process assigned cases in a timely manner owing to an excessive workload or an anticipated extended absence, the assignment of new cases to that judge may be temporarily suspended. In such instances, the remaining judges within the court division or legal field will be assigned the cases, following the order of submission of the initial procedural motion [and] taking into account the alphabetical order of the initials of the judges’ surnames.

(2) The temporary suspension of assigning cases is decided by the president of the court [in question], either on his or her own initiative or upon the proposal of the head of the court division or the judge.”

IV. FAMILY CODE

97. The Family Code came into force on 15 April 2019. Many of its provisions are similar to those contained in the Act on Marriage and Family Relations (adopted on 4 June 1976), which had been in force up until that date. The relevant provisions of the Family Code read as follows:

PART THREE: Relations between parents and children

...

4. Duties and rights of parents and children

Article 136

(Content of parental responsibility)

“(1) Parental responsibility consists of the duties and rights of parents, relating to ... the representation ... of the child. ...”

Article 138
(Care and upbringing of children)

“ ...

(3) If parents do not agree on the care and upbringing of the children [hereinafter “custody”], the court will decide. The court may also decide on all measures necessary for the protection of the child’s interests, as defined by this Code, on its own initiative.

...

(4) The court may issue a new decision on the custody of the child if the changed circumstances and the child’s welfare so require.”

Article 141
(Parental contact)

“(1) A child has the right to maintain contact with both parents, and both parents have the right to maintain contact with the child. These contacts must safeguard the best interests of the child.

(2) The parent with whom the child resides or another person the child has been placed with must refrain from doing anything that hinders or prevents contact. They must foster a positive attitude in the child towards contact with the other parent or with both parents. The parent exercising contact [rights] must refrain from doing anything that would impede the execution of contact and custody [arrangements]. ...

(5) If parents do not agree on the matter of contact, the court shall decide.

(6) The court may restrict or revoke the right to contact, in accordance with Article 173 of this code.

(7) If the parent with whom the child lives prevents contact between the child and the other parent and contact cannot be arranged – even with professional help from the welfare centre – the court may, at the request of the other parent, decide to remove the custody rights from the parent preventing contact, and assign them to the other parent if it determines that he or she will facilitate contact and if it is the only way to protect the child’s interests.

(8) The court may issue a new decision on [the matter of] contact with the parents if changed circumstances and the child’s welfare so require.”

Article 143
(Child’s opinion and opinion of the welfare centre)

“(1) In deciding on care ... and contact ..., the court will also consider the child’s opinion, as expressed by the child himself or herself or through a person the child trusts and has chosen himself or herself, if the child is capable of understanding its significance and consequences.

(2) In deciding on care ... and contact ..., concerning the child’s welfare, the court will also consider the opinion of the welfare centre, if [that opinion has been] obtained in accordance with the provisions of the law governing non-contentious proceedings.”

Article 145
(Representation of children)

“(1) Children are represented by their parents unless the law provides otherwise. ...”

7. Measures for protecting the child's welfare

7.1. General provisions

Article 156

(Principle of least restrictive measure)

“When choosing a measure for the child's welfare, two limitations must be observed:

The measure that least restricts the parents' exercise of parental responsibility should be imposed if it adequately protects the child's welfare.

The measure by which the child is not removed from the parents should primarily be imposed if it sufficiently protects the child's welfare. ...”

Article 158

(Child's opinion)

“(1) When deciding on a measure to protect the child's welfare, the court will consider the child's opinion, as expressed either directly or through a person he or she trusts and has chosen himself or herself, [provided that] the child is capable of understanding its significance and consequences.

(2) The court may issue an interim order without obtaining the child's opinion prior to that.”

Article 159

(Types of measures)

“Measures for protecting the child's welfare include interim orders, the emergency removal of the child, and long-term measures.”

Article 160

(Deciding on measures and monitoring implementation)

“(1) The court, either on its own initiative or by request, will impose measures for protecting the child's welfare, terminate such a measure if the reasons for it no longer exist, impose another measure if the current one negatively impacts the child's health, development, or property, extend the measure, or reimpose it. ...”

7.2 Interim orders

Article 161

(Condition for issuing an interim order)

“The court will issue an interim order if it is likely that the child is in danger.”

Article 162

(Types of interim orders)

“(1) The court may issue an interim order to protect the child's welfare, particularly:

- An order to remove the child from the parents and place them with another person, in a crisis centre, foster care, or an institution.

...

- An order prohibiting or restricting contact (*prepoved ali omejitev stikov*).

- An order regarding the manner of the execution of contact [arrangements].

- An order concerning the custody of the child. ...”

Article 163

(Interim order regarding supervised contact)

“(1) The court may, by means of an interim order, decide that contact take place in the presence of a professional from the welfare centre.

(2) The interim order for supervised contact may last for a maximum of nine months and cannot be reissued or extended.

(3) The professional monitors the progress of the contact and prepares a report on the course of the contact once a month, which is sent to the court.

...”

7.4. Measures of a more permanent nature

Article 169

(Opinion of the welfare centre regarding a measure of a more permanent nature)

“When deciding on a measure for the protection of the child’s welfare of a more permanent nature, the court takes into account the opinion of the welfare centre.”

Article 170

(Plan of assistance to the family and the child)

“(1) Before the court’s decision on a measure of a more permanent nature, the welfare centre prepares a plan of assistance for the family and the child. A report on the implementation of the assistance plan is submitted to the court once a year.

(2) The assistance plan contains a description of the situation, the child’s needs, the family’s possibilities, methods of monitoring, forms of assistance, and a description of the implementation of the measure.

(3) The welfare centre may include in the assistance plan for the family and the child programmes such as family therapy, psychiatric treatment, treatment for alcohol or drug addiction, and other healthcare, educational, or psychosocial programmes, if it appears that the parents, after therapy or treatment, will be able to resume the care of the child, or in other cases where it is in the best interests of the child.”

Article 173

(Restriction or revocation of the right to contact)

“(1) The court shall restrict or revoke the right to contact (*odvzame pravico do stikov*) of one or both parents if the child is endangered by such contact, and the child’s welfare could be adequately protected only by the restriction or revocation of the right to contact. The court may also decide that the contact be carried out in a manner other than personal meetings and interactions when this is the only way to ensure the protection of the child’s welfare.

(2) The decision that contact with the child occur under supervision may be provided only by an interim order under Article 163 of this Code.”

7.5 Common provisions

Article 182

(The child's right to an advocate)

“(1) An advocate [*zagovornik*] protects a child's interests in proceedings and activities concerning the child when the protection of [his or her] interests cannot be ensured in any other more appropriate way.

(2) Advocacy for children is regulated by a special law [The Human Rights Ombudsman Act – see paragraph 99 below].”

PART EIGHT: Guardianship

...

5. Special guardianship

...

Article 269

(Guardian *ad litem*)

“(1) The welfare centre or the court appoints a guardian *ad litem* for a child in respect of which the parents exercise their parental rights but their interests are in conflict. ...”

98. The Act on Marriage and Family Relations (see paragraph 97 above) also provided that a special guardian could be appointed in cases where the child and the parents' interests were in conflict. The guardian could be appointed by the welfare centre or the authority in charge of the proceedings (sections 211-213).

V. THE HUMAN RIGHTS OMBUDSMAN ACT

99. Under section 25a of the Human Rights Ombudsman Act (adopted on 20 December 1993, with relevant subsequent amendments) the Human Rights Ombudsman shall provide child advocacy services via a volunteer network of people acting as “advocates for children” (*zagovorniki otrok*). Such advocates should ensure professional assistance to a child who wishes to express his or her opinion in respect of all proceedings and matters involving him or her, and forward the child's opinion to the bodies and institutions deciding on the child's rights and interests. Such an advocate shall not be the child's statutory representative. Professional assistance includes psychosocial support for the child, discussions about their wishes, well-being and opinions, informing the child about proceedings and activities in a manner they understand, seeking the most suitable solution together with the child, and accompanying the child before State bodies. Anyone concerned about the child's ability to realise his or her right to express his or her opinion may lodge a request that an advocate be appointed. If parents or statutory representatives refuse to consent to the appointment of an advocate, the Ombudsman shall submit a proposal to that effect to the relevant welfare centre or court, which can then (in the absence of parental assent) appoint an advocate from a list of such advocates.

VI. ENFORCEMENT AND SECURITY ACT

100. Enforcement in respect of matters regarding custody of and contact with children is regulated by the Enforcement and Security Act (adopted on 30 June 1998, with relevant subsequent amendment). Section 238.a specifies the enforcement measures available to a court for the purposes of enforcing a judicial decision concerning child custody. In addition to setting a deadline for compliance (on pain of payment of a fine (so-called “indirect enforcement”)), the court can also order the removal of the child (*odvzem otroka*) and his or her transfer to the person entrusted with his or her custody (so-called “direct enforcement” under section 238.č). Section 238.e of the Enforcement and Security Act provides that the direct enforcement can be ordered when indirect enforcement has failed to yield success, or in specially justified instances. Direct enforcement had to be carried out in the presence of a professionally qualified worker or more than one such workers. As regards decisions concerning [the issue] of contact, they can be enforced by setting a deadline for compliance, and if that fails by imposing monetary fines. In exceptional and particularly justified cases, where it is necessary to ensure the protection of the child’s interests and enforcement [by the threat or imposition of] fines has not been successful, the court can allow direct enforcement [that involves] the removal of the child. The Enforcement and Security Act also stipulates that if the child opposes contact with a parent who is entitled to contact, and if a professionally qualified person who is present at the removal considers that the removal would not be in the child’s interests, the bailiff may refrain from carrying out the enforcement measures and notify the court conducting the enforcement of the reasons for this (section 238.f).

101. Changes to the Enforcement and Security Act adopted on 3 March 2021 stipulate that, at the request of the professionally qualified worker, the welfare centre or the person subjected to enforcement, a court can exceptionally postpone enforcement if the interests of the children so require. Further changes were introduced also with respect to the interim measures for the protection of the children’s interests, so that it was no longer possible to lodge an objection, provided that the affected party had the possibility to comment on the measure.

102. On 13 May 2020 a team of experts from the Supreme Court, the Bailiffs Chamber, and different ministries adopted a Protocol concerning the conduct of the procedure for the removal of children, setting out the instructions on planning, risk assessment, and cooperation of those participating in order to prevent the child trauma and respect the children’s integrity.

VII. INTERNATIONAL LAW AND PRACTICE

103. The relevant international law and practice on the representation of children, the appointment of a representative *ad litem* and the child's right to be heard are set out in *M. and M. v. Croatia* (no. 10161/13, §§ 94-98 and 102, ECHR 2015 (extracts)).

104. As regards standards concerning the allocation of cases within a court, the following Council of Europe and EU material is of relevance to the present case.

105. Appendix to the Recommendation CM/Rec(2010)12 entitled "Judges: independence, efficiency and responsibility", adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, in the relevant part, read as follows:

Chapter III – Internal independence

"...

24. The allocation of cases within a court should follow objective preestablished criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by wishes of a party to the case or anyone otherwise interested in the outcome of the case."

106. Explanatory memorandum to the Recommendation CM/Rec(2010)12 reads, in so far as relevant, as follows:

"32. There are various systems for the distribution of cases on the basis of objective, pre-established criteria. These include, *inter alia*, the drawing of lots, distribution in accordance with alphabetical order of the name's of judges or by assigning cases to divisions of courts in an order specified in advance ("automatic distribution") or the sharing of cases among judges by decision of court presidents. What is important is that the actual distribution is not subject to external or internal influence and is not designed to benefit any of the parties. Appropriate rules for substituting judges could be provided for within the framework of rules governing the distribution of cases. Caseload and overburdening are valid reasons for the distribution or removal of cases provided such decisions are taken on the basis of objective criteria (paragraph 24 of the recommendation)."

107. In connection with the above-mentioned Recommendation Rec(2010)12, the Consultative Council of European Judges (CCJE) was entrusted by the Committee of Ministers of the Council of Europe to prepare an opinion on the role of Court Presidents. Opinion n° 19 (2016) (CCJE (2016)2), adopted on 10 November 2016, reads, in so far as relevant, as follows:

C. Managerial role

"...

25. While judicial systems vary, the managerial functions have to be framed and adapted to the specific environment of the judicial organ of state respecting its independence and the independence and impartiality of individual judges. As it is in the

case of relations between court presidents and other judges, the managerial functions of the presidents are also based on these fundamental values. The presidents should never engage in any actions or activities which may undermine judicial independence and impartiality.”

108. European Networks of Councils for the Judiciary (ENCJ), which unites the national institutions in the Member States of the European Union which are independent of the executive and legislature, and which are responsible for supporting the judiciaries in the independent delivery of justice, set out in its report “Minimum Judicial Standards IV, Allocation of Cases” (ENCJ Report 2013-2014) eleven minimum standards and indicators in respect of allocation of cases. These standards include the following:

“2. There should be an established method of allocation of cases. The method of allocation should be made available to the public. This method of allocation may be governed by statute, regulation or judicial or administrative practice.

...

5. The principles and criteria to be considered in the methodology for allocating cases should be objective and include:

- 1) The right to a fair trial;
- 2) The independence of the Judiciary;
- 3) The legality of the procedure;
- 4) The nature and complexity of the case;
- 5) The competence, experience and specialism of the Judge;
- 6) The availability and/or workload of the Judge;
- 7) The impartiality of the Judge;
- 8) The public perception of the independence and impartiality of the allocation.

...

7. The method of allocation should be applied uniformly according to the criteria in paragraph (5); differences in the application of the principles and criteria may be required due to the nature of the jurisdiction, the size of the Court, the level of the Court and the judicial district where the case is heard.

...

9. The motivation/reasoning for any derogation from the established method of allocation should be recorded.”

THE LAW

I. JOINDER OF THE APPLICATIONS

109. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FIRST APPLICANT

110. The first applicant complained that her case had been allocated to Judge P. unlawfully, in breach of her right to be heard by an independent and impartial tribunal established by law, as guaranteed by Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

111. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) **The first applicant**

112. The first applicant argued that her case had been assigned to Judge P. in breach of the established method of allocating cases. In her opinion, the decree of 18 April 2019 (see paragraph 12 above) had been tailored so that Judge P. would be given Judge H.'s cases. The rules that were meant to ensure that the cases were assigned to judges randomly had been ignored. She also argued that the criteria on which the order in question had been based had rendered it impossible to implement a random assignation of cases because the President of the District Court (being aware of the caseload statistics maintained by his office) had clearly known which of the judges had the fewest unresolved family-related cases on the day in question.

113. Moreover, the first applicant argued that the lack of impartiality on the part of Judge P. had been confirmed by her improper and biased conduct of the proceedings in issue.

(b) **The Government**

114. The Government argued that the allocation of cases previously handled by Judge H. to Judge P. had been aimed at ensuring their prompt processing. The fact that Judge P. had had the lowest workload could not have been known in advance. The Government referred to the finding of the Constitutional Court (see paragraph 89 above) and argued that there had been no violation of Article 6 § 1. They also noted that the Judicial Council had reviewed the matter and had likewise found no violation of “the right to a

natural judge”. Mere disagreement regarding the manner in which Judge P. had handled the case was not sufficient to indicate bias on her part. There had been no other circumstances that could have undermined any aspect of the requirement of impartiality.

115. The Government also pointed out that the impugned decree had concerned the redistribution of a group of cases from Judge H. to Judge P.; it had therefore not concerned only the applicants’ case. The Government emphasised that the situation regarding the respective workloads of the judges of the family-law division had been at the time significantly worse than that pertaining to the division dealing with (other) civil-law disputes; that had prompted a different approach regarding redistribution of Judge H.’s cases. They also submitted that the (other) civil-law cases had not been allocated to judges who had already been overburdened. The Government lastly pointed out that the applicant had only complained of the re-allocation of the cases six months after she had been informed of the decree of 18 April 2019 (see paragraph 12 above).

116. As regards the Human Rights Ombudsman’s submissions, the Government argued that they were not admissible, because they addressed the present case directly.

(c) The third party (Human Rights Ombudsman of the Republic of Slovenia – “the Ombudsman”)

117. The Ombudsman argued that there were no legal grounds for (re)assigning cases pending before the court according to the lowest number of pending cases already assigned to each judge. The rules for allocating cases were clearly defined in respect of both instances where judges were absent for lengthy periods and where individual judges were suffering from an overload of work. In both cases, a criterion for allocation was the daily sequence of the filing of initial procedural motion with regard to the alphabetical order of the first letters of judges’ surnames. In the Ombudsman’s view, when a departing judge was assigned to the Supreme Court for a period of three years and was at the time in question completely exempt from performing the function of a district court judge, his or her pending cases had to be reallocated to another judge, in accordance with section 158 of the Judicial Order. In his view, the pre-defined rules excluded anyone exercising their discretion to appoint a particular judge to hear a specific case.

118. The Ombudsman noted that there was no publicly available information on the actual application of the provisions of the Judicial Order regarding the (re)allocation of cases among the judges of courts in Slovenia. He therefore sent an enquiry to all the local, district, administrative, social and labour courts of Slovenia. He received replies from all social and labour courts and a joint reply from local and district courts, submitted to him by the Supreme Court of the Republic of Slovenia on 24 March 2023. It can be seen

from those replies that assigning cases to the judge with the smallest number of pending cases was not part of established practice. The Supreme Court explained that at all courts, the number of cases assigned to judges in each division or in each legal field was regularly monitored. Cases were allocated to judges who had been eligible to receive cases, according to the order set out in the provisions of the Courts Act and Judicial Order and in the Annual Distribution of Judges (following amendments thereto – if any). The legal basis for the (re)allocation of cases was provided by sections 158 and 160 of the Judicial Order, taking account also of section 155. The Supreme Court also explained that in the event of a planned departure, the workload of the judge in question was usually frozen beforehand in order that all the cases assigned to the judge could be dealt with; in this manner a reallocation of cases could be avoided. If pending cases remained, their reallocation was carried out on the basis of the provision set out under section 158 of the Judicial Order, which applied *mutatis mutandis*. In respect of cases pending before the Higher Labour and Social Court, reallocation took place on the basis of sections 156 and 158 of the Judicial Order. In three situations between 2020 and 2023 unresolved cases had been reallocated to judges assigned to the same division, taking into account the workload of the judges of that division. In those situations, either the judge who was overburdened with pending cases was not allocated new cases, or each judge had been allocated as many cases as had been needed to achieve a balanced caseload.

2. The Court's assessment

119. At the outset, the Court notes that the instant complaint concerns the assignment of the applicants' case to Judge P. and the subsequent request for her recusal, which was adjudicated initially by the Vice-President of the Ljubljana District Court. Her decision was reviewed by the Ljubljana Higher Court, the Supreme Court and ultimately by the Constitutional Court on 3 February 2022 (see paragraph 76, 77, 78, 79, 80 and 89 above).

120. The relevant principles concerning the requirement of a “tribunal established by law” – including its close connection with the guarantees of “independence” and “impartiality” – have been set out in, *inter alia*, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 211-16, 233-34 and 242, 1 December 2020; *Miracle Europe Kft v. Hungary*, no. 57774/13, §§ 45-56, 12 January 2016; and *Pasquini v. San Marino*, no. 50956/16, §§ 100-03, 2 May 2019.

121. The phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also compliance by the tribunal with the particular rules that govern it and the composition of the bench in each case. In view of the applicable principles and the issues raised in this case, the Court must determine whether the assignment of the applicants' case to Judge P. was compatible with the domestic law, and if not, whether the irregularities

were such as to amount to its flagrant violation (see *Miracle Europe Kft*, cited above, §§ 49-50).

122. The Court notes that the applicants' case was, following the departure of Judge H., assigned to Judge P. on the basis of the decree issued by the President of the Ljubljana District Court (hereinafter "the President's decree", see paragraph 12 above). The President's decree ordered that Judge H.'s cases in the family-law field be assigned to the judge who had had the lowest number of unresolved cases in that field on the day on which the proposal for distribution of Judge H.'s cases had been made (see paragraphs 12 and 76 above). The issue whether the aforementioned criteria for the reassignment of cases from Judge H. to Judge P., as set out in the President's decree, had a basis in domestic law – namely the Courts Act and, in particular, the Judicial Order, was examined by the domestic courts in some detail. The Vice-President of Ljubljana District Court was of the view that section 158 of the Judicial Order did not require that the cases be assigned exclusively on the basis of the chronological and alphabetical order set out therein (see paragraph 76 above). The Ljubljana Higher Court rejected the first applicant's complaint, referring to sections 155, 156 and 158 of the Judicial Order, which set out the rules for the assignment of cases and the requirement that cases be distributed equally among the judges (see paragraph 77 above). The Constitutional Court upheld the Ljubljana Higher Court's decision, finding that the Judicial Order allowed for the assignment of the case in question to the judge who had the lowest caseload on a particular day (see paragraph 89 above).

123. The Court observes that the Slovenian Constitution itself, in the provision concerning the appointment of judges to cases, refers to a statute and the Judicial Order (see paragraph 93 above). It is undisputed – and indeed it is implied in the Constitutional Court's decision of 3 February 2022 (see paragraph 89 above) – that this constitutional provision also encompasses the assignment of cases to a specific judge. In other words, it also applies to the assignment of a particular case to a particular judge. It is further observed that the Courts Act set out the method of assignment of cases in its section 15, which referred to the order of the submission of the initial procedural motion and the alphabetical order of the initials of the judges' surnames. Further provisions of the Courts Act provided that detailed rules for the assignment of cases should be laid down in the Judicial Order. The assignment of judges and the rules for the assignment of cases should be published on the notice board and website of the court in question (see paragraphs 94 and 95 above). Under section 158 of the Judicial Order, if a judge – owing to, *inter alia*, a prolonged absence from work – was unable to handle the assigned cases in a timely fashion, the cases already assigned to him or her could be "reassigned to other judges ... according to the chronological order of the filing of the initial procedural motion, taking into account the alphabetical order of the judges' surnames". These criteria aligned also with the criteria set out in

section 156, which governed the appointment of the “lawful judge” (see paragraph 96 above).

124. Having regard to the above-noted considerations, the Court cannot but note that the situation which arose in the present case – that is, the anticipated prolonged absence of Judge H. and the resulting necessity to transfer her cases to another judge – was regulated by the rules set out by the relevant domestic law (see also the observations of the Ombudsman summarised in paragraphs 117 and 118 above). It further finds that not only did the President of the District Court fail to publish in advance the criteria for the assignment of the cases in question (as found by the Constitutional Court – see paragraph 89 above), but by adopting such criteria he also circumvented the aforementioned rules governing the manner of assigning cases.

125. The Court takes note of the Constitutional Court’s position that in assigning cases the principle of the equal distribution of caseloads also constituted a relevant criterion (see paragraph 89 above). However, there is no indication in the domestic law, to which the Constitution explicitly refers, that this could constitute a stand-alone ground for assignment of cases. It also does not follow from the information obtained by the Ombudsman and submitted to the Court (see paragraph 118 above) that the criteria applied in the present case were part of the established assignment practices in courts in Slovenia. Such criteria were therefore neither set out in the relevant domestic law nor foreseeable on any other grounds.

126. While the Court recognises the importance of both the effective and expeditious administration of justice, and the need for flexibility in managing courts’ caseload efficiently, it cannot overlook the fact that in this case, the domestic rules designed to regulate situations such as that which arose following Judge H.’s departure were disregarded, without any convincing explanation being given (contrast *Toivanen v. Finland*, no. 46131/19, §§ 35 and 37, 9 November 2023). By assigning family-law cases to the judge with the lowest number of unresolved cases of this type on a particular day, the President of the District Court effectively assigned these cases to a particular judge, contrary to objective pre-established criteria (see, for comparison, the standards set out in paragraphs 105, 106 and 108 above) and defying the clear purpose of the domestic law – namely, to ensure randomness in the assignments of cases. This conclusion remains unaffected by the fact that Judge P. was not expressly named in the President’s decree of 18 April 2022 and that this decree concerned all twenty-one of Judge H.’s family-law-related cases. The Court finds it worth noting that the remainder of Judge H.’s civil-law cases were apparently redistributed to other judges in a manner that, while taking account of those judges’ respective workloads, observed criteria set out in the Judicial Order, thus ensuring randomness in the distribution of those cases (see paragraphs 12 and 96 above).

127. The Court reiterates that in principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court may not question their interpretation unless there has been a flagrant violation of domestic law (see *Miracle Europe Kft*, cited above, § 50). In the light of the considerations set out in paragraphs 121-126 above, the Court is not persuaded that the present case concerned a mere question of interpretation of domestic law, nor a breach of a purely technical nature. Instead, the Court considers that the decree issued by the President of the District Court on the basis of which the applicants' case was assigned to Judge P. was in flagrant violation of national legislation and the Judicial Order (compare and contrast, for instance, *Pasquini*, cited above, §§ 104-09 and 112). This may have legitimately undermined the first applicant's confidence in the case assignment process and it impaired the very essence of the right to a "tribunal established by law". The Court observes in this connection that, although the first applicant had the opportunity to challenge in her appeal and constitutional complaint the refusal of her request for the recusal of Judge P. (see paragraphs 77, 80, 85, 87 and 89 above), the review conducted by the domestic courts – including the Constitutional Court – did not adhere to Convention standards (see, *mutatis mutandis*, *Guðmundur Andri Ástráðsson*, cited above, § 251). As previously noted, the domestic courts failed to duly consider the fact that the applicants' case had been assigned to Judge P. in clear violation of criteria established under domestic law and – at the constitutional level – set out in Article 23 of the Constitution (see paragraph 123 above). Consequently, Judge P. remained in charge of the applicants' case for over four years, and her replacement in 2023 was due not to her being recused but because her mandate was nearing its end (see paragraphs 66 and 72 above). Having regard to the foregoing, the Court concludes that there has been a violation of Article 6 § 1 of the Convention in this regard.

128. The Court notes that, in the present case, the complaints relating to the requirements of the "tribunal established by law" and "independence and impartiality" stem from the same underlying problem – that is, the irregularities in the assignment of the applicants' case to Judge P. As the Court has found above, the irregularities in question were of such gravity that they undermined the very essence of the right to be tried by a tribunal established in accordance with the law. Having made that finding, the Court concludes that the remaining question as to whether the same irregularities have also compromised the independence and impartiality of the same tribunal does not require further examination (see, *mutatis mutandis*, *Guðmundur Andri Ástráðsson*, cited above, § 295). The Court likewise does

not find it necessary to address separately the question of whether the alleged lack of impartiality of Judge P. was confirmed by her improper and biased conduct of the proceedings, noting that the Judge P.'s conduct of the proceedings will be addressed below within the context of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION CONCERNING ALL APPLICANTS

129. The applicants complained under Article 8 of the Convention that the applicant children's wish to live with the first applicant had been disregarded by the domestic authorities, the applicant children had been treated like "objects" in the proceedings, without any rights, and the removal order of 16 March 2020 had been in breach of the applicant children's rights, as enshrined in the said provision. They also complained that the restrictions on the first applicant's custody rights and the discontinuation of contact between the applicants had been unjustified. 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

130. The Government contested the admissibility of the applicant children's complaints on the grounds that the first applicant did not have standing to complain on their behalf. In support of this argument, they referred to the fact that the applicant children had been placed in the sole custody of Y by the judgment of 7 November 2022.

131. The first applicant pointed out that she had never, by virtue of any decision, been divested or restricted in her right and obligation to represent her children.

132. The Court has previously held that the position of children under Article 34 calls for careful consideration, since children generally have to rely on others to present their claims and represent their interests, and may not be of an age or capacity to authorise in any real sense that steps be taken on their behalf. A restrictive or technical approach in this area is therefore to be avoided (see *N.Ts. and Others v. Georgia*, no. 71776/12, § 54, 2 February 2016, and *A.K. and L. v. Croatia*, no. 37956/11, § 47, 8 January 2013). The key consideration in such cases is that any serious issues concerning respect for a child's rights should be examined (see *N.Ts. and Others v. Georgia*,

cited above, § 54; *Tonchev v. Bulgaria*, no. 18527/02, § 31, 19 November 2009; and *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 118, 11 December 2014).

133. As to the circumstances of the present case, the Court observes that the first applicant was never divested of her parental rights regarding the representation of her children (see Articles 136 and 145 of the Family Code cited in paragraph 97 above). The applicant children have also not been appointed a guardian, so it cannot be said that there is a third – unrelated – person entrusted with safeguarding their interests. The Court furthermore notes that the judgment of 7 November 2022, which gave sole custody of the applicant children to Y and to which the Government referred (see paragraphs 57 and 130 above), was quashed on appeal (see paragraph 66 above). It could thus not constitute valid grounds for the Government’s objection. Moreover, with the interim order of 1 December 2023, the Ljubljana District Court granted provisional joint custody to both parents, ordering that the applicant children live with the first applicant (see paragraph 74 above). The Court observes in this connection that in cases arising out of disputes between parents, it is the parent entitled to custody who is entrusted with safeguarding the child’s interests (see *Y.Y. and Y.Y. v. Russia*, no. 43229/18, § 43, 8 March 2022, and *C v. Croatia*, no. 80117/17, § 55, 8 October 2020). Having regard to the foregoing, and in the absence of any specific arguments or indication to the effect that there is a conflict of interest between the first applicant and the applicant children as regards the matter under consideration (see *A and Others v. Iceland*, nos. 25133/20 and 31856/20, § 62, 15 November 2022), the Court considers that the first applicant has standing to complain on behalf of her children and accordingly dismisses the Government’s related objection.

134. The Court further notes that the first applicant did not clearly specify whether the complaint about a violation of Article 8 of the Convention with respect to the removal order of 16 March 2020 (see paragraph 23 above) was lodged only in the name of the children or also in her own name. However, the Court notes that the applicants submitted that the District Court failed to use less severe measures, such as imposing a fine on the first applicant. Moreover, it is understood that they complained about the fact that the removal had targeted the children (not the “non-compliant parent” – see paragraph 137 below). In view of the foregoing, and having regard to the formulation of this complaint, the Court – assuming that the complaint extends to the first applicant – considers that she cannot claim to have been a victim within the meaning of Article 34 of the Convention. Accordingly, this part of the application is incompatible *ratione personae* with the provisions of the Convention for the purposes of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

135. As regards the remainder of the complaints raised under Article 8 the Court finds that they are neither manifestly ill-founded nor inadmissible on

any other grounds listed in Article 35. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

136. The applicants argued that, before restricting contact or rejecting the first applicant's proposals for interim measures, the District Court had not in any way attempted to seriously investigate the circumstances, interviewed the children and obtained the welfare authorities' report. It also did not take proper measures to investigate the times that the children ran away from home, downplayed those incidents and attributed responsibility for them to the first applicant. The applicants further submitted that the District Court had not ordered any preparatory measures, such as discussing with the children the contact and custody arrangements or ordering a trial period in respect of their placement with Y; instead, it used radical measures, such as the removal of the children from the first applicant without arranging for the children to subsequently have contact with her.

137. As regards the removal order of 16 March 2020, the applicants submitted that the District Court had failed to employ less severe measures, such as imposing a fine in the event that it considered that the first applicant failed to comply with the interim custody order. The possibility to impose fines had been set out in the interim orders, and, unlike the measure of removal, which had targeted the children, they were designed to target the non-compliant parent. They also argued that the removal order had not been justified because the children had not been in any danger in the first applicant's home and because she had not retained them on purpose. The applicants submitted that the children had wanted to stay with the first applicant, and they had ultimately run away from Y. The first applicant had been left with no choice but to let the children stay with her, which had been accepted by the welfare authorities, who likewise had failed to persuade the children to go to Y. The applicants furthermore explained that prior to the second removal order (see paragraph 63 above), the first applicant had attempted to hand the second applicant over to Y, who had refused to collect him.

138. The applicants also criticised the "no contact" orders and argued that they had been unjustified, and that the indefinite discontinuation of any contact was not allowed under the domestic law without a plan being put in place with a view to facilitating family reunification. As a result of those orders the first applicant had been left for several months with no contact with and no information about her children, which had made it very difficult for her to know whether they were at risk.

139. The applicants also argued that Judge P. had presented “false facts” or twisted the facts so as to present the first applicant in a bad light, disregarding the actions of Y. In particular, given the very limited contact the first applicant had had with the applicant children, it had been impossible for her to manipulate them. The applicants also disputed the methods used by the experts and pointed out that the supplementary expert reports had not been based on any interview with or examination of the applicant children.

140. Lastly, the applicants submitted that the removals and the “no contact” orders had seriously interfered with the applicant children’s rights. Despite this, the applicant children had not been appointed a guardian *ad litem* who could have protected their interests and used legal remedies on their behalf. The court or the welfare authorities could have appointed a guardian without any proposal in that respect from the parties and in the absence of their consent. The guardian’s role was different from that of an “advocate for children” (who was not in a position to represent the children in the proceedings). In any event, an advocate for children, too, could be appointed without the parent’s consent. The applicants also argued that as the applicant children had matured in the course of the proceedings their wishes should have carried more weight. The children had been ignored throughout the proceedings, with the result that they had ultimately taken matters into their own hands by running away from Y.

(b) The Government

141. The Government argued that the placement of the applicant children with Y had been necessary in order to protect them and to prevent their alienation from him until such time as the first applicant came to realise that the applicant children needed their father. It had been the State’s obligation to protect the children from abuse – including that of a psychological nature. The domestic courts’ decisions had been well reasoned – including the decision to remove the applicant children. As regards alternatives to removal, the Government argued that imposing fines, which could have been subject to challenges, would have only delayed the transfer of the applicant children, and exacerbated their alienation. The Government also submitted that while the applicant children had suffered great distress during the removal, their anguish could have been avoided had the first applicant complied with the interim order granting custody of the children to Y.

142. As regards the alleged failure to appoint a guardian, the Government pointed out that the first applicant had disagreed with that option in 2019. They further argued that the appointment of a guardian at the end of the proceedings would have caused unwanted delays. The Government explained that an “advocate for children” (see paragraphs 97 and 99 above) would not have acted as the children’s legal representative and could not have represented them in the proceedings. The courts were in any case under an obligation to do everything necessary to protect the children’s interests. The

Government further explained that in the absence of parental consent the welfare authorities or the court could, at the request of the Ombudsman, have nevertheless appointed an “advocate for children”.

143. The Government further submitted that the first-instance court had not heard the applicant children because they had been eight and five years old at the start of the proceedings. However, the children conveyed to the expert in clinical psychology their wish to live with the first applicant – a wish of which the domestic courts had been aware.

2. *The Court’s assessment*

(a) **General principles**

144. The mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life – even when the relationship between the parents has broken down (see *Keegan v. Ireland*, 26 May 1994, § 50, Series A no. 290). Family life in the Contracting States encompasses a broad range of parental rights and responsibilities with regard to the care and upbringing of minor children.

145. Domestic measures hindering the enjoyment of family life constitute an interference with the right to respect for family life (see, for example, *Palau-Martinez v. France*, no. 64927/01, § 30, ECHR 2003-XII, and *Babayeva v. Azerbaijan*, no. 57724/11, §§ 30-31, 30 January 2020).

146. Any such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society”. Necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (see *W. v. the United Kingdom*, 8 July 1987, § 60, Series A no. 121).

147. In determining whether the interference was “necessary in a democratic society”, the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V (extracts); *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); and *Katsikeros v. Greece*, no. 2303/19, § 52, 21 July 2022).

148. According to the Court’s well-established case-law, it must further be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court’s task is not to substitute itself for the domestic authorities in the exercise of their responsibilities, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see, *inter alia*, *Hokkanen v. Finland*, 23 September

1994, § 55, Series A no. 299-A; *Görgülü v. Germany*, no. 74969/01, § 41, 26 February 2004; *Sommerfeld*, cited above, § 62; and *Katsikeros*, cited above, § 53).

149. The margin of appreciation to be accorded to the relevant national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. 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).

150. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind (see, for instance, *I.M. and Others v. Italy*, no. 25426/20, § 105, 10 November 2022, and *Babayeva*, cited above, § 35). To that end, the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, in particular factors of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Antonyuk v. Russia*, no. 47721/10, § 134, 1 August 2013). Failure to conduct such examination will amount to a violation of Article 8 (*ibid.*, § 146). By contrast, if the domestic courts were to examine the question at issue with care and in line with the principles laid down by the Court's case-law, the Court would require very strong reasons to substitute its own assessment for that of the domestic courts (see *Elita Magomadova v. Russia*, no. 77546/14, § 63, 10 April 2018, and *Babayeva*, cited above, § 35).

151. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents, and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. Accordingly, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sahin v. Germany* [GC], no. 30943/96, § 66, ECHR 2003-VIII, and *Sommerfeld*, § 64, both cited above). On the other hand, it is in the child's best interests to maintain ties with their family, except in cases where the family has proven itself particularly unworthy: breaking this bond effectively cuts the child off from their roots. As a result, the child's interests dictate that only truly exceptional circumstances can justify severing

family ties, and every effort should be made to maintain a personal relationship (see *Cincimino v. Italy*, no. 68884/13, § 66, 28 April 2016).

152. Furthermore, the Court cannot satisfactorily assess whether the reasons advanced by the domestic courts were “sufficient” for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, was fair (see *Sahin*, § 68, and *Sommerfeld*, § 66, both cited above). While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, an applicant has been involved in the decision-making process to a degree sufficient to provide him or her with the requisite protection of his or her interests (see *Z.J. v. Lithuania*, no. 60092/12, § 100, 29 April 2014, with further references). In particular, in a number of childcare cases the Court has examined whether the parents were sufficiently involved in the decision-making process, with a view to establishing whether their rights under Article 8 were violated (see, for example, the above-cited cases of *Sommerfeld*, §§ 66-75, and *Sahin*, §§ 68-78). The Court has previously held that the same considerations apply, *mutatis mutandis*, to children in any judicial or administrative proceedings affecting their rights under Article 8. Children capable of forming their own views could not be considered to have been sufficiently involved in the decision-making process if they were not provided with the opportunity to be heard and thus express their views and if due weight, in accordance with their age and maturity, was not given to those views (see *M. and M. v. Croatia*, no. 10161/13, §§ 171 and 181, ECHR 2015 (extracts), and *C v. Croatia*, cited above, § 73).

(b) Application of the above-noted principles to the present case

153. The Court considers that the decisions that resulted in the removal of the applicant children from the first applicant, the restriction or prohibition of contact between the applicants or the restriction of the first applicant’s custody rights constituted interference with their right to a family life under Article 8 of the Convention (see *Bîzdiga v. the Republic of Moldova*, no. 15646/18, § 55, 17 October 2023, and *Babayeva*, cited above, §§ 30, 31 and 38). It has not been disputed that the interference in question had a basis in national law and pursued a legitimate aim of protection the rights of the applicant children and those of Y, within the meaning of paragraph 2 of Article 8. It remains for the Court to examine whether the interference was justified under the aforementioned provision, that is “necessary in a democratic society”. In this connection, it is essential to assess whether the respondent State acted within its margin of appreciation and achieved a fair

balance between the competing interests, with the best interests of the child remaining central to this evaluation (see paragraphs 149 and 150 above).

154. Before turning to the assessment of the justification for the interference in the instant case, the Court notes that the proceedings of which the applicants complained continued after the applications were lodged. Both parties commented on the facts as they evolved subsequently and provided arguments in this respect. The Court sees no reason not to take these arguments into account. Furthermore, in view of the nature and gravity of the alleged deficiencies in the authorities' conduct, the Court considers it appropriate to examine these deficiencies separately.

(i) The removal order of 16 March 2020

155. The Court notes that this complaint concerns only the applicant children (see paragraph 134 above). It further observes that following the breakup of the family in 2018, the welfare authorities observed that the first applicant, who had been given provisional custody of the applicant children, repeatedly prevented contact between the applicant children and Y (see paragraphs 13 and 16 above). She also unjustifiably failed to cooperate with the expert who had been requested to prepare a report on the family situation (see paragraph 10 above). As a result of this, provisional custody of the applicant children was transferred to Y (see paragraph 15 above) and the first applicant was eventually able to have contact with the applicant children only under supervision (see paragraph 17 above). The Court further notes that the visits under supervision did not yield the desired result, and that the first applicant repeatedly took the applicant children back to her home following those visits, which was contrary to the District Court's orders (see paragraphs 17, 19 and 20 above). However, the Court cannot but note that the conduct of the applicant children – who consistently expressed their wish to stay with the first applicant and resisted leaving with Y after the visits – was challenging for all those involved (see paragraphs 19 and 20 above). There is no doubt that the authorities were required to respond to this situation, which, as noted by the welfare authorities and the District Court, exposed the applicant children to significant stress (see paragraphs 19, 20 and 22 above). The question that needs to be addressed is whether the subsequent decision to remove the applicant children from the first applicant, taken on 16 March 2020 (see paragraph 23 above), could be considered to have been justified in those circumstances.

156. The Court takes note of the District Court's view that the applicant children's resistance to going with Y had resulted from the first applicant's active attempts to alienate them from Y. This finding was endorsed also by the Ljubljana Higher Court (see paragraph 22 above), and found support in the report prepared subsequently by the appointed experts (see paragraphs 42 and 55 above). The Court, being aware of its subsidiary role, has no reason to call that finding into question. It notes that the harm caused to children by

parental alienation should not be underestimated, and acknowledges that removing the children from the alienating parent and limiting contact with that parent may be in certain circumstances warranted in order to protect them from such harm (see, *mutatis mutandis*, *A.S. and M.S. v. Italy*, no. 48618/22, §§ 123 and 147, 19 October 2023). However, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I). As the Court's case-law has consistently recognised, the greatest caution must be exercised when resorting to coercion in this delicate area (see *Endrizzi v. Italy*, no. 71660/14, § 51, 23 March 2017). The Court therefore considers that a transfer of a child from one parent to another by means of coercion aimed at breaking the child's resistance could not be justified if it is against the child's best interests and, more specifically, if less restrictive measures suitable to achieve the legitimate objective in question were not seriously considered first (compare *A.S. and M.S. v. Italy*, cited above, § 144; *Suur v. Estonia*, no. 41736/18, § 96, 20 October 2020; and *Hokkanen*, cited above, § 58).

157. In the present case the District Court's removal order (see paragraph 23 above), which provided that the applicant children be removed from the first applicant by a bailiff, contained no explanation as to why other alternative approaches had not been considered and attempted first (see the above-cited cases of *Suur*, § 76, and *Ignaccolo-Zenide*, § 94). The Court is struck by the fact that no serious steps appear to have been taken with a view to preparing the children for their return to Y, although their resistance (for whatever reasons) to going to Y was clearly at the centre of the problem in executing transfers between the parents (see paragraphs 19 and 20 above). It is not for the Court to examine whether the domestic legal order allowed for preparatory measures and appropriate professional assistance to be ordered by the domestic court (indeed a suggestion to that effect was made by the domestic authorities and by experts – see paragraphs 9, 22 and 49 above). It would however emphasise that it is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its obligations under Article 8 of the Convention (compare *Ignaccolo-Zenide*, cited above, § 108).

158. The Court further notes that the welfare authorities proposed that the first applicant be sanctioned by fines, which moreover were also provided for in the domestic law and by the domestic decisions as a means of ensuring compliance (see paragraphs 16 and 100 above). Yet no sanctions were ever imposed on the first applicant. The Ljubljana District Court and the Government opined that the fines would have been ineffective and would only have delayed the proceedings (see paragraphs 24, 63 and 141 above). However, this opinion is unconvincing, as it lacks supporting facts and

details. The Court for its part notes that the use of sanctions against a parent who acts unlawfully must not be ruled out (see *Ribić v. Croatia*, no. 27148/12, § 95, 2 April 2015, and *Ignaccolo-Zenide*, cited above, § 109)

159. The Court also takes note of the Government's argument that the applicant children's anguish could have been avoided had the first applicant complied with the interim order granting custody of the applicant children to Y (see paragraph 141 above). It notes in this connection that the circumstances under which the first applicant was supposed to transfer the children, after they had left with her following the supervised visit (see paragraphs 19 and 20 above), remain unclear. In particular, there is no indication that the first applicant received any prior court order instructing her when, where and how to hand the children over to Y or that she was required to present the children to the authorities but refused to do so. Furthermore, there is nothing in the case file to suggest that, on the day of the removal, she actively sought to prevent the children from being transferred to Y (see paragraphs 26-28 above). The Court further notes that no expert report was prepared owing to the first applicant's failure to cooperate, which could have to a certain extent impeded a proper evaluation of the situation (see paragraph 155 above). That said, the first applicant's conduct, no matter how objectionable, cannot alone justify the measure taken against the applicant children. In this regard, the Court emphasises that the children's best interests must be the foremost consideration when implementing measures that interfere with their rights (see paragraph 150 above), even more so when they interfere with their physical and mental integrity, as in this case.

160. There is no doubt that the removal inflicted on the applicant children considerable distress (see paragraphs 26-28 and 141 above). The Court takes note of the Ljubljana Higher Court's observation that the removal order in itself did not imply that its execution would be traumatic for the children (see the Ljubljana Higher Court's comment on that in paragraph 24 above). Yet the Court cannot ignore the fact that Judge P. must have been aware of the applicant children's resistance to going with Y, which they had demonstrated during the visits (see paragraphs 19 and 20 above); nevertheless, Judge P. ordered their removal by a bailiff, without first resorting to less severe – and more appropriate – measures (as mentioned above – see paragraphs 157 and 158 above).

161. Lastly, the Court observes that when the Ljubljana Higher Court reviewed the removal order, it took the view that the applicable domestic law had not required less severe measures to be exhausted prior to the physical removal of children (see paragraph 24 above); thus, in its view, the impugned removal order had been lawful. The Constitutional Court, for its part, did not examine the first applicant's complaint on the merits, and dismissed her application challenging the constitutionality of the enforcement legislation relating to the removal of children, finding that legislative changes had in the meantime been introduced and that the issue was no longer of constitutional

importance (see paragraph 92 above). Neither of those courts therefore reviewed the compliance of the impugned measure with the Convention.

162. Seen against the above-noted context and considerations, the Court finds that the removal order of 16 March 2020 could not be considered to have been supported by relevant and sufficient reasons. It therefore amounted to a violation of the applicant children's rights enshrined in Article 8 of the Convention.

(ii) Discontinuation of contact between the applicants

163. The Court observes that contact between the applicants was discontinued by means of interim orders – firstly, on 16 March 2020 (see paragraph 22 above), and, for the second time, on 5 August 2022 (see paragraph 56 above). As a result, the first applicant and her children were not allowed to have any contact with each other between 17 March 2020 and 4 August 2020 (see paragraph 33 above) and between 5 August 2022 and 4 April 2023 (see paragraph 65 above). The judgment of 7 September 2022, which was later quashed, discontinued any contact between the applicants as part of the long-term measure (see paragraphs 57 and 69 above).

164. As regards the interim order of 16 March 2020, it is noted that contact between the applicants was discontinued, reference being made in that respect to the first applicant's attempts to alienate the applicant children from Y (see paragraph 22 above). The Court does not doubt that the discontinuation of contact between the first applicant and her children was aimed at ensuring the continuation of family life between the applicant children and their father, Y. Indeed, in the event of parental alienation domestic authorities are required to take measures in line with their positive obligations under Article 8 (see, for instance, *Aneva and Others v. Bulgaria*, nos. 66997/13 and 2 others, §§ 109 and 110, 6 April 2017; see also paragraph 156 above). However, in doing so, and being faced with the strained relationship between the first applicant and Y, the Slovenian authorities remained bound to seek a fair balance between the interests at stake and to take measures that would reconcile those interests – including any preparatory measures needed to facilitate the reunification of or contact between the parents and their children, bearing in mind the paramount interests of the child (see *Kacper Nowakowski v. Poland*, no. 32407/13, § 89, 10 January 2017; *A.V. v. Slovenia*, no. 878/13, § 73, 9 April 2019; and *A and Others v. Italy*, no. 17791/22, §§ 97-100, 7 September 2023; see also paragraph 151 above).

165. Despite the above-mentioned requirements of proportionality and assistance, the interim order of 16 March 2020 for the complete discontinuation of contact between the first applicant and the applicant children lacked any serious consideration of (i) the challenges encountered during the children's transfers (see paragraphs 19 and 20 above), which seemed to have presented a very important obstacle to the implementation of

custody and contact arrangements, and (ii) any other suitable and less severe measure that could have addressed those challenges (see Article 156 of the Family Code, which obliges the authorities to use the least restrictive measures – cited in paragraph 97 above). Nor did it contain any evaluation of the impact that the discontinuation of contact would have on the applicant children, despite the fact that they were very attached to the first applicant, who had previously been their primary caregiver (see, for instance, paragraphs 42, 69 and 71 above). While noting that the first applicant failed to cooperate in the preparation of the expert opinion (see paragraphs 15 and 22 above), the Court does not consider that this in itself sufficed to justify a measure that had such a severe impact on the applicants' family life.

166. Of further significance, the Court observes that the interim order of 16 March 2020 was not accompanied by any plan laying out the provision of specific assistance to the family and a timeframe within which the situation would be reviewed and the measure possibly adjusted (see paragraph above 22 above). This not only amounted to a missed opportunity to assist the family, but also created an atmosphere of uncertainty that was undoubtedly detrimental to the applicants (see, for instance, paragraphs 27 and 38 above).

167. In view of the above, the Court finds that the interim order of 16 March 2020 discontinuing all contact between the applicants was not justified by sufficient reasons.

168. As regards the interim order of 5 August 2022 and the judgment of 7 November 2022, the Court notes that the Ljubljana Higher Court found that the discontinuation of contact between the applicants had lacked justification, had not been based on a proper evaluation of the situation and had not been accompanied by a timeframe and a plan for the provision of assistance to the family, as required by domestic law (see paragraphs 67 and 69 above) and Article 170 of the Family Code (see paragraph 97 above). The Court sees no reason to disagree with the Ljubljana Higher Court's findings. It further notes that the District Court's decisions to discontinue contact were based on the supplementary expert report of 1 August 2022, which recommended that the contact between the applicants and all communication between them be discontinued (see paragraph 55 above). The Court finds it particularly concerning that the experts based their opinion in favour of a total discontinuation of contact and communication between the applicants merely on the documents in the case file. They did not conduct any interview with the family, despite the fact that over eighteen months had passed since the last time the applicants and Y had been examined by the experts (see paragraph 42 above), and that in their previous opinion (of September 2021) the experts had in fact found the interruption of contact would not be in the applicant children's best interests (see paragraph 49 above). It would appear that the welfare centre, which had first-hand contact with the family, had never suggested that contact between the applicants be discontinued. The Court further observes that the District Court also found that the first

applicant had been involved in one of the youngest children running away from Y's home, but had not conducted any kind of investigation in this regard (see paragraphs 53 and 57 above). The District Court attributed responsibility for that situation to the first applicant and referred to that when deciding to discontinue contact between the first applicant and the applicant children; however, no efforts seem to have been made to evaluate the respective applicant's motives for her running away from Y and the impact on the children of the discontinuation of contact. This problematic approach became particularly evident when the District Court refused the first applicant's request for the issuance of an interim order after the second applicant ran away from Y on 29 January 2023, simply finding that the fact that the child had run away did not justify the requested measure (see paragraphs 62 and 63 above). Without hearing the applicant children and taking appropriate steps with a view to investigating the first applicant's allegations, the District Court found that Y's conduct – which the first applicant had argued was neglectful – was in fact “very beneficial for the applicant children” (see paragraph 62 above). Soon afterwards the District Court again resorted to the removal measure in order to have the second applicant returned to Y – although it is not clear from the case-file material why it was assumed that the first applicant was unwilling to cooperate in his transfer (see paragraph 63 above).

169. The District Court's failure to take the second applicant's grievance seriously – possibly owing to the fact that it never heard him, despite him being eleven years old at the time in question – may have contributed to the escalation of the situation. This ultimately led the welfare centre to request the transfer of the applicant children to the first applicant, finding that they were being neglected in Y's home and that the second applicant was possibly at risk (see paragraph 64 above).

170. In view of the above, the Court considers that the interim order of 5 August 2022 and the prohibition on contact issued by the judgment of 7 November 2022 were not based on an in-depth examination of the entire family situation (see paragraph 150 above) and that the reasons advanced in support of those measures were not sufficient to demonstrate that the circumstances of the case were such as to justify the measure in question. Emphasising the gravity of the interference and the seriousness of the interests at stake, the Court also considers that the decision-making process leading to these decisions should have been conducted in such a way as to ensure that the applicants' interests were duly taken into account. It will examine separately and in more detail the question of the applicant children's involvement in the proceedings (see paragraphs 173-175 below). Here, it will confine itself to noting that the applicant children seem to have been heard only by expert A during their examination at the end of 2020 (see paragraph 42 above). The District Court never heard them (see paragraph 174 below) – not even the second applicant, who was the oldest of the three and who had repeatedly demonstrated his opposition to the court's decisions

(including by putting himself at risk of harm by repeatedly running away – see paragraphs 61, 63, and 64, above).

171. Lastly, although the Court acknowledges the reasoning of the Ljubljana Higher Court in its judgment of 10 July 2023, it notes that it could have not fully remedied the harm caused to the applicants’ family life as a result of the contested decisions; therefore, the applicants’ victim status under Article 8 of the Convention remains intact. It observes in this connection that as a result of the impugned decision of 5 August 2022 the first applicant was not allowed to have any contact with the applicant children until April 2023 (see paragraphs 56 and 65 above), when the parents reached a temporary court settlement. The welfare centre’s repeated requests for changes to the arrangements, emphasising the urgency of the situation, remained unaddressed by the District Court in the meantime (see paragraph 64 above). Moreover, because of the District Court’s disregard of the Higher Court’s instructions to assign the case to a different judge (see paragraph 66 above), the interim order issued on 28 August 2023, granting provisional custody of the applicant children to the first applicant, was promptly quashed (see paragraph 72 above); a new decision granting joint custody and a residence order in favour of the first applicant was issued on 1 December 2023 by a newly assigned judge, meaning that for two months contact between the first applicant and the applicant children was regulated by an outdated decision of 1 October 2021 (see paragraphs 50 and 74 above).

172. In view of the above-noted considerations, the Court concludes that the cessation of contact between the first applicant and the applicant children, which arose from the interim orders of 16 March 2020 and 5 August 2022 and the judgment of 7 November 2022, violated the applicants’ right to respect for their family life, as guaranteed by Article 8 of the Convention.

(iii) Involvement of the applicant children in the decision-making process

173. The Court observes that the domestic law applicable at the relevant time enabled the welfare centre and the domestic court to appoint a guardian *ad litem* and/or an “advocate for children” with a view to ensuring that the applicant children’s interests were properly protected (see Articles 182 and 269 of the Family Code; see also paragraphs 97-99 above). It has not been disputed that the aforementioned guardian or advocate could have been appointed in the absence of the consent of the parents (see paragraphs 140 and 142 above), and indeed nothing in the legislation suggests otherwise.

174. Moreover, Articles 143 and 158 of the Family Code provided that the opinion of the child in question should be considered by the domestic court deciding on contact, custody or other childcare measures if the child was capable of understanding their significance and consequences (see paragraph 97 above). In this connection, the Court notes that at the time of the issuance of the removal order of 16 March 2020 the second applicant was nine years old and the third and fourth applicants were six years old. At the

time when the judgment revoking the mother's right to contact was issued, they were eleven and eight years old, respectively. The domestic courts referred to the age of the applicant children and explained that it was unnecessary that they be heard since their wishes and their best interests did not necessarily overlap, because they were intensively involved in the conflict between the parents and exposed to the first applicant's influence. They also referred to the fact that an interview with them had been conducted by an expert psychologist, A – to whom all three children had expressed their wish to live with the first applicant. The Ljubljana District Court appeared to have assumed that the applicant children would have likely expressed the same wish had they been heard by the District Court (see paragraphs 59 and 68 above).

175. The Court has already considered the fact that the applicant children were never heard by the domestic court in its assessment of whether the discontinuation of contact between the first applicant and the applicant children had been justified (see paragraph 170 above; also compare *C v. Croatia*, cited above, §§ 78-80, where the applicant was nine years old when the relevant set of custody proceedings was concluded). It is furthermore important to note that the domestic courts' decision not to hear the applicant children rendered their involvement in the proceedings through an appropriate impartial representative even more pressing. The Court would refer in this connection to the considerations set out in its judgment which concerned a relevantly similar situation, *C v. Croatia* (cited above, §§ 76-77) – in particular as regards the benefit of appointing a guardian *ad litem* to the child of parents involved in a custody battle. It is further emphasised that the contested measures in the present case had a particularly serious impact on the applicant children (who displayed significant resistance to them) – of which the domestic courts were aware. Despite the above-noted considerations, it would appear that the District Court did not attach any significance to the applicant children's need for representation. In its judgment of 7 November 2022 it seems to have confused different concepts under the domestic law and essentially relied on the fact that the first applicant had initially refused to give consent for the appointment of an "advocate for children" (see paragraphs 10 and 58 above). The District Court overlooked the fact that parental consent was not a necessary condition for appointing such an advocate and that the welfare centre had proposed the appointment of a guardian *ad litem*, which the District Court could and should have appointed on its own initiative (see Article 269 of the Family Code, and paragraphs 97-99 above). In the light of this, the Court finds that the domestic courts' failure to ensure proper representation of the applicant children's interests during the contact and custody proceedings amounts, in itself, to a breach of their right to respect for their family life under Article 8 of the Convention.

(iv) Conclusion

176. In the light of the above-noted considerations the Court finds that there has been a violation of Article 8 of the Convention with respect to the applicant children, on account of the removal order of 16 March 2020 (see paragraph 162 above) and their lack of representation in the contact and custody proceedings (see paragraph 175 above). It further finds that there has been a violation of Article 8 of the Convention with respect to all the applicants on account of the discontinuation of their contact (see paragraph 172 above). In view of these findings the Court does not consider it necessary to examine separately other restrictions regarding contact with and custody of the applicant children (see paragraph 129 above). The Court furthermore notes that although the applicant children's lack of representation undermined the quality of the proceedings, the first applicant, unlike the applicant children, was not directly affected by this flaw (compare *Q and R v. Slovenia*, no. 19938/20, § 101, 8 February 2022). Therefore, and having regard to its finding of a violation of Article 8 (see paragraphs 163-172 above), the Court considers that this issue, likewise, does not warrant a separate examination on the merits with respect to the first applicant.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

177. The applicants complained that the applicant children had been subjected to treatment incompatible with Article 3 of the Convention during their removal on 17 March 2020. However, regarding the specific actions taken by the bailiff, the judge or other officials involved in the removal, the applicant children, who did not avail themselves of any means of directly challenging those actions, should have lodged their application with the Court within six months¹ from the removal, had they considered that no effective remedy was available to them (see, for instance, *Palmeri v. Italy* (dec.), no. 26781/20, § 35 and 38, 2 July 2024). The Court accordingly considers that this complaint was lodged out of time and is not compliant with Article 35 § 1 of the Convention.

178. It follows that this part of the application should be declared inadmissible under Article 35 § 4 of the Convention.

¹ Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the event in question took place prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention), on the assumption that no effective remedy was available to the applicant children.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

179. 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

180. The applicants each claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

181. The Government argued that the amount claimed was excessive and unsubstantiated.

182. The Court, having regard to the nature and severity of the violations of the Convention found in the present case, awards the first applicant alone EUR 7,000 and the applicant children jointly EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

183. No claim regarding pecuniary damage has been submitted; therefore, the Court does not make any award in this respect.

B. Costs and expenses

184. The applicants also claimed EUR 66,490 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

185. The Government argued that the claims submitted by the applicants were not justified.

186. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 3,000 and the first applicant alone an additional sum of EUR 2,500 for costs and expenses in the domestic proceedings, and to award the applicants jointly EUR 4,000 for the proceedings before the Court. In total, the Court awards the applicants jointly EUR 7,000 and the first applicant additional EUR 2,500 for the costs and expenses, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the complaint under Article 3 of the Convention and the first applicant's complaint concerning the removal order of 16 March 2020 inadmissible and the remainder of the applications admissible;
3. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention as regards the first applicant's right to a tribunal established by law;
4. *Holds*, by six votes to one, that there is no need to examine the merits of the first applicant's remaining complaints under Article 6 § 1 of the Convention;
5. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention as regards the removal order of 16 March 2020 with respect to the applicant children;
6. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention as regards the discontinuation of contact between the applicants with respect to all the applicants;
7. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention as regards the applicant children's lack of representation in the contact and custody proceedings;
8. *Holds*, unanimously, that there is no need to examine the merits of the complaint under Article 8 of the Convention regarding other aspects of the contact and custody proceedings and the first applicant's complaint regarding the applicant children's lack of representation in the custody and contact proceedings;
9. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicants, 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 7,000 (seven thousand euros) to the first applicant and EUR 20,000 (twenty thousand euros) to the applicant children jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,000 (seven thousand euros) to the applicants jointly and EUR 2,500 (two thousand five hundred euros) to the first applicant, plus any tax that may be chargeable to the applicants, 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;

10. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Ivana Jelić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge G. A. Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The present case concerns, firstly, the removal of three children from the first applicant (the mother), by their father, and the discontinuation of contact between the children and their mother, as well as other related issues, about which they complained under Article 8 of the Convention; and, secondly, the reassignment of the first applicant's case to a particular judge, which was allegedly in breach of her right to be heard by an independent and impartial tribunal established by law, as guaranteed by Article 6 § 1 of the Convention.

2. I agree with all points of the operative provisions of the judgment apart from point 3, namely, that having found that there had been a violation of Article 6 § 1 of the Convention as regards the first applicant's right to be heard by a tribunal established by law, there was no need to examine her remaining complaints under that provision relating to the independence and impartiality of the same tribunal (see also the last but one sentence of paragraph 128 of the judgment, to which point 3 corresponds).

3. Briefly, the reason for my disagreement with point 3 is that, after the finding that there was no tribunal established by law, the “remaining complaints” under Article 6 § 1 became moot and were immediately and automatically devoid of object and existence *ex tunc*. Therefore they would have had to be rejected as inadmissible *ratione materiae*, by virtue of Article 35 §§ 3 (a) and 4 (under the latter provision, the Court may declare a complaint inadmissible “at any stage of the proceedings”). This consequence is not something that the Court would have overlooked or considered unnecessary to examine. I supported this view in depth in separate opinions in two other cases, by also invoking adherence to the principle of effectiveness (see my partly dissenting opinion (paragraphs 4-8) in *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020, and my dissenting opinion (paragraphs 25-31) in *Angerjärv and Greinoman v. Estonia*, nos. 16358/18 and 34964/18, 4 October 2022). Since I have already dealt with the same issue in those two other opinions, I refrain from further elaborating on it here.

4. A final point which I wish to clarify is that the ground for the Court's finding in various cases that the guarantee of a “tribunal established by law” under Article 6 § 1 is not satisfied, whether for example it relates to the appointment of a judge or to the assignment of a case to a judge, is immaterial for the purpose of examining (or not) the rest of the complaints under this provision. A tribunal is either established by law or not established by law, and the corresponding guarantee of Article 6 § 1 can either be satisfied or not. There is no doubt, as the judgment also accepts, that this guarantee was not satisfied in the present case.