



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

**CASE OF SCOZZARI AND GIUNTA v. ITALY**

*(Applications nos. 39221/98 and 41963/98)*

JUDGMENT

STRASBOURG

13 July 2000

**In the case of Scozzari and Giunta v. Italy,**

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,  
Mr J.-P. COSTA,  
Mr L. FERRARI BRAVO,  
Mr GAUKUR JÖRUNDSSON,  
Mr L. CAFLISCH,  
Mr I. CABRAL BARRETO,  
Mr W. FUHRMANN,  
Mr K. JUNGWIERT,  
Mr M. FISCHBACH,  
Mr B. ZUPANČIČ,  
Mrs N. VAJIĆ,  
Mr J. HEDIGAN,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr T. PANȚÎRU,  
Mr E. LEVITS,  
Mr K. TRAJA,  
Mr C. RUSSO, *ad hoc judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 26 January and 5 July 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”)<sup>1</sup>, by the European Commission of Human Rights (“the Commission”) and by the Italian Government (“the Government”) on 4 December 1998 and 21 January 1999 respectively (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in two applications (nos. 39221/98 and 41963/98, which have been joined) against the Italian Republic. The first applicant, Mrs Dolorata Scozzari, a Belgian and Italian national currently living at Figline Valdarno, is also acting on behalf of her children, G., who was born in 1987 and has dual Belgian and Italian nationality, and M., who was born in 1994 and has Italian nationality. The second applicant, Mrs Carmela Giunta, is an Italian national, who was born in 1939 and lives in Brussels.

---

1. *Note by the Registry*. Protocol No. 11 came into force on 1 November 1998.

Since the end of 1998 she has also had a home in Italy. She is the first applicant's mother.

3. The first applicant lodged the first application with the Commission on 9 December 1997 under former Article 25 of the Convention. Both applicants subsequently lodged the second application with the Commission on 16 June 1998. The applications were joined on 8 July 1998.

4. The first applicant alleged a violation of Article 8 of the Convention on account of the decision of the Florence Youth Court to suspend all relations between her and her children and to place them with “Il Forteto”, a community, and of the fact that she was unable to see her younger son. The second applicant complained that no consideration had been given to the possibility of her being given the care of the children. The applicants also complained of violations of Article 6 § 1 and Article 14 of the Convention, on account of the delay in hearing their appeals and of allegedly discriminatory treatment. Lastly, the first applicant complained of a violation of Article 3 of the Convention on account of allegedly inhuman treatment inflicted on the children in the community, and of Article 2 of Protocol No. 1 on the ground that the arrangements made for the children's schooling were, in her submission, insufficient.

5. On 10 March 1998 the Commission declared part of the first application (no. 39221/98) inadmissible. On 15 September 1998 it declared the second application (no. 41963/98) and the remainder of the first application admissible. In its report of 2 December 1998 (former Article 31 of the Convention)<sup>1</sup>, it expressed the opinion that there had been no violation of Article 8 of the Convention as a result of the suspension of the first applicant's parental rights or of the fact that her children had been taken into care (twenty-four votes to one); there had been no violation of Article 8 as a result of the children being placed at “Il Forteto” (thirteen votes to twelve); there had been a violation of Article 8 as a result of the suspension of all contact between the first applicant and her children (twenty-one votes to four). The Commission also expressed the unanimous opinion that there had been no violation of Article 3 of the Convention or of Article 2 of Protocol No. 1 as regards the second applicant, and that no separate issue arose under Article 6 § 1 and Article 14 of the Convention.

6. The Government were represented by their Agent, Mr U. Leanza, Head of the Diplomatic Disputes Department, Ministry of Foreign Affairs.

7. On 3 February 1999 a panel of the Grand Chamber determined that the case would be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). Mr B. Conforti, the judge elected in respect of Italy, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly

---

1. *Note by the Registry.* The report is obtainable from the Registry.

appointed Mr C. Russo to sit in his place as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

8. The applicants filed memorials on 3 March, 16 July and 22 September 1999 and the respondent Government on 9 December 1998, 1 March, 6 and 10 April, 5 and 19 July, and 10 September 1999. Observations were also received from the Belgian Government, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 61 § 2).

9. A hearing took place in private in the Human Rights Building, Strasbourg, on 26 January 2000.

There appeared before the Court:

(a) *for the Italian Government*

Mr V. ESPOSITO, *magistrato*, on secondment  
to the Diplomatic Disputes Department,  
Ministry of Foreign Affairs, *Co-Agent*,

(b) *for the applicants*

Mrs A MAZZARRI, of the Livorno Bar *Counsel*,  
Mrs D. SCOZZARI,  
Mrs C. GIUNTA, *Applicants*;

(c) *for the Belgian Government*

Mrs A. DAVIS,  
Mrs M. GILLET, *Counsel*.

The Court heard addresses by them.

10. On 8 March 2000 the Court viewed video recordings of the contact visits on 29 April and 9 September 1999, which the respondent Government had produced on 2 February 2000. The Court considered that the case was ready for decision and that it was not necessary to accede to the further request of the parties and the Belgian Government for additional investigations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### **A. Events leading up to the intervention of the authorities in the first applicant's family life**

11. The first applicant met N.A., the father of her children, in Belgium while he was in prison. He had been sentenced on 17 February 1984 to a life term of forced labour for offences that included robbery and attempted murder. He had several previous convictions for offences including theft, indecent exposure in the presence of a child aged under 15 and rape of a minor aged between 10 and 14 (for the latter two offences he was given a pardon and his sentence was reduced). The sentence of forced labour for life was subsequently reduced to twenty-seven years' forced labour following a pardon in 1991.

12. The elder child was born while N.A. was still in prison. Subsequently, the first applicant and N.A. married. On an unspecified date in 1993 N.A. failed to return to the prison and has remained on the Belgian authorities' wanted list ever since. In fact, N.A. and the first applicant had travelled to Italy with their child.

13. In February 1994 the younger son was born. However, the atmosphere in the family had begun to deteriorate. Arguments between the parents became worse and ended in outbursts of violence against the first applicant, who subsequently lodged a complaint against her husband (the Court has not been informed of the outcome of those proceedings).

14. In the meantime, M.L., a social worker employed by social services in the Florence region, had built up a good relationship with the first applicant's family. He was a former drug addict and was responsible for counselling a number of children from problem families who had been taken into care. He offered to look after the first applicant's elder son without payment at weekends. She accepted, since both she and her husband were working, she had to look after the baby, and social services did not provide assistance with children over weekends without charge.

15. Shortly afterwards the elder son started to have health problems. The first applicant took him to hospital several times but the problems were initially attributed to an inadequate diet.

16. In November 1996 the first applicant said that she did not want M.L. to visit her son any more. He then started to see the child at the first applicant's home and only in the presence of his parents. The first applicant sought to stop him seeing her son, but that had psychological repercussions on the boy, who tried to see M.L. without his parents' knowledge.

17. A short while later the boy informed a friend of the family about “unusual games” in which M.L. had persuaded him to participate on several occasions. On learning of their son's admission, the first applicant and her husband lodged a formal complaint with the police on 2 February 1997.

18. An investigation was started. The investigators rapidly discovered a number of factors showing M.L. to be at the centre of a paedophile ring. In particular, he was accused of having indecently assaulted several children since 1986 by taking advantage of his connections with social services and his role as a social worker (some of his presumed victims had been placed in homes and one even entrusted into his care by the Palermo Youth Court). M.L. was also accused of selling photographs taken during his sexual encounters with children, including the first applicant's elder son, and of running a drug-trafficking ring.

19. On 6 June 1997 the investigating judge ordered, *inter alia*, M.L.'s arrest. The judge noted that M.L., a former drug addict, had feigned a desire to reform and thereby succeeded in gaining access to public institutions responsible for the protection of children and had taken advantage of the children that both individuals and the public authorities had entrusted into his care. He was convicted at the end of the proceedings at first instance.

20. Meanwhile, social services began to examine the situation of the first applicant's family more closely. In a report of 30 January 1997, the case worker, Mrs S.G., stated that there was a serious conflict between the parents (the first applicant had complained about the situation to various authorities the previous summer) and difficulties in securing their effective cooperation. In a second report of 7 February 1997 a deterioration in the situation was noted. Furthermore, Mrs S.G. said that the younger child was not attending nursery school regularly because of minor ailments, while the elder child was described by his teachers as an intelligent and very active child.

21. On 25 February 1997 the Florence Youth Court ordered that the children and their mother should stay in a home designated by social services. It referred in particular to the complaint concerning the sexual abuse allegedly suffered by the first applicant's elder son.

22. In a report of 12 March 1997, social services indicated that it was difficult to find a home ready to accommodate both the children and their mother. Moreover, the first applicant had refused to be separated from her children and the elder boy had said that he wanted to stay with her. All three were provisionally accommodated in a hostel ran by Caritas, a charity. On the first applicant's initiative, the children began to attend school again. Social services also described the first applicant in that report as being unstable and fragile.

23. In March 1997 social services noted that it was impossible for Caritas to continue to provide a home for the first applicant. They also said that she seemed incapable of following a suitable programme for the

protection of the children and that there were doubts as to her effective capacity to look after them. In addition, she had continued to see a man both on and off the premises and indicated that she wanted to return home, as her husband was no longer violent towards her.

24. A neuropsychiatrist employed by the local health authority stated in a report of 9 June 1997 that the first applicant appeared to be suffering from personality disorders. The relevant passages from the report read as follows:

“... Mrs ... appears incapable of gauging reality and adapting her behaviour appropriately. She seems very confused about how to recount matters and about irrational acts. She is incapable of distinguishing between what is good and what is bad for the child and therefore incapable of protecting him; she alternates between times when she appears very childlike, in accordance with the idealised image of the mother, and times when she places G. in an adult role with seductive and subtly perverse traits.

I can conclude that Mrs ... presents a serious personality disorder that at times affects the sphere of knowledge and ideation and at others the emotional and relational sphere, and that the hypothesis of a clinical 'borderline case' can be advanced.

As matters stand, Mrs ... shows that she is not capable of managing the extremely complex family situation and G.'s particularly sensitive situation, still less of creating a sufficiently positive environment for him.”

25. It was noted in a school report of 10 June 1997 that the elder boy was becoming increasingly agitated and that the first applicant's attitude to both her son and school staff had tended to be highly erratic: at times aggressive, at others attentive. According to the school, it had proved very difficult to establish a constructive dialogue with her. A report by the social worker the following day confirmed the elder boy's increasing difficulties.

26. On 22 July 1997 the Youth Court ordered the elder son's placement in another home. The parents challenged that decision on 30 July 1997. On 8 August 1997 the Youth Court stipulated that the placement would last three months and was intended to provide an opportunity for the child's behaviour to be monitored. However, the boy manifested his dislike of that solution and ran away from the home, returning to his parents. Social services nonetheless insisted that he should remain in the home.

27. It was stressed in a private medical report lodged at the time that the boy, who was in terror of the priest who ran the home, needed a peaceful environment rather than to be surrounded by other children whose past was just as tragic as his own.

28. The younger child was transferred to another home in the meantime.

29. On 8 September 1997, at the end of a meeting attended by, *inter alia*, social workers and specialists who had been supervising the first applicant and her children, the representatives of the relevant social-services department concluded that the children needed to be separated from their natural family and recommended their placement in a community, “Il Forteto”, which was organised as an agricultural cooperative.

30. On 9 September 1997 the Florence Youth Court ordered the two children's placement at "Il Forteto", pursuant to Article 333 of the Civil Code (*Condotta del genitore pregiudizievole ai figli* – "parental behaviour harmful to the children"), suspended the father's and the mother's parental rights pursuant to Article 330 of the Civil Code (*Decadenza dalla potestà sui figli* – "lapse of parental rights"), ordered that if the parents refused to comply, the decision was to be enforced with police assistance, and granted the parents the right to visit the younger son only, such visits to take place on the cooperative's premises and in the presence of members of its staff. The Youth Court observed, *inter alia*, that the parents had been uncooperative and had on one occasion taken the elder child from the home where he had previously been staying despite the protests of his carers. It also criticised the parents for having exposed the elder boy to a tragic situation – of which he had been the victim – over a lengthy period, without exercising the supervision which was expected of them as parents, or being alert to the alarm signals given by the child. Conversely, those signals had not escaped the attention of school staff, who had tried in vain to establish a dialogue with the family. Lastly, the Youth Court ordered social services to monitor the children's situation closely and to produce a proposal for the children's rehabilitation, based on what was observed.

#### **B. Matters relating the "Il Forteto" community**

31. The case file reveals that at the end of the 1970s the cooperative was the subject matter of a criminal investigation into acts of bestiality and paedophilia allegedly committed there by three of its founder members. Two of them, L.R.F. and L.G., were arrested and later released, but nevertheless committed for trial.

32. On 3 January 1985 the Florence Court of Appeal convicted L.R.F. and L.G. of, *inter alia*, the ill-treatment and sexual abuse of persons who had stayed in the home (they were acquitted on the other counts as there was insufficient evidence). The Court of Appeal considered it appropriate to examine the evidence against the accused in the light of the situation at "Il Forteto": leaders at the home sought to sever relations between the children in their care and their natural parents, while homosexuality was rife. Relying, *inter alia*, on the evidence of witnesses and partial confessions by the accused, the Court of Appeal found the case proved, in particular, on the following counts:

(i) both L.R.F. and L.G. were guilty of ill-treating a handicapped 18-year-old girl who had stayed at the home for a few days by, *inter alia*, hitting her several times a day, insulting her in the presence of others, preventing her from communicating with the outside world and mocking her physical appearance. In addition, L.R.F. had spat in her face and, as an act of contempt, exposed himself to her.

(ii) L.R.F. was also found guilty of having sexually abused (*atti di libidine violenti*) two mentally handicapped males, on one occasion in the presence of a 13-year-old minor.

33. L.R.F. was sentenced to two years' imprisonment and L.G. to ten months' imprisonment. They were nonetheless granted a stay of execution and the order banning them from holding public office was quashed. They also received an amnesty for an offence of wrongfully holding themselves out (*usurpazione di titolo*) as psychologists holding diplomas from the universities of Berne and Zürich.

34. Their appeal to the Court of Cassation was dismissed on 8 May 1985.

35. Both men remain on the staff working at the cooperative. In addition, one of them, L.R.F., was present during the aforementioned contact visit on 8 September 1997, which ended with the relevant social services department recommending to the Florence Youth Court that the first applicant's children be placed at "Il Forteto". According to the most recent information available to the Court, L.R.F. is currently the president of that community.

36. The case file and, in particular, one of the books published on "Il Forteto" (*Ritratti di famiglia*, Florence, 1997), revealed that some of the people working in the community, or who have been staying there, come from problem families and have suffered violence at the hands of paedophiles.

37. In support of her allegations, the first applicant has also produced various statements in writing, beginning with statements by three people who have given their identity and whose respective niece, sister and daughter stayed, for various reasons, at the community in question. The relevant extracts are set out below.

38. Statement of the first witness:

"... the little girl recognised me and came towards me; a man standing next to her, came towards us and told us to leave ... I went to 'Il Forteto' on another occasion in 1997 ... I tried a number of times but always received negative replies ..."

39. Statement of the second witness:

"... the girls who went to 'Il Forteto' were malnourished and demoralised. My sister was one of them. When she returned to my mother's house she didn't speak and couldn't express her ideas coherently; my mother and I had to feed her with a teaspoon for several months ..."

40. Statement of the third witness:

"... in May 1991, late in the evening in the presence of other members of the family, she was so frightened that she could not even manage to explain and kept repeating that she did not want to go back to 'Il Forteto'. That made us aware that terrible things are going on at 'Il Forteto'. She had to go back because they were blackmailing her ... She had in the past been hit by ... G. ... L. ... for refusing to participate in certain acts

of violence which she did not want ... I am prepared to give evidence before the European Court.”

41. The applicants have also produced two other witness statements in writing. Both are signed.

42. The first is by a municipal councillor from a village in the region. She affirmed that the children's guardian, whom she already knew and to whom she had referred for information on the case, had advised her not to get involved. Furthermore, according to her statement, L.R.F. had invited her to visit the community after she had expressed doubts about it in public at a ceremony for the presentation of one of the books published on the community. Despite her repeatedly expressed wish to meet the children, she was consistently denied an opportunity to do so, various reasons being given.

43. The second statement was made by two officially assigned experts working for the Florence Youth Court who had had a role in the case concerning the first applicant's children. According to their statement, the two experts – one a neurologist, the other a psychiatrist, and both directors of a family-therapy medical centre in Florence – had asked “Il Forteto” to allow trainees from the centre to work at the community or at least to visit it. On each occasion, their requests were turned down for reasons which the experts found “absurd”, such as, for example, the fact that the community was not a public institution. A student from the centre, attending a training course recognised by the Tuscany Region in 1996/97, had nonetheless managed to gain access to the community during his studies. During his visit he learnt from one of the leaders of the home that the families looking after the children were not necessarily the ones formally named in the court order.

44. The applicants also referred to passages taken from one of the books published on the community (*Il Forteto*, Florence, 1998).

45. They quote, *inter alia*, the following passages relating to the vexed issue of the presence of certain adults at the home:

“Therefore, they each decided to share a mutually enriching experience with the others which would assuage the affective deficiency which had been their driving force” (p. 94). “Thus each member found and continues to find, through this experience, a sense of belonging, cohesion and love which elsewhere, in his family of origin, was lacking” (p. 95)

46. The applicants also quote the following passage, which refers to the authorities implicated in the criminal proceedings against some of the leaders of the community:

“Many years have passed and the case has become clearer as the evidence of the machinations against them, which even today is kept in the villa, has been gathered. Even in that regard they display a Christian attitude which, frankly, I envy. Today, they could easily bring criminal proceedings or an action in damages against certain judicial officers, but do not do so ... At the time, the behaviour of the judicial

authorities was schizophrenic. While making accusations against 'Il Forteto' via the Florence Public Prosecutor's Office, they continued to place children in the care of that structure through the Youth Court. S ... was put into R ... at precisely that time" (p. 31)

### **C. Suspension of contact between the first applicant and her children until the decision of the Florence Youth Court of 22 December 1998**

47. Within the community, the children were put into the care of Mr G.C. and Mrs M.G., the couple designated in the court order of 9 September 1997. The applicants allege that by October 1997 the first applicant's elder son, despite being of school age, had still not started school. In fact, he was enrolled on 23 October 1997 and began lessons on 4 November 1997.

48. On 10 and 14 October 1997 respectively the children's guardian and the public prosecutor applied to the Court for an order temporarily suspending contact with the younger boy, too.

49. On 4 November 1997 the first applicant complained to Judge S. of the Youth Court that since that court's decision of 9 September 1997 she had been given no further opportunity to see her children.

50. On the same day the psychology unit at the local health authority (*Unità sanitaria locale*) certified that the first applicant was in good psychological health.

51. On 18 November 1997 the Youth Court noted that contact between the parents and the younger son had not yet begun. In view of the pending applications by the guardian and the public prosecutor, it ordered the appropriate child-neuropsychiatric centre to verify whether the time was ripe for a resumption of parental contact.

52. On 25 November 1997 the first applicant made representations to the guardianship judge requesting execution of the Youth Court's decision concerning contact with the younger son.

53. Other attempts by the first applicant to see her younger son by going directly to "Il Forteto" were unsuccessful. Subsequently, there was a deterioration in relations between the first applicant and certain leaders of the community responsible for her children. The latter lodged a complaint against her accusing her of having threatened and assaulted them verbally and physically. They alleged that, on at least one occasion, she had done so with the assistance of her former husband, whom, they said, she continued to see (a letter relating the incidents was sent on 7 January 1998 to the public prosecutor and to the Youth Court; it bore the signature of L.G.).

54. On 3 December 1997 the first applicant requested the Youth Court to rescind its decision of 9 September 1997 because of a change of

circumstances in the interim, she and her husband having just separated. She added that the realities of children's homes were often "ambiguous".

55. On 7 December 1997 the first applicant made a further complaint to the Youth Court. She said that "Il Forteto" had repeatedly refused to allow her to see her younger son and had disregarded the court's decisions. She requested it to obtain the information needed to establish whether the community was really defending the children's interests, not just private ones.

56. On 15 December 1997 the elder child was questioned by the public prosecutor's office. According to the record, the interview took place in the presence of the foster parents, Mr G.C. and Mrs M.C., though one of them (probably Mrs M.C.) signed the record using L.G.'s surname (see paragraph 114 below).

57. On 15 January 1998 the first applicant was served with notice to attend a hearing before Judge S. of the Youth Court. At that hearing, she informed the judge that certain leaders of "Il Forteto" had been prosecuted in the past for abuse and violence against people who had stayed in the community.

58. Following the various steps taken by the first applicant, the Florence Youth Court noted in an order of 6 March 1998, firstly, that the initial examinations conducted by the child-neuropsychiatric centre showed that, while displaying open-mindedness, the younger child had at the same time denied his past and his parents. In particular, he had referred to his mother only on repeated prompting by staff from the centre. Observing that the child appeared to be in the process of coming to terms with a particularly difficult first phase in his past, the Youth Court considered it necessary for contact between the first applicant and her younger son to be preceded by preparatory sessions for both mother and child. The child was to be counselled by the social services department already responsible for his supervision, and the mother by the relevant psychology department. The court also ruled that contact could start once the preparatory work had been completed and the child had shown himself ready to resume relations with his mother. Lastly, it said that the contact was to be supervised by the social workers concerned, while the relevant authorities were to inform it when contact could begin and to advise on progress.

59. On 30 March 1998 the first applicant informed the Belgian embassy in Italy of the danger presented by the community. She requested the intervention of the Belgian authorities.

60. On 6 April 1998 the younger child was examined by a specialist. He was accompanied by Mr M.S. and Mrs M.G., as foster parents.

61. Subsequently, the relevant social services department held preparatory sessions with the first applicant on 21 April, 19 May and 9 June 1998. The children attended several sessions with a neuropsychiatrist and were also required to take part in a number of logopaediatric sessions.

62. There was a meeting of all the services concerned on 6 June 1998, at the end of which two initial contact visits between the first applicant and the younger child, each lasting an hour, were arranged for 8 and 14 July 1998. The visits were to take place in the presence of various specialists, including a social worker from the area in which “Il Forteto” was located, who was to accompany the child. The specialists were to observe the visits from behind a two-way mirror.

63. The first applicant had requested that her lawyer also be allowed to attend the visits and informed the Youth Court of that request. However, it was turned down on the ground that the presence of undesignated persons was not envisaged and, in addition, the therapeutic nature of the arrangements made it necessary to restrict attendance to the specialists from public bodies.

64. On 22 June 1998, however, the first applicant said that she was unwilling to see the younger child without his brother in view of the probable suffering that the elder child would endure on learning that only his younger brother was to be allowed to meet their mother. On 25 June 1998, Mrs C.C., a psychologist from social services, invited the first applicant to inform her whether she intended to stand by that decision and warned her that, unless she received a response, the contact visit would be cancelled. At that point, the first applicant changed her mind.

65. On 29 June 1998 L.R.F., one of the two leaders of “Il Forteto” convicted in 1985, sent a letter to the deputy public prosecutor at the Florence Court of First Instance concerning the first applicant's children. In the letter, he stated, *inter alia*:

“... we do not want the children to nurture absences which could develop into internal fantasies and consequently bring contact with their parents to an abrupt and definitive end, but we consider it very important to put off such contact to a more suitable moment and to give the children sufficient time to absorb the negative and guilt-ridden images which their parents evoke ...”

66. On 2 July 1998 the deputy public prosecutor informed the Florence Youth Court that an investigation had been opened concerning the first applicant and her former husband, who were suspected of abusing the children. The deputy public prosecutor also drew the Youth Court's attention to the fact that the scheduled contact visits between the first applicant and the younger son, which he said he was aware of, could jeopardise the investigation as an expert examination due to continue throughout September 1998 was under way in order to determine whether that child presented symptoms of sexual abuse. He indicated that during recent interviews with a specialist, the child had begun to reveal matters of relevance to the accusation against his father, and added that he could not exclude a like accusation subsequently being made against the mother.

67. On 6 July 1998 the Youth Court decided provisionally to suspend the contact visits scheduled for 8 and 14 July, pending the outcome of the

new investigation. It considered that the investigation, in connection with which an expert psychological examination of the younger son had been ordered, might be hindered by the visits.

68. On 14 July 1998 the elder son was questioned. Mr G.C. and Mrs M.C. were once again present as the “foster parents”.

69. In a note of 31 October 1998, the public prosecutor repeated that it was necessary for the children to be heard in connection with the investigation and desirable for them to be kept safe from any intimidating behaviour on the part of the parents that might undermine their recently recovered composure and compromise the results of future examinations. He stated in his memorandum that the children would be questioned as soon as possible regarding the matters disclosed in the psychologist's report, which matters would be communicated to the Youth Court once the confidentiality obligations that attached to the proceedings under way had been lifted.

70. In addition, R.L., a neuropsychiatrist responsible for assessing the children, stated in a report of 11 November 1998 that a programme designed to help them renew contact with their parents was being prepared with the foster parents.

#### **D. Action taken by the second applicant**

71. On 14 October 1997 the second applicant lodged an initial application for an order granting her parental rights over the children.

72. On 4 March 1998 she requested permission to see the children at least twice weekly.

73. On 15 May 1998 she made a further application to the Youth Court for permission to see the children. She said that she had not seen them since June 1997 and had learnt of the events that had resulted in the Youth Court placing the children in a community indirectly (*de relato*).

74. At the end of the hearing on 12 June 1998, which the second applicant attended, the Florence Youth Court instructed the relevant child-psychology and neuropsychiatry departments to provide preparatory counselling to the children and their grandmother before contact began. The Youth Court noted that the latter had shown a real interest in renewing relations with the children and had indicated a willingness to follow the programme of counselling to be organised by the court-appointed services.

75. Subsequently, the second applicant nonetheless appealed against that decision, her principal claim being to parental rights over the children. In the alternative, she asked to be allowed to see them at least twice weekly without prior counselling, since she was in any event prevented from attending such a course as she could not remain in Italy. In support of her application she contended, *inter alia*, that the application she had lodged in

October 1997 had still not been examined and that she had looked after the elder boy in the past.

76. On 6 July 1998 the Youth Court dismissed her appeal. It stated, in particular, that it failed to comprehend why the second applicant could not remain in Italy to attend the preparatory course arranged by the specialists, since she had asked to see the children at least twice weekly, which would inevitably mean her travelling to Italy on a regular basis. The Youth Court also considered that counselling was essential in view of the gravity of the events, which had seriously marked the children, and of the need to avoid jeopardising the delicate task of rehabilitation on which the specialists had embarked. Lastly, removing the children from Italy might hinder progress in the pending criminal investigation into offences that may have been committed by the parents.

77. Meanwhile, on 19 June 1998 the second applicant had requested the Belgian consulate in Italy to have “Il Forteto” inspected by the Belgian diplomatic authorities. The Belgian diplomats did not note anything untoward during their visit.

78. On 15 July 1998 the second applicant requested the Belgian authorities to seek the transfer of the children to Belgium under the Convention concerning the powers of authorities and the law applicable in respect of the protection of minors concluded at The Hague on 5 October 1961.

#### **E. Decision of the Florence Youth Court of 22 December 1998 and the contact visits between the first applicant and her children**

79. On 22 December 1998 the Florence Youth Court examined the first applicant's application of 3 December 1997, the second applicant's application of 14 October 1997 and the guardian's application of 10 October 1997. It began by reconsidering its decision of 6 July 1998 and ordered that the counselling programme in preparation for contact between the two applicants and the children should begin immediately. The meetings were to start on 15 March 1999 at the latest. As regards the second applicant, the Youth Court considered that her recent move to Italy would facilitate the implementation of the preparatory programme. It nonetheless renewed its orders suspending parental rights and for the children's placement at “Il Forteto”, as the first applicant's domestic situation remained very difficult – despite her separation from the children's father – while the children had adapted very well to their foster home. Lastly, the Youth Court also envisaged a resumption of relations between the children and their father, who had shown a willingness to re-establish contact. Contact visits by the father could not, however, start before September 1999, owing to the uncertainty of his position while the criminal investigation was pending.

80. On 8 January 1999 a judge of the Youth Court informed the Sesto Fiorentino Social Services Department that, in order to ensure continuity, it would be responsible for continuing the work of counselling for the visits ordered by the court on 22 December 1998. The court observed that the first applicant had requested that contact visits should commence.

81. On 13 January 1999 the Sesto Fiorentino Social Services Department declared that it had no power to organise the counselling, as the first applicant had moved and the social worker hitherto assigned to her case had been transferred in the meantime.

82. On 4 February 1999 the Figline Valdarno Social Services Department assigned a social worker to monitor the first applicant's progress. When giving evidence to the Youth Court on 8 February the social worker admitted that she was unfamiliar with the case, but said that she was conscious of the urgency of the situation and undertook to prepare the mother for contact with her children by no later than 15 March, the deadline set by the court.

83. On 9 February 1999 a social worker from Vicchio (Mrs S.C.) and the child-neuropsychiatrist, Mr R.L., who were responsible for monitoring the progress of the first applicant's children and who had already prepared a programme of meetings with the children and the foster parents, informed the Youth Court that they had reservations as to the appropriateness of their being asked to counsel the children's father and grandmother with a view to contact. According to the social services department, there was a danger that the close proximity of the children would create tensions, added to which it did not know either the father or the grandmother. For those reasons, it suggested that they should receive preparatory counselling from their local social services.

84. On 12 February 1999 the Head of the Figline Valdarno Social Services Department informed the Youth Court that it was encountering difficulties in obtaining all the documents relevant to the case. She proposed that the court should therefore convene a meeting of all the specialists and social workers involved.

85. On 15 February 1999 the Youth Court replied, *inter alia*, to the Social Services Departments of Figline Valdarno and Vicchio; it informed them that the court proceedings had finished and that, accordingly, the administrative and organisational matters were to be dealt with by social services. It remarked, too, on the length of time that social services had taken since its decision and reminded them that they should be giving it their urgent attention.

86. On 18 February 1999 the Figline Valdarno Social Services Department convened a meeting of all the social services departments involved. On 25 February 1999 the Vicchio Social Services Department informed the children's guardian that the programme of pre-contact counselling had begun in mid-January.

87. On 2 March 1999 the elder boy sent a letter to the president of the Youth Court. Among other things he said that he had not seen his grandmother for four years and did not understand why she would want to see him again. As to his mother, he said that she had always sought to justify the conduct of his “social workers”, even though he had informed her of their conduct. It was only on arriving at “Il Forteto” that he had been able to comprehend, thanks to Mrs M. and Mr G., what he had been through and what it meant to have a father and mother. For those reasons, he did not want to see his mother at that stage. (He signed the letter using the surname of one of his official foster parents at “Il Forteto”, before also adding his own surname.)

88. On 8 March 1999 the Florence Social Security Department informed the Youth Court that the various tasks had been assigned. However, it was not possible to set a date for the visits to begin as G. was now reluctant to see his mother immediately after seeing a specialist on 26 February 1999 (see paragraph 116 below). It added that the meetings with the grandmother and the father would begin during a second phase.

89. A few days later G. informed the Youth Court that after his experience with the specialist he did not wish to meet his mother or grandmother for at least three months.

90. After the first applicant had received preparatory counselling, the initial contact with the children nonetheless took place on 29 April 1999. G., so it appears, preferred not to leave his younger brother to see their mother on his own. According to the reports of social services dated 21 June and 5 July 1999, that first visit showed that both the children and the mother were experiencing difficulties. The mother was not sufficiently receptive to what the children said, while they perceived her insistence as a threat to the stability of their new environment. The children had been mistrustful from the outset of the visit and the younger child had not even acknowledged that the first applicant was his mother. Social services observed that despite the children's wish to see their mother, they had been disappointed.

91. However, having viewed the video recordings of that first visit produced by the Government (see paragraph 10 above), the Court has found nothing to support the appraisal and unfavourable comments of social services to which the Government refer. The visit took place in a room in the psychology unit at the social services department. It was friendly and the atmosphere was reasonably relaxed. Towards the middle of the visit the elder son began to cry, very probably when old wounds from his dramatic past were reopened. The episode was brief, he appeared relieved afterwards and calm was quickly restored between the first applicant and the children. Social services displayed an evident lack of tact towards the first applicant. Two people – either social workers or specialists – were present in the room throughout the visit so that the first applicant was at no stage able to enjoy any intimacy with her children, added to which, the visit was ended rather

abruptly. The Court's view is that overall, though tense, the relationship between the first applicant and her children was warm and relaxed. The first applicant behaved responsibly throughout the visit, proved ready to cooperate and was respectful. Although the children did not manifest any obvious regret when the visit ended, the Court considers that the terms summarised above which social services used in their reports to describe the visit were unduly dramatic and unfavourable to the first applicant, and do not correspond to what was seen on the video recording produced by the respondent Government.

92. That notwithstanding, the elder child wrote to the social workers on 6 May 1999, expressing disappointment with that first contact.

93. A second visit took place on 9 September 1999. According to the report of social services, G. on this occasion sought an explanation from his mother for her alleged failure to react to his allusions to the paedophile violence to which he had been subjected. He had left the room when the first applicant refused to accept his criticism. In their report, social services stressed the first applicant's inability to listen to her son or to follow the recommendations of the specialists, while at the same time showing understanding of her painful situation and her desire to assert herself in her role as mother. According to a subsequent report (see paragraph 95 below), one of the specialists present during the contact visit had suggested to the first applicant that she write a letter to her son but, according to the report, she had refused.

94. However, having examined the audio recordings produced by the Government (see paragraph 10 above), the Court has found nothing to support social services' position. The arrangements for this visit appear to have been similar to those for the first in that, in particular, it was held on premises belonging to social services, again in the presence of two specialists. The following points arising from the focal points of the visit have enabled the Court to identify once more discrepancies between social services' official report and what was heard on the recording. In particular:

(i) the report does not mention the fact that the first applicant asked the children whether they were happy to see her again or that they said that they were;

(ii) the elder son did not raise the question of his mother's role in the paedophile assaults on him on his own initiative, as the report seems to suggest, but was prompted to do so by one of the two specialists present;

(iii) after the visit was over, one of the specialists told the first applicant that in reality her elder son had not wanted to see her again and that the new visit had only proved possible thanks to the efforts of the other specialist present;

(iv) the experts said that whether there were to be further visits would depend on the elder son and that the first applicant would be able to see her younger son "if possible", to which she had reacted by asking them what

they meant by the latter expression, but the specialists had replied that the answer did not depend on them.

95. On 4 October 1999 the specialists from social services met the children at “Il Forteto” in the presence of the foster parents, with a view to assessing the short-term prospects of contact with their mother continuing. According to the report of social services, the meeting ended “with an agreement, at G.'s and M.'s request, to suspend contact with their mother for the time being”. A further session of preparatory counselling was nevertheless arranged with the first applicant for 9 November 1999.

96. On 3 January 2000 a specialist from social services met the first applicant. At the meeting, the latter complained that the children's Christmas presents had been refused. She reiterated her attachment to the children and her willingness to explain matters to them if they agreed to meet her. Since then, no further visits have been organised or programmed. Furthermore, in their last report (29 March 2000), social services said, *inter alia*, that:

(i) the elder child was in the process of acquiring a new identity marked by the suffering from the past and, consequently, did not appear to be being manipulated;

(ii) he considered it preferable not to see his mother again during the next two years;

(iii) social services had decided to suspend all contact between the first applicant and her children, while at the same time continuing to counsel her with her a view to keeping her informed of any changes in the children's attitude on that subject.

97. As to the father, he has not visited the children at all, despite the fact that preparatory counselling sessions with social services were held at the end of 1999. From a report by social services dated 8 November 1999, it would appear that the father was aware of the evolution of the situation between his former wife and the children, and in particular of the negative outcome of the visit on 9 September 1999. The first applicant maintains, however, that she was no longer in touch with him and that he spent his time travelling between Belgium and Italy.

#### **F. Further appeals by the applicants**

98. On 21 January 1999 the first applicant appealed against the decision of the Youth Court of 22 December 1998. Her primary request was for reinstatement of her parental rights and an immediate renewal of contact with her children. She contended in particular that she had in the meantime separated from her former husband – whom the relevant judge had regarded as being responsible for violence against both her and the children – and now led a normal life and was working as a chiropodist.

99. The first applicant also challenged the decision to keep the children at “Il Forteto” and requested their placement elsewhere, arguing:

(i) that it was difficult for the parents of children staying in the community to gain access to them;

(ii) L.R.F. and L.G. remained the most important figures at “Il Forteto”, despite their convictions;

(iii) the foster parents at “Il Forteto” were doing all they could to hinder a resumption of relations with the children.

100. The second applicant also appealed.

101. On 22 March 1999 the children's guardian intervened in the proceedings before the Court of Appeal, requesting the suspension of contact for several months, *inter alia*, on the grounds that:

(i) the first applicant had largely exaggerated her professional qualifications;

(ii) for several years she had failed to notice what her elder son, G., was going through, which demonstrated that she was incapable of assuming her role as mother;

(iii) the grandmother had always lived in Belgium and had not shown any real interest in the children. In addition, no one knew what she had been doing since moving to Italy. Furthermore, it was difficult to see how she could claim to be able to provide the children with a good upbringing when she had not succeeded in doing so for her daughter (the first applicant), who, at best, was an inadequate, unsuitable and absent mother;

(iv) the children's father was a fugitive criminal after his escape from prison in Belgium, where he had been serving a 27-year prison sentence for murder;

(v) “Il Forteto” was a cooperative that was internationally famous for its production of milk and cheeses, but also an innovative home for the protection of children in distress that had been founded by twenty families who had never abandoned it. While it was true that two of its members had convictions (although they were not, in any event, members of the family looking after the first applicant's children), it was equally true that such prosecutions could be based on false evidence. Furthermore, over a twenty-year period, some seventy children had been placed with the cooperative by courts from regions all over Italy and a number of those care orders had subsequently resulted in adoptions, thus confirming the validity of that option and the courts' confidence in “Il Forteto”.

102. The public prosecutor at the Court of Appeal requested that the children be put into the care of their grandmother or, failing that, of another family.

103. On 31 March 1999 the Court of Appeal upheld the decision of the Youth Court. It emphasised, in particular, the positive evolution of the children's situation and considered that the allegations concerning “Il Forteto” were of a general nature, with the exception of the events of twenty

years earlier, which in any event did not concern the children's foster parents. Although the applicants had produced statements from highly qualified people contesting the methods employed at "Il Forteto", the fact that there were other statements from equally qualified people confirming its reputation could not be disregarded. The good conditions in which the children were living made it unnecessary to accede to the grandmother's request as, though in theory it was preferable to put children in the care of a member of the family rather than in a community, the children had by that time been staying with the community for some while and the results had been positive. Moreover, the children did not know their grandmother very well and she did not appear to be independent of her daughter.

104. The first applicant appealed to the Court of Cassation. As to the placement of the children at "Il Forteto", she observed that even though the children were not in the immediate care of the two leaders with convictions, it had been the latter who had brought the foster parents into the home and trained them (L.R.F. had even become the president of the cooperative). Moreover, L.G.'s wife was actively involved in looking after the children, the elder son, G., having admitted in his letter of 2 March 1999 that it had been she who had helped him to interpret his doubts about his mother.

105. The Court has not been informed of the outcome of the proceedings before the Court of Cassation.

106. On 25 October 1999 the first applicant asked the guardianship judge to request that contact visits be arranged at more regular intervals than in the past and to permit a psychologist to interview the children in "Il Forteto" and attend the counselling sessions prior to the visits. On 3 November 1999 the guardianship judge agreed in particular to the requests relating to the presence of the psychologist at the preparatory sessions and at the visits with the children and to the production of the audio-visual recording of the meetings. The children's guardian appealed.

107. In a decision of 12 January 2000, the Florence Youth Court allowed the guardian's appeal and reversed the decision of the guardianship judge. On the basis of the information supplied by social services it found that the negative results of the two visits should be attributed to a lack of cooperation on the first applicant's part. Accordingly, the presence of another specialist during visits to facilitate a change in attitude by the first applicant did not appear necessary, as she was already receiving sufficient counselling from the institutional services appointed by the court. As regards the audio-visual recording of the visits, the Youth Court considered that it would not be appropriate for the first applicant to view such material, as the purpose of recording the visits was to enable the relevant authorities to assess whether the visits had been a success and whether it was possible and appropriate for them to continue.

108. The first applicant appealed against that decision. She argued, *inter alia*, that the Youth Court had accepted social services' conclusions

regarding the negative results of the visits as they stood; it had failed in its duty to supervise the implementation of its decisions critically and with the help of relevant objective evidence such as the audio-visual recordings which she had asked to be produced. In her submission, apart from the fact that she failed to see how a visit which she had been looking forward to for years could have been interpreted so negatively, her right to examine the recordings was all the more founded in that it would help her gain a better understanding of herself and to adapt her behaviour. It was, furthermore, absurd for the Youth Court to refuse to examine the recordings itself or to allow the guardianship judge to do so. Lastly, the presence at the preparatory sessions and during contact visits of a specialist chosen by the applicant would help her to take part in her children's family and psychological development, particularly as there was no statutory provision to prohibit a parent from seeking the additional help of private psychologists to prepare for re-establishing relations with his children.

109. In a decision of 17 March 2000 the Youth Court authorised the showing of the audio-visual recordings to the first applicant, since they had already been produced to the Court and consequently were of procedural, as well as clinical, value.

### **G. The programme of visits by the second applicant**

110. The second applicant was invited on 4 November 1999 to begin a programme preparing her for contact with her grandchildren. However, the notice of appointment was returned to the sender. Inquiries were made to establish whether the second applicant had changed address in the meantime. At the first applicant's suggestion, a further notice was sent to the first applicant's sister, but social services were informed that the second applicant was still unable to attend. They received the same reply for a session scheduled in December 1999. The second applicant explained her absence by the fact that she had had to return to Belgium as a matter of urgency as the invalidity benefit she received for her handicapped son had been cancelled because of her move to Italy. The first preparatory session with social services finally took place on 10 January 2000.

111. According to the report prepared by social services, the second applicant complained at that session that she had not been given an appointment in March 1999 and said that she could not leave Belgium for more than three months at a time, as otherwise she risked losing the invalidity benefit she received there for her handicapped son. She said that she wished to see the children and wanted them to live with her. She justified her silence over a period of several months by the fact that she did not know what stage the programme of visits between the children and her daughter had reached, as she no longer had any contact with the latter. It was also mentioned in the report that the second applicant had advised

against the children being returned to their mother because the latter continued to see her former husband, as had been confirmed both by her daughter herself and by neighbours. The cause of all the problems was N.A.'s violence and the first applicant's inability to defend either herself or the children. She had concluded by saying that she was unhappy with the fact that the children had been sent to "Il Forteto".

112. According to the most recent information received from the first applicant, the second applicant will be required to reimburse a substantial sum to the Belgian State in respect of benefit received during the periods when she was staying in Italy, and in February 2000 she was admitted to hospital with heart problems.

#### **H. Subsequent developments in the criminal proceedings against the first applicant**

113. On 19 June 1998 the guardian sent a letter to the public prosecutor written the previous day by the elder child, in which the boy said that his mother had been aware of the paedophile abuse to which he had been subjected and that on one occasion he had witnessed her receiving money from M.L.

114. The child confirmed his accusations on questioning by the public prosecutor on 14 July 1998. He was accompanied to the interview by Mr G.C. and Mrs M.C. (who was in fact Mr L.G.'s wife), as foster parents.

115. On 11 November 1998 the public prosecutor questioned M.L. about the accusations made against the first applicant by the elder child. M.L. denied what the child had said and concluded:

"What I have said up to now is the simple truth. I would have no difficulty in confirming what G. has said if it were true ... I believe that G. has invented, at least in part, what he has said because of bitterness towards his parents. G. had a very poor relationship with his father, but adored his mother. Perhaps he later became rather bitter because he felt that she had not done enough to protect him. If I could confirm what he has said I would do so, to help him, too."

116. On 27 February 1999 the children were examined by a specialist in the presence of the investigating judge. The judicial authorities' assessment of the results of the specialist examination is not yet known. During the examination, the elder child admitted having written the letter of 19 June 1998 in the presence of, *inter alia*, R. (probably L.R.F.). He also said that he would be pleased to see his mother again.

117. In addition, on an unspecified date and in circumstances that have not been clarified, the first applicant's sister was heard by the Florence Youth Court. She stated that she was living with her mother and one of her brother's at Figline Valdarno and that another brother, who had been involved in drug trafficking, had been killed. An elder brother who had not forgiven her for having intervened as a civil party in the criminal

proceedings instituted following the death of the other brother had accused her of attempted murder. According to the record of her sister' statements, the first applicant had also been charged.

### **I. Other information relating to the children's mental and physical welfare**

118. In a certificate of 8 June 1998, the neuropsychiatrist, R.L., noted that the younger child was fragile psychologically and advised the authorities to act with great caution.

119. In addition:

– a doctor's certificate dated 1 November 1998 described the elder child as being in “excellent” health;

– a certificate by another doctor dated 11 November 1998 expressed the view that the younger child's health had improved and was “good”.

120. A certificate drawn up by a paediatrician on 24 November 1998 stated that the children were in excellent health and that their development and growth appeared normal.

121. In addition, the school report on the elder child for the school year 1997/98 and a report by the teachers stated that he was working hard and making constant progress.

122. Social services said in a report of 5 July 1999 that the children's stay at “Il Forteto” had been very positive from both an emotional and a relational standpoint, had enabled them to recover a degree of equilibrium and made them more receptive to interpersonal relations.

123. Lastly, in their last report (29 March 2000) social services said that the younger child was now attending nursery school and his relations with the teachers were very good.

### **II. RELEVANT DOMESTIC LAW**

124. Article 330 of the Italian Civil Code provides:

“The court may declare parental rights forfeit if the parents do not perform or neglect the obligations inherent in their parental role or abuse the powers related thereto causing serious detriment to the child.

In such eventuality, the court may, if there are serious grounds for so doing, order the child's removal from the family home.”

125. Article 333 of the Civil Code provides:

“Where the conduct of one or both parents is not such as to give rise to their parental rights being declared forfeit under Article 330, but is nonetheless detrimental to the child, the court may adopt any measure that is appropriate in the circumstances and may even order the child's removal from the family home.

These measures may be revoked at any time.”

126. Furthermore, Law no. 184 of 4 May 1983 on the fostering of minors and adoption, provides, *inter alia*, that a minor who has temporarily been deprived of a satisfactory family environment may be placed with another family, with a family-type community, or if it is not possible to provide him with a satisfactory family environment, in a children's home (section 2).

127. Section 4 of that law provides, *inter alia*, that among other matters that must be stipulated in an order placing the child with a family is its provisional duration (paragraph 3). In addition, section 5 provides that the family, home or community in whose care the child is placed must facilitate relations between the minor and his natural parents and his reintegration in his original family.

128. Section 9 imposes an obligation on children's homes to send six-monthly reports to the guardianship judge on the minor, his relations with the family of origin and his mental and physical welfare. The provision also requires the guardianship judge to report to the youth court on abandoned children in the home and to carry out six-monthly inspections.

129. Lastly, section 12 provides, *inter alia*, that where investigations have revealed the existence of relatives or other family members up to the fourth degree who have maintained meaningful contact with the minor and whose whereabouts are known, the president of the court shall order their attendance at court (paragraph 1). After hearing them, the president of the court may give them such instructions as shall be necessary to ensure that the minor receives emotional support, maintenance, an education and an upbringing (paragraph 3).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

130. The first applicant, who purported also to be acting on behalf of her children, complained of infringements of Article 8 of the Convention in that her parental rights had been suspended, her children had been taken into care, the authorities had delayed before finally allowing her to see the children, too few contact visits had been organised and the authorities had placed the children at “Il Forteto”.

131. The second applicant also alleged a violation of Article 8, complaining that the authorities had discounted the possibility of her being given the care of her grandsons and delayed organising contact with them.

132. Article 8 is worded 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.”

133. The Government contested the applicants' arguments.

134. The Commission expressed the opinion that that there had been no violation on account of the suspension of parental rights or the children's placement at “Il Forteto”, and no violation of the second applicant's rights. Conversely, it considered that there had been a violation of Article 8 as regards contact between the first applicant and her children.

**A. The Government's preliminary objection regarding the first applicant's standing also to act on her children's behalf and, consequently, the Belgian Government's standing to intervene in the proceedings**

135. The Italian Government contested, firstly, the first applicant's standing also to act on behalf of her children, as her parental rights had been suspended on 9 September 1997, there was a conflict of interest between her and the children and criminal proceedings were pending against her for offences against her children. In addition, the Government argued that the first applicant had never clearly stated that her application to the Court was made on behalf of her children, too.

136. The Government went on to contend that the Belgian Government had no standing to intervene, since their intervention was based solely on the fact that the elder child was a Belgian national.

137. The Commission rejected that objection, noting that it was clear from the first application that the first applicant's children were also applicants and represented by the same lawyer in the proceedings before it. It added that there was nothing to prevent minors applying to the Commission. Indeed, there was all the more reason to allow them to do so where they were represented by a mother who had a conflict of interest with the guardian whom the public authorities had entrusted with the task of looking after the children's interests in her stead.

138. The Court points out that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, the Nielsen v. Denmark judgment of 28 November 1988, Series A no. 144, pp. 21-22, §§ 56-57). In particular, minors can apply to the Court even, or indeed especially, if they are represented by a mother who is in conflict with the authorities and criticises their decisions and

conduct as not being consistent with the rights guaranteed by the Convention. Like the Commission, the Court considers that in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, as the Commission observed, even though the mother has been deprived of parental rights – indeed that is one of the causes of the dispute which she has referred to the Court – her standing as the natural mother suffices to afford her the necessary power to apply to the Court on the children's behalf, too, in order to protect their interests.

139. Moreover, the conditions governing individual applications are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so (see the Norris v. Ireland judgment of 26 October 1988, Series A no. 142, p. 15, § 31).

140. Therefore, since the first applicant also has standing to act on behalf of the children, the Belgian Government are entitled to take part in the proceedings within the meaning of Article 36 § 1 of the Convention and Rule 61 § 2 of the Rules of Court, as the elder child also has Belgian nationality.

141. The Court accordingly concludes that the Government's preliminary objection must be dismissed, both as regards the *locus standi* of the first applicant's children and the standing of the Belgian Government to intervene in the proceedings.

#### **B. Compliance with Article 8: was the interference “in accordance with the law” and did it pursue a legitimate aim?**

142. It was common ground that the impugned interference was in accordance with the law for the purposes of Article 8, the relevant provisions being, in particular, Articles 330 and 333 of the Civil Code (see paragraphs 124-25 above) and section 2 of Law no. 184 of 1983 (see paragraph 126 above). It is true that the applicants alleged a failure to apply certain provisions of the latter statute, notably those concerning the provisional length of the placement (section 4(3)), the duty of directors of care institutions to facilitate links with the family of origin (section 5), and the refusal to give consideration to putting the children in the care of their maternal grandmother (section 12(1)). However, those matters concern the manner in which the relevant domestic provisions were applied, not the legal basis for the impugned interference as such. They therefore relate to

the issue whether the relevant provisions were applied in accordance with the Convention principles.

143. Furthermore, the parties also agreed that the impugned measures pursued a legitimate aim within the meaning of Article 8, namely “the protection of health or morals” and “the protection of the rights and freedoms of others”, as they were intended to protect the welfare of the first applicant's children.

### **C. Compliance with Article 8: was the interference “necessary in a democratic society”?**

#### *1. Suspension of the first applicant's parental authority and the removal of the children*

##### **(a) Submissions of those appearing before the Court**

###### *(i) The first applicant*

144. The first applicant contested the authorities' decision and stressed, *inter alia*, her determination to break free of the family background that had been damaged by her former husband's violence. That determination was shown notably by the fact that she had lodged a complaint against her former husband and separated from him.

###### *(ii) The Belgian Government*

145. The Belgian Government considered that the suspension of parental rights appeared justified in view of the limited capacities of the first applicant and her former husband to bring up the children.

###### *(iii) The Italian Government*

146. The respondent Government emphasised above all the gravity of the domestic circumstances of the first applicant, which had been marked by the sexual abuse which one of her friends had inflicted on the elder child for years and the repeated violence that characterised the relations between the members of the family. The Government also referred to the first applicant's complex personality and concluded that the measure in issue had been justified by the children's interests.

###### *(iv) The Commission*

147. The Commission considered that since the children had been confronted over a very considerable period by situations that were undoubtedly harmful to their development, the interference by the

authorities through the children's removal was justified in order to protect their interests.

**(b) The Court's assessment**

148. The Court reiterates that "... it is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child ..." (see the *Olsson v. Sweden* (no. 1) judgment of 24 March 1988, Series A no. 130, pp. 33-34, § 72). Therefore, "... regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State ... enjoy[s] a certain margin of appreciation ..." (see the *Hokkanen v. Finland* judgment of 23 September 1994, Series A 299-A, p. 20, § 55). In this sphere, "... the Court[s] ... review is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith ... In the second place, in exercising its supervisory jurisdiction, the Court cannot confine itself to considering the impugned decisions in isolation, but must look at them in the light of the case as a whole; it must determine whether the reasons adduced to justify the interferences at issue are 'relevant and sufficient ...' " (see the *Olsson* (no. 1) judgment cited above, p. 32, § 68, and, *mutatis mutandis*, the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52).

149. The Court notes that the first applicant's domestic circumstances seriously deteriorated in 1994 (see paragraph 13 above). It is particularly struck by the negative role played by her former husband. The case file shows that it was he who was largely responsible for the violent atmosphere within the family through his repeated assaults on the children and his former wife, which led the first applicant to lodge a criminal complaint (see paragraph 13 above).

150. However, it must be noted, too, that even after separating from her former husband, the first applicant found it difficult to look after her children. In that connection, the Court attaches weight to the report of 9 June 1997 by the neuropsychiatrist employed by the local health authority (see paragraph 24 above), in which she expressed the view that the first applicant was suffering from a personality disorder and was incapable of managing the complex situation of her family and children. The problem is compounded by the severe trauma suffered by the elder child as a result of the paedophile abuse of him by a social worker who succeeded in ingratiating himself with the first applicant's family.

151. Under those circumstances, the Court agrees with the Commission on this point and considers that against that background the authorities' intervention, through the suspension of the first applicant's parental rights and the temporary removal of the children from their mother's care, was based on relevant and sufficient reasons and was justified by the need to

protect the children's interests. Consequently, there has been no violation of Article 8 of the Convention on that account.

*2. Contact between the first applicant and her children*

**(a) Submissions of those appearing before the Court**

*(i) The first applicant*

152. The first applicant observed, firstly, that she could not understand why she had been prevented from seeing her elder son since the decision of 9 September 1997.

153. As to the accusations that had been made against her in July 1998, she submitted that it was absurd to have interrupted a relationship as sensitive as that between mother and son because, if at the end of the proceedings she was found innocent, she would have suffered irreversible harm. In that connection, she complained that the authorities had used double standards: the Youth Court had cited the accusations against her (even though they had not resulted in her being committed for trial) as the reason for separating her from her children for a lengthy period, whereas it had continued to place children at “Il Forteto”, despite the final convictions of two leaders of that community for serious offences against children in their care.

154. The first applicant also alleged that social services in fact had a very negative view of her that was in the process of strongly influencing her elder son to the point where he had shown a hostility towards her that had not previously been present.

*(ii) The Belgian Government*

155. The Belgian Government submitted, as its principal contention, that when in March 1998 the Youth Court had ordered the implementation of a preparatory programme for contact with M., the issue whether the suspension of contact with G. should continue had not been raised, even though the psychiatric report that had been ordered by the Youth Court on 18 November 1997 had concerned both children.

156. As to the suspension of the contact with the younger son that had already been scheduled for 8 July 1998 the Belgian Government observed that while it was defensible in principle, in practice it had to be noted that:

- the allegations that had culminated in the child being questioned had been known to the authorities for seven months (since 7 January 1998);
- the matters revealed implicated only the child's father and there was only a possibility that the investigation would also encompass the first applicant, as the public prosecutor had indicated in his notes of 18 and 26 June 1998;

– M. was not questioned until 27 February 1999, that is to say seven months later.

157. In fact, M. was not questioned until the Youth Court had delivered its decision of 22 December 1998 in which it ordered the implementation of a new preparatory procedure for the resumption of contact between the two children and their mother. The fact that the Youth Court had ordered a resumption of contact even before M. had been questioned in connection with the criminal proceedings considerably undermined its reasoning in the decision of 6 July 1998, while the harmful consequences of that decision for M., resulting from the abrupt halt to the preparatory sessions, could not be disregarded.

158. Even after the decision of 22 December 1998, the visits had begun late (on 29 April) after nineteen months' separation. In the Belgian Government's submission, the prevention of any contact over such a lengthy period constituted an extremely serious interference in the first applicant's family life, especially when the tender age of the younger son was taken into account. Accordingly, the inconsistencies in the authorities' decisions could not be regarded as compatible with the requirements of Article 8.

*(iii) The Italian Government*

159. The respondent Government observed, firstly, that it was not until 4 November 1997, that is to say two months after the Youth Court's decision to place the children at "Il Forteto", that the first applicant had complained for the first time that, contrary to the Youth Court's decision, she had not been given an opportunity to see her younger son.

160. The respondent Government went on to emphasise the ambivalent attitude of the first applicant. In order to have a better understanding of her personality, the Government suggested that it might be helpful to recall that during the course of the proceedings she had described herself on a number of occasions as a psychologist, a nurse and a gynaecologist. It was also appropriate to refer to the proceedings currently pending before the Florence Court concerning acts that she was presumed to have committed against her elder son (there being serious evidence of complicity on her part), to the attempted suicide of the daughter born of the first applicant's first marriage as a result of the domestic violence of which she had been victim, and to the statements of the first applicant's sister to the Florence Youth Court.

161. The Government also argued that there was a need for preparatory counselling before contact visits, and that such counselling should be provided at brief intervals so as to avoid a preferential relationship developing between the mother and M., the younger son, as that would create serious tension in the relationship between the two brothers, a relationship which social services considered important to maintain. Furthermore, owing to the complexity of the programme and the desirability

of verifying the effective needs of those concerned, it had been necessary to devote time to it.

162. The Government also referred to the difficulties social services had encountered as a result of the first applicant's aggressive and threatening behaviour, particularly towards her elder son, which the Government maintained was almost certainly linked to his statements in the criminal proceedings.

163. The postponement of the visit scheduled for 6 July 1998 had been fully justified by the requirements of the criminal investigation, since the children would have to be questioned and the first applicant's attitude towards her elder son had been threatening.

164. The respondent Government also pointed to the commitment of the services involved in guiding the children through an innovative programme aimed at the children's psychological and emotional recovery and at giving them a better understanding of their parents' role. In the light of that aim, the Government considered it desirable for the first applicant to cooperate with social services and to stop adopting a threatening stance against her elder son at meetings (the Government also referred to the first applicant's refusal to heed the advice of the social workers at the end of the meeting on 9 September 1999 to write to her elder son).

165. Contact visits would in any event resume in accordance with the decisions of the specialists dealing with the case.

*(iv.) The Commission*

166. The Commission said that it was conscious of the particularly serious nature of the situation of the first applicant's children and did not question the need to take precautions owing to the suffering and trauma to which the children had been exposed both generally and during the visits from their mother.

167. It considered, however, that the total severance of relations that occurred just as it was adopting its report was unjustified. In its view, there were no exceptional circumstances capable of justifying a total severance of contact in the instant case. Indeed, the authorities themselves had envisaged a resumption of contact, at least with the younger son. In addition, total severance appeared still more unjustified in the present case in view of the first applicant's concerns over the community chosen for the placement, which concerns were understandable when, *inter alia*, the criminal antecedents of certain leaders of "Il Forteto" were taken into account.

168. As regards the suspension of visits that had already been scheduled with the younger son, the Commission expressed the opinion that the reason relied on by the authorities – namely the fact that an investigation had been started concerning the children's father – appeared weak, since the prosecution had not referred to any concrete evidence against the first

applicant and had confined itself to alluding to a possible extension of the investigation to the mother.

**(b) The Court's assessment**

169. The Court reiterates, firstly: “the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; furthermore, the natural family relationship is not terminated by reason of the fact that the child has been taken into public care ...” (see the *Eriksson v. Sweden* judgment of 22 June 1989, Series A no. 156, p. 24, § 58). As the Court has previously observed, “... taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and ... any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child ... In this regard, a fair balance has to be struck between the interests of the child in remaining in public care and those of the parent in being reunited with the child ... In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular, ... the parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development. (see the *Johansen v. Norway* judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, pp. 1008-09, § 78).

170. The Court considers, firstly, that the decision of 9 September 1997 to prohibit any contact between the first applicant and her elder son does not appear to have been based on sufficiently valid reasons. It is true that the child had gone through a very difficult and traumatic experience. However, as the Commission pointed out in its report, a measure as radical as the total severance of contact can be justified only in exceptional circumstances (see the *B. v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, pp. 78-79, § 77). While the complex circumstances that were harmful to the family life and the development of the children fully justified their being temporarily taken into care (and without underestimating the importance of appropriate psychological support for the mother), the grave situation within the first applicant's family did not, in the Court's view, justify by itself contact with the elder child being severed, regard being had not only to the attachment which the first applicant has always shown to her children, but also and above all to the authorities' decision to allow at the same time a resumption of contact with the younger child. Given that the authorities did not wish to deprive the first applicant of all parental rights permanently, the decision to exclude G. from all contact with his mother entails a partial breakdown in relations, including relations between the brothers, and does not tally with the declared aim of bringing about a resumption of relations with the mother.

171. The Court further notes that although the decision of 9 September 1997 provided for the organisation of visits with the younger son, nothing further was done until 6 March 1998, when the Florence Youth Court finally decided to require visits to be preceded by a preparatory programme for the mother. However, nothing came of that as, just two days before the first visit was due to take place on 8 July 1998 and at the request of the deputy public prosecutor, who had just started an investigation concerning the children's father (see paragraph 66 above), the Youth Court decided to suspend the visits that had already been scheduled. As regards that decision, the Court agrees with the Commission's opinion. It is difficult to identify the basis for the Youth Court reaching such a harsh decision, with its very negative psychological impact on those concerned, since the public prosecutor's application had been based on the mere possibility, unsupported by any objective evidence, that the scope of the investigation might be enlarged to include the mother. While it is true that the child had for the first time accused his mother in a letter sent to the public prosecutor on 19 June 1998 (see paragraph 113 above) of being implicated in the paedophile assaults on him, no serious attempt was made to verify the truth of that allegation, (and none was made until 11 November 1998 when the paedophile concerned was questioned and said that the allegation was untrue – see paragraph 115 above). The Court has to conclude that both the deputy public prosecutor and the Youth Court acted irresponsibly.

172. Indeed, a mere five months later, on 22 December 1998, the Youth Court gave the first applicant permission to see both children, even though officially the investigation was still pending. That appears to have been in flat contradiction to the decisions taken in the summer of that year.

173. However, once again, despite an order of the Youth Court for the resumption of visits by 15 March 1999, the first visit did not take place until 29 April 1999. Indeed, the delay was remarked on by the Youth Court itself in its note of 15 February 1999. To the extent that the delay was attributable to administrative difficulties (see paragraphs 84-85 above), it should not be forgotten that “in so fundamental an area as respect for family life, such considerations cannot be allowed to play more than a secondary role” (see the *Olsson* (no. 1) judgment cited above, p. 37, § 82). Such a delay was even more unacceptable in the instant case as, by that time, the first applicant and her children had already been separated for a year and a half.

174. What is more, the first visit did not prove to be the beginning of regular and frequent contact to assist the children and their mother in rebuilding their relationship. It is true that the elder son expressed disappointment over the first meeting in his letter of 6 May 1999 to the social workers (see paragraph 92 above). However, leaving aside the fact that letters sent by the elder child to the various authorities involved in the case must be treated with caution given the special situation in which the child found himself (as the Court will remark upon below – see

paragraph 210 below), a sense of disappointment is perfectly understandable after such a long separation following events that were traumatic for the child. On the contrary, that situation should have incited social services to organise visits at regular intervals to help the children get through such a difficult period. Continued separation can certainly not be expected to help re-cement family bonds that have already been put under considerable strain. It should be recalled in this connection that “ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other” (see the Olsson (no. 1) judgment cited above, pp. 36-37, § 81).

175. The Court wishes to emphasise that it does not underestimate the importance of preparatory counselling. Indeed, it has previously said: “... the reunion of natural parents with children who have lived for some time in a foster family needs preparation. The nature and extent of such preparation may depend on the circumstances of each case, but it always requires the active and understanding cooperation of all concerned. Whilst national authorities must do their utmost to bring about such cooperation, their possibilities of applying coercion in this respect are limited since the interests as well as the rights and freedoms of all concerned must be taken into account, notably the children's interests and their rights under Article 8 of the Convention. Where contacts with the natural parents would harm those interests or interfere with those rights, it is for the national authorities to strike a fair balance ...” (see the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90). In the instant case, however, it has to be observed that a single visit could not suffice to give the children an opportunity to re-establish bonds with their mother. Having regard to the fact that the first visit was preceded by a preparatory phase that had already contributed to delays, the Court fails to understand why it was not rapidly followed by further visits. It also considers that the Government have furnished no satisfactory explanation to justify the subsequent preparatory phase lasting a further four months and, *a fortiori*, the absence of any further visit after 9 September 1999.

176. Having carefully examined the video recordings of the first visit (see paragraph 91 above), the Court found both the visit itself and its outcome to be far less negative than the report of social services suggests. Social services were nonetheless given complete freedom to defer the second visit for fully four months. Moreover, the audio recordings of the second visit (see paragraph 94 above) attest to the considerable latitude given to social services to decide whether and when further meetings should take place.

177. On that subject, it should be borne in mind that there is a significant danger that a prolonged interruption of contact between parent and child or too great a gap between visits will undermine any real possibility of their

being helped to surmount the difficulties that have arisen within the family and of the members of the family being reunited. (The danger is even greater for the younger child, who was very young when the separation occurred.)

178. Therefore, in the circumstances of the present case, the Court finds it unacceptable that social services should be able, as they have been in this instance, to alter the practical effect of judicial decisions establishing that contact will, in principle, take place. Given their limited number and irregular occurrence (there have been only two in almost three years), the visits arranged to date have for all intents and purposes been sporadic and make little sense when viewed in the light of the principles established under Article 8.

179. It is apparent from the case file that since the first visit social services have played an inordinate role in the implementation of the Youth Court's decisions and adopted a negative attitude towards the first applicant, an attitude for which the Court finds no convincing objective basis. In reality, the manner in which social services have dealt with the situation up till now has helped to accentuate the rift between the first applicant and the children, creating a risk that it will become permanent. The information contained in social services' latest report only goes to confirm that trend (see paragraph 96 above). Faced with that evolution in the situation, the Youth Court, which should in principle supervise the implementation of its decisions, approved the action being taken by social services, without conducting any thorough review.

180. The fact that there had been only two visits (after one and a half year's separation) since its decision of 22 December 1998 should have incited the Youth Court to investigate the reasons for the delays in the programme, yet it merely accepted the negative conclusions of social services, without conducting any critical analysis of the facts. When confronted with the first applicant's complaints regarding the assessment of the outcome of the visits, the Youth Court deemed it unnecessary to examine the audio-visual recordings of the visits (permission for them to be produced was given after substantial delay and only after they had been produced to the Court – see paragraph 109 above), and despite the favourable opinion of the guardianship judge did not even authorise the presence during visits and preparatory sessions of an independent specialist designated by the first applicant (see paragraphs 106-07 above). Not only does there appear to have been no relevant basis for such refusals, they also deprived the Youth Court of a means of reviewing the action taken by social services.

181. Article 8 demands that decisions of courts aimed in principle at facilitating visits between parents and their children so that they can re-establish relations with a view to reunification of the family be implemented in an effective and coherent manner. No logical purpose would be served in

deciding that visits may take place if the manner in which the decision is implemented means that *de facto* the child is irreversibly separated from its natural parent. Accordingly, the relevant authorities, in this case the Youth Court, have a duty to exercise constant vigilance, particularly as regards action taken by social services, to ensure the latter's conduct does not defeat the authorities' decisions.

182. Lastly, having regard to the material in the case file, the Court cannot attach any weight to the uncorroborated statements of the first applicant's sister (see paragraph 117 above). The respondent Government cannot therefore explain away the authorities' and social services' conduct, as they apparently seek to do, by such vague information, especially as neither the decisions of the former nor the reports of the latter make any reference to it. The Court further observes that the case file contains conflicting evidence as to the current relations between the first applicant and the former husband (see paragraphs 97 and 111 above). However, there is nothing in the case file to show that the uncertainty about the current relations between the first applicant and her former husband justifies the conclusion that the first applicant is incapable of re-establishing bonds with her children. It will be noted, too, that none of the authorities' decisions contains sufficient information in that regard.

183. In conclusion, the Court considers that the authorities failed to strike a fair balance between the interests of the first applicant's children and her rights under Article 8 of the Convention. Consequently, there has been a violation of Article 8 on this point.

### 3. *Decision to place the children with the "Il Forteto" community*

#### (a) **Submissions of those appearing before the Court**

##### (i) *The first applicant*

184. The first applicant submitted that the philosophy of "Il Forteto", based on the rejection of the natural family, has not evolved since the 1970s. The aim of "Il Forteto" would always be to separate children from their natural families, as G.'s letters confirmed.

185. It was apparent from the case file that in practice the children were throughout their placement looked after, accompanied and supervised by L.R.F. and L.G., as was shown, for example, by the tenor of L.G.'s letter of 7 January 1998 to the public prosecutor. A letter of that nature should have been sent by the president of the community or the foster parents, not a community member who, according to the Government, had only a minor role in the children's upbringing.

186. The first applicant further maintained that there were no real foster parents and that the children were in fact looked after by people other than

those to whom the Youth Court had entrusted their care. It was significant, too, that G. never mentioned Mrs M.G. in his letters.

187. As to the supervision which the authorities were meant to exercise over “Il Forteto”, the first applicant contended that in practice the relevant authorities did not compile their reports on the dates indicated by the Government. Thus, the first report by social services had been compiled in February 1998, the second in June 1998 and the third only in November 1999. Moreover, the six-monthly inspections required by section 9 of Law no. 184 of 1983 had not taken place.

188. Lastly, the first applicant said that “Il Forteto” appeared to have been given considerable latitude in deciding on the arrangements for children in its care and to enjoy substantial support from social services. That fact, coupled with delays in implementing the authorities' decisions, compromised the effective application of those decisions.

*(ii) The Belgian Government*

189. The Belgian Government noted firstly that the two leaders of “Il Forteto” who had been convicted in 1985 had not undergone rehabilitation and that at the time of the criminal proceedings the Italian authorities continued to entrust minors into their care. It added that contrary to the allegations of the Italian Government, it was apparent from the case file that the two leaders had played an active role in the proceedings concerning the first applicant's children.

190. While not endorsing the applicants' hasty conclusions that L.R.F. and L.G. continued to commit offences against children, the Belgian Government considered that care orders constituted such a serious interference in the family domain that their implementation had to be organised within a structure that was above all suspicion. As with Article 6 of the Convention, appearances were therefore relevant. Consequently, institutions fostering minors in difficulty had to provide every guarantee that they were reliable and competent. The presence within the structure of people with criminal convictions – albeit from long ago – seriously undermined the confidence which such institutions should inspire.

191. The Belgian Government also observed that “Il Forteto” carried on a commercial activity for profit, which was hardly consistent with the objectives of providing welfare assistance to minors. The participation of its members on consultative boards that provided the courts with opinions on whether care orders should be made seemed hardly appropriate.

192. Lastly, the methods used in “Il Forteto” appeared to be aimed at severing relations between the children and the natural family. That did not seem consistent with the spirit of fostering within the family implicit in Article 8 of the Convention.

*(iii) The Italian Government*

193. The respondent Government recognised that the relevant authorities had probably been aware of L.R.F.'s and L.G.'s convictions when they decided to place the children at “Il Forteto”. However, the Government emphasised that, so far as public opinion in Tuscany was concerned, the charges against the two people concerned were perceived as being part of a battle between supporters and opponents of “Il Forteto”. Furthermore, at the end of a laborious trial in which the Court of Cassation had intervened twice, the two men had been acquitted on ten of the thirteen counts. As regards the offences of which L.R.F. and L.G. were convicted, the Government said that a committee was being constituted to gather evidence with a view to requesting a review. Neither of them had committed any further criminal offences since their conviction in 1985.

194. Moreover, “Il Forteto” enjoyed the confidence of many local and regional institutions and had been the subject matter of a number of studies. The Government cited in particular an article that had been published in *Il Mulino*, one of Italy's most famous publishing houses, based on research conducted on-site by psychologists, doctors, sociologists and neuropsychiatrists specialising in children. Moreover, the positive results obtained with children placed at “Il Forteto” had also prompted studies by institutions from other countries. Even the Florence Court of Appeal had, in its judgment of 1985, attached importance to the evidence of numerous witnesses attesting to the positive results obtained at “Il Forteto”. The relevant judge at the Youth Court had not noted anything negative about the community or its members. “Il Forteto” was also under the supervision of the Ministry of Employment, which had not noted any problems on its last inspection. Inspections were also carried out by the region and the province. In any event, minors at “Il Forteto” were closely supervised by the relevant social services departments and the Youth Court was kept informed at all times.

195. Against that background, convictions dating back more than twenty years lost some of their significance.

196. Furthermore, neither L.R.F. nor L.G. had played any role in the programmes for the rehabilitation of minors in the care of the community as, on the contrary, that task was the responsibility of the numerous social workers and specialised teams who worked under the supervision of the Youth Court. Mr G.C. and Mrs M.G. looked after the children and, with the agreement of social services, received help from Mrs M.C.-G., Mr L.G.'s wife, and Mr S. with the children's school activities (they attended a State school in the locality) and the various sessions preparing them for contact with their mother and grandmother.

197. As regards the letters written by the elder child, the Government considered that no significance attached to the fact that one of them had been written in the presence of the foster parents and Mr R., since the child's

needs had changed and he often criticised his parents, particularly his mother, for failing to help him after they had been informed of the sexual abuse inflicted on him by a family friend. As to the letter of 2 March 1999, the Government, relying in the opinion of psychologists on this point, submitted that the elder child's signature, with the addition of the surname of one of his foster parents, attested to a positive attitude by him towards the persons looking after him.

198. It had to be stressed also that a number of items of evidence on the case file indicated that the children's psychological condition was constantly and markedly improving.

199. The Government concluded by saying that the placement of the first applicant's children at "Il Forteto" had been viewed positively by all the relevant services, which enjoyed the confidence of the Youth Court. In any event, there was no reason for modifying such a complex and difficult programme, particularly bearing in mind the first applicant's lack of cooperation.

*(iv) The Commission*

200. The Commission expressed the view that the fact that the two members of the community concerned continued to hold important posts within "Il Forteto" was a cause for concern. It observed, however, that the first applicant's children had not been placed in the care of the community leaders concerned, added to which it was true that the offences for which they had been convicted dated back twenty years and there was nothing on the case file to allow of the conclusion that the persons concerned had committed other acts of the same type subsequently or, above all, that they had direct control over the children or a decisive influence over the foster parents. The Commission also considered that the improvement in the children's health meant that the risk that the authorities' choice of "Il Forteto" should prove to be manifestly contrary to the children's interests could be discounted.

**(b) The Court's assessment**

201. The Court considers it appropriate first to restate certain principles established in its earlier decisions which may help to put the difficult issues to which this part of the application gives rise into context. In particular, in the *Johansen v. Norway* judgment cited above, the Court said (pp. 1003-04, § 64):

"... the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in any event of crucial importance. Moreover, it must be borne

in mind that the national authorities have the benefit of direct contact with all the persons concerned ..., often at the very stage when care measures are being envisaged or immediately after their implementation. 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 for the regulation of the public care of children and the rights of parents whose children have been taken into care, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation ...

The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake ... Thus, the Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an 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 the parents and a young child are effectively curtailed.”

202. The Court notes that two of the principal leaders and co-founders of “Il Forteto” were convicted in 1985 by the Florence Court of Appeal of the ill-treatment and sexual abuse of three handicapped people staying in the community. They were given an amnesty in respect of an alleged offence of fraudulently holding themselves out as psychologists with diplomas from the universities of Berne and Zürich (see paragraphs 32 and 33 above). Those convictions are an established fact, since there is a full copy of the Court of Appeal's judgment, which was upheld by the Court of Cassation, in the case file. Accordingly, the Court cannot attach any weight to the Government's argument that a committee is being constituted to gather evidence (of which no details are supplied) with a view to seeking a retrial. Nor does the Court find the Government's reference to public opinion in Tuscany at the time of the trial of relevance (see paragraph 193 above).

203. The Court is not called upon to express an opinion on “Il Forteto” as such or on the general quality of care which that community offers to children placed there. Nor is it for the Court to say whether or not the confidence which a number of institutions have in “Il Forteto” is justified. Furthermore, although the judgment of the Florence Court of Appeal in 1985 discloses information about the atmosphere and practices in “Il Forteto” at the end of the 1970s, that information refers to the situation in the community more than twenty years ago and the Court has no information enabling it to express a view on the situation at “Il Forteto” today. In any event, it is not for the Court to become involved in the debate between the supporters and opponents of “Il Forteto”.

204. However, the fact that the two members of the community convicted in 1985 continue to hold positions of responsibility within the community cannot be regarded as innocuous and for practical purposes means that a detailed examination of the concrete situation of the first applicant's children is called for.

205. The Court notes that, contrary to the assertions of the respondent Government, the evidence on the case file shows that the two leaders concerned play a very active role in respect of the first applicant's children.

– L.R.F. attended the meeting of 8 September 1997, which ended with social services recommending to the Florence Youth Court that the first applicant's children be placed at “Il Forteto” (see paragraph 35 above).

– At the interview on 15 December 1997, the elder child was accompanied by, *inter alia*, Mrs M.C.-G., who, as the Government recognised (see paragraphs 114 and 196 above), is in fact L.G.'s wife (see paragraph 56 above).

– It was L.G. who signed the letter sent to the public prosecutor and the Youth Court on 7 January 1998 relating the incidents allegedly caused by the first applicant and her former husband when they attempted to see the children at “Il Forteto” (see paragraph 53 above).

– On 29 June 1998 L.R.F. wrote a detailed letter on behalf of “Il Forteto” regarding the first applicant's children and recommending that the younger child's scheduled visits should be postponed (see paragraph 65 above).

206. The Court considers that those facts clearly attest to the active role played by those two members of the community in the care of the first applicant's children. It has strong reservations about the fact that, under arrangements made by the public authorities for taking children into care, two people who were convicted – albeit twenty years earlier – of the ill-treatment and abuse of persons entrusted into their care at the time can play such an active role within the same community.

207. The Court's reservations are reinforced by the fact that, as the Government acknowledged (see paragraph 193 above), the Youth Court was aware of the convictions of the two members of the community concerned when it took the decisions regarding the first applicant's children. Those reservations remain even though neither L.R.F. nor L.G. have committed any further offences since 1985 and there is nothing in the case file to indicate that they or other members of the community or persons staying there have abused or ill-treated the first applicant's children or other children staying at “Il Forteto”. A further contributory factor is the sexual abuse to which the elder child was subjected in the past (see paragraphs 14-19 above). The combination of those two factors (the past sexual abuse against the elder child and the criminal antecedents of L.R.F. and L.G.), fully account for the first applicant's concerns about her children's placement at “Il Forteto” and make them understandable from an objective standpoint, especially bearing in mind her position as a mother separated from her children.

208. It should also be noted that the authorities have at no point explained to the first applicant why, despite the men's convictions, sending the children to “Il Forteto” did not pose a problem. In the Court's view, such

a failure to communicate is not compatible with the duties incumbent on States to act fairly and to provide information when taking serious measures interfering in a sphere as delicate and sensitive as family life. Unless full and pertinent explanations are given by the authorities concerned, parents should not be forced, as they were in the instant case, merely to stand by while their children are entrusted into the care of a community whose leaders include people with serious previous convictions for ill-treatment and sexual abuse. The situation was compounded by the following two sets of circumstances.

209. Firstly, some of the leaders of “Il Forteto”, including one of the two men convicted in 1985, appear to have contributed substantially to delaying or hindering the implementation of the decisions of the Florence Youth Court to allow contact between the first applicant and her children. Thus, it can be seen from the case file that after the decision of 9 September 1997 allowing the first applicant to see her younger son and before the Youth Court definitively decided on 15 March 1998 to make the resumption of contact with M. conditional on attending a preparatory programme, the leaders of “Il Forteto”, in disregard of the operative provisions of the Youth Court's decision, seem to have prevented the first applicant from seeing either child, but especially the younger son. Such conduct is, in the Court's view, unacceptable. In addition, it would appear that the letter sent by L.R.F. to the deputy public prosecutor on 29 June 1998 recommending that contact be deferred and the deputy public prosecutor's letter to the Youth Court just three days later implicitly suggesting that the scheduled visits (which the public prosecutor said he was aware of) should be postponed (see paragraphs 66 and 171 above) were not wholly unconnected.

210. Secondly, the evidence points to the first applicant's children having been subjected to the mounting influence of the leaders at “Il Forteto”, including, once again, one of the two men convicted in 1985. That influence was exerted with the aim of distancing the boys, particularly the elder boy, from their mother. Thus, the Court notes in particular that the latter acknowledged to a specialist on 27 February 1999 that the letter sent to the public prosecutor's office had been written in the presence, *inter alia*, of a person with the same first name as L.R.F. The Court cannot express any view as to the genuineness of the assertions made in the elder child's letters. However, the presence of adults, including, in all likelihood, L.R.F., when a 12-year-old child is writing letters to the president of a court or a public prosecutor cannot objectively be regarded as of no importance. Indeed, the Court finds the changes in attitude, particularly of the elder child towards his mother, worrying (an example of such a change can be seen in the letter of 2 March 1999 – see paragraph 87 above – which was sent just four days after he had told a specialist on 27 February 1999 – see paragraph 116 above – that he would be pleased to see his mother again).

211. In the Court's view, the facts show that the leaders of "Il Forteto" responsible for looking after the first applicant's children helped to deflect the implementation of the Youth Court's decisions from their intended purpose of allowing visits to take place. Moreover, it is not known who really has effective care of the children at "Il Forteto", as the various people who accompany the children outside its confines do not appear merely to be assisting the foster parents as the Government asserted (see paragraph 196 above), since they are identified on a number of records as *the* foster parents (see paragraphs 56, 60 and 68 above). That doubt is confirmed by the evidence, which the Government did not contest, given by the two officially assigned experts (see paragraph 43 above).

212. That situation and the relevant leaders' criminal antecedents should have prompted the Youth Court to increase its level of supervision regarding the way in which the children were being looked after at "Il Forteto" and the influence of the leaders concerned over the children and their relations with their mother. However, that did not occur. In practice, the leaders concerned work in a community which enjoys very substantial latitude and does not appear to be subject to effective supervision by the relevant authorities. In that connection, the Court also notes that the respondent Government failed to produce sufficient evidence to show that the six-monthly inspections by the guardianship judge, required by section 9 of Law no. 184 of 1983, did in fact take place. Indeed, the respondent Government have not produced any reports by the guardianship judge relating to such inspections.

213. Furthermore, the negative impact on the prospects of rebuilding a relationship with the mother of the attitude and conduct of the people responsible for the children at "Il Forteto", including the two leaders convicted in 1985, combines with the social services' negative attitude referred to above, and is partly responsible for depriving the first applicant of any serious prospect of one day being reunited with her children.

214. As regards the absence of any time-limit on the children's stay at "Il Forteto", experience shows that when children remain in the care of a community for a protracted period, many of them never return to a real family life outside the community. Accordingly, the Court sees no valid justification for the failure to put a time-limit on the care order concerning the first applicant's children, especially as that failure appears to contravene the relevant provisions of Italian law, namely section 4 of Law no. 184 of 1983.

215. The fact of the matter is that the absence of any time-limit on the care order, the negative influence of the people responsible for the children at "Il Forteto", coupled with the attitude and conduct of social services, are in the process of driving the first applicant's children towards an irreversible separation from their mother and long-term integration within "Il Forteto". While a number of factors point to there having been a considerable

improvement in the children's psychological and physical condition since the placement (see paragraphs 118-22 above), that process, which, it will be remarked, undermines both the role of the courts dealing with the case and of their decisions, presents a real danger that the relations between the first applicant and her children will be severed.

216. Consequently, the Court considers that the authorities have failed to show the degree of prudence and vigilance required in such a delicate and sensitive situation, and have done so to the detriment not just of the first applicant's rights but also of the superior interests of the children. Accordingly, in the circumstances described above, the uninterrupted placement to date of the children at "Il Forteto" does not satisfy the requirements of Article 8 of the Convention.

#### *4. Position of the second applicant*

##### **(a) Submissions of those appearing before the Court**

###### *(i) The second applicant*

217. The second applicant alleged, firstly, that section 12 of Law no. 184 of 1983, which accords priority to children being fostered with close relatives of known address, had been infringed since the possibility of the children living with her had been disregarded. In that connection, she said that G. had lived with her until 1992 and they enjoyed an excellent relationship.

218. She added that in order to comply with the Youth Court's recommendations she had moved to Italy where she lived in her own flat, not with her daughter. Despite that fact, the authorities continued to refuse to show any confidence in her, as they considered that she was not independent of her daughter.

###### *(ii) The Italian Government*

219. The Italian Government, which did not deny that the relationship between the second applicant and her grandchildren came within the scope of the right to respect for family life guaranteed by Article 8, maintained that the authorities had examined the second applicant's requests and were working towards the gradual re-establishment of relations between the children and their grandmother. That said, the most recent developments, in particular, the second applicant's delay in contacting social services after the cancellation of the first preparatory session, betrayed, in the Government's view, a lack of enthusiasm for actually looking after the children. Referring to explanations given by social services, the Government also contended that priority had to be given to preparing the mother's visits.

*(iii) The Commission*

220. The Commission considered that the authorities' decision not to respond to the second applicant's request for the children to be entrusted into her care was based on relevant grounds, in particular, the fact that it would have been undesirable for the authorities to lose all direct control over the children's situation. The Commission also described the second applicant's behaviour as incoherent.

**(b) The Court's assessment**

221. The Court notes, firstly, that it was common ground that issues relating to the relations between the second applicant and her grandchildren were covered by Article 8 of the Convention. It also points out in that connection that “'family life', within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life. 'Respect' for a family life so understood implies an obligation for the State to act in a manner calculated to allow these ties to develop normally” (see the *Marckx v. Belgium* judgment of 13 June 1979, Series A no. 31, p. 21, § 45).

222. As to the second applicant's request to be given care of the children, the Court notes that section 12 of Law no. 184 of 1983 gives priority to children being placed with close members of the family living at a known address. The Court notes, however, that the evidence on the case file indicates that the second applicant would have substantial difficulty in looking after the children properly. She was unable to make herself available for an initial preparatory counselling programme prior to contact with the children, as she was living in Belgium (see paragraph 75 above). After moving to Italy, she had had to return to Belgium in the autumn of 1999 to resolve administrative problems connected with the invalidity benefit she receives for her handicapped son, who remains dependent on her (see paragraphs 110-11 above). Lastly, she was admitted to hospital in February 2000 with heart problems (see paragraph 112 above). It is difficult, moreover, for any decisive weight to be attached to the fact that the elder child lived with his grandmother in 1992: he was very young at the time and there is nothing to suggest a close and continuing relationship with the second applicant subsequently. The Court consequently considers that the authorities' decision not to entrust the children into the second applicant's care was based on reasons that remained relevant even after the second applicant's move to Italy, which in any event proved to be temporary.

223. With regard to contact between the second applicant and the children, the Court notes that her attitude was initially characterised by a degree of incoherence. As the Commission observed, it is difficult to comprehend why the second applicant should refuse to take part in any

preparation before seeing the children on the grounds that she lived too far away when she had asked to be allowed to visit twice a week.

224. Subsequently, despite the decision of the Florence Youth Court on 22 December 1998 that contact between the second applicant and the children should start before 15 March 1999 after a preparatory programme rendered possible at that stage by the second applicant's move to Italy, she failed to get in touch but simply waited to hear from social services, even after the expiry of the time-limit fixed by the Youth Court. Nor did she consider it necessary to inform the authorities when she travelled to Belgium so that the two notices of appointment which social services did send, albeit belatedly, were to no avail.

225. Although the Court is not persuaded by the Government's explanation for the delay in implementing the Youth Court's order concerning the second applicant (the need for social services to concentrate on preparing contact with the first applicant), it considers that the second applicant has not furnished any valid explanation for her failure to act after the time-limit expired or to inform the relevant authorities when she travelled to Belgium.

226. In the Court's view, the second applicant's conduct betrays a lack of enthusiasm for seeing her grandchildren again, a factor which offsets the authorities' delay.

227. In the light of the foregoing considerations, the Court concludes that there has been no violation of Article 8 of the Convention as regards the second applicant.

#### **D. Applicability of Article 6 § 1 and Article 14 of the Convention**

228. The applicants did not pursue before the Court their complaints of violations of Article 6 § 1 (for delays in the examination of their appeals before the domestic courts) and Article 14 of the Convention (for allegedly discriminatory treatment).

229. In its report, the Commission considered that in the circumstances of the case, and having regard in particular to the fact that at the date of its report no concrete action had been taken following the appeal of 3 December 1997, the complaint under Article 6 § 1 about the length of the proceedings should be regarded as having been absorbed by the issues related to Article 8 of the Convention. As to Article 14, it took the view that that provision was of no relevance to the instant case, as the applicants had not alleged any actual discrimination within the meaning of that Article.

230. In the light of its decision under Article 8, the Court sees no reason not to follow the conclusions of the Commission on this point and accordingly holds that no separate issue arises under these provisions of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

### **A. Whether the treatment allegedly inflicted on the children at “Il Forteto” amounted to a violation of Article 3 of the Convention**

231. The first applicant complained, on behalf of her children, of a violation of Article 3 of the Convention on account of the risk that they would be subjected to improper treatment at “Il Forteto”. In addition, the danger that the children would again be subjected to paedophile assaults or exposed to an environment in which such assaults had been carried out in the past by at least some members of the cooperative was in itself contrary to Article 3.

232. Article 3 of the Convention provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

233. The Government contended in particular that there was no evidence on the case file to prove that the two leaders concerned, or other members of the community or people staying there, were abusing or ill-treating the first applicant's or other children staying at the home.

234. The Commission expressed the opinion that there was no concrete evidence in the case file apt to prove beyond all reasonable doubt that the children had been subjected to treatment contrary to Article 3.

235. Despite the fact that some of the witness statements produced by the first applicant (see paragraphs 38-40 above) give cause for concern and the Government have not contested their veracity, the Court agrees with the opinion of the Commission, as there is nothing on the case file to indicate that the children have been subjected to treatment contrary to Article 3 of the Convention at “Il Forteto”. It should also be noted in that connection that the first applicant has not lodged a criminal complaint with the relevant domestic authorities. Consequently, there has been no violation of Article 3.

### **B. Whether the distress caused the applicants amounted to a violation of Article 3 of the Convention**

236. In their memorial lodged with the Court on 3 March 1999, the applicants alleged that there had also been a violation of Article 3 of the Convention in that their situation, taken as a whole, had caused them suffering and distress.

237. The Court notes that that complaint, which in substance raises no separate issue from the issues arising under Article 8 of the Convention, was

not declared admissible by the Commission. The applicants are therefore estopped from raising it.

### III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1

238. The first applicant complained, lastly, that her children did not have adequate schooling and that the only education they seemed to be receiving was that provided within the community. She alleged that there had therefore been a violation of Article 2 of Protocol No. 1.

239. Article 2 of Protocol No. 1 provides:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

240. The Government maintained that the first applicant's allegations were unfounded as the children were under constant supervision. They added that some delay in the elder child's attending school had been inevitable in view of his delicate personal circumstances and the desirability of ensuring his gradual reintegration into the school system.

241. The Commission considered that the first applicant's fears no longer appeared founded as the case file showed, in particular, that the elder child was now attending school. The initial delay seemed, moreover, to have been warranted when the dramatic situation which he had just come through was taken into account.

242. The Court notes that the case file shows that the first applicant's elder son began school shortly after arriving at “Il Forteto” (see paragraph 47 above). The younger child has just reached school age and the Court notes from the case file that he is in fact attending a nursery school (see paragraph 123 above). Furthermore, with regard to the influence of “Il Forteto” on the supervision and education of the children, the Court refers to its conclusions on the placement of the children within that community (see paragraphs 201-16 above).

243. Consequently, there has been no violation of Article 2 of Protocol No. 1.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

244. 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

245. The first applicant sought 100,000,000 Italian lire (ITL) in reparation for non-pecuniary damage. She also claimed ITL 700,000,000 under that head on behalf of the children for damage they had sustained. The latter claim was based, in particular, on the complaint that the authorities had not sought a solution allowing for the children to be placed with family relatives.

246. The first applicant also claimed ITL 300,000,000 in the event of a finding by the Court that the children's placement had not been suitable.

247. As regards pecuniary damage, the first applicant claimed ITL 15,000,000 for the loss of her former job, which she attributed to the difficulties caused by her children's situation that had meant her repeatedly having to take time off work.

248. The respondent Government confined themselves to alleging that there was no evidence supporting the first applicant's claims. They also contended that any finding of a violation of the Convention would give rise to complex and sensitive issues, particularly before the Committee of Ministers, regarding the adoption of individual measures.

249. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, *mutatis mutandis*, the Papamichalopoulos and Others v. Greece (*Article 50*) judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34). Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.

250. Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied.

251. As regards pecuniary damage, the Court considers that the first applicant has not produced concrete evidence in support of her allegations.

252. As to the non-pecuniary damage, the Court considers that the first applicant undoubtedly sustained such damage, as the contact organised with her children to date has been inadequate, visits have been delayed, no explanation was given for the authorities' decision to place the children at "Il Forteto", and the re-establishment of relations with the children was hindered by the conduct of those responsible for the children at "Il Forteto". The Court further notes that since the children were taken into care on 9 September 1997, that is to say two years and ten months ago, the first applicant has seen them only twice and no contact has been arranged since 9 September 1999. It can reasonably be presumed that those circumstances taken as a whole have caused the first applicant substantial anxiety and suffering that have increased with the passage of time. Ruling on an equitable basis, the Court awards the first applicant ITL 100,000,000.

253. The Court considers, further, that the children personally sustained damage, too, as the increasing risk of an irreversible severance of ties with, in particular, their mother and the danger that their continued placement at "Il Forteto" would prevent them from one day enjoying family life outside the community did not tally with the authorities' avowed aim of protecting the children's interests. The Court therefore considers that it must take that damage into account with reference to the children's position as applicants and, ruling on an equitable basis, it awards each child in person ITL 50,000,000.

## **B. Costs and expenses**

254. The first applicant sought ITL 11,550,000 as reimbursement for the legal costs and experts' fees incurred in the proceedings before the Italian courts.

255. The first applicant further claimed ITL 121,463,603 for legal fees incurred before the Commission and the Court (and produced a fee note). In that connection, the first applicant's lawyer has requested that the fees be paid directly to her. To that end, she has produced a certificate that the first applicant has paid her the sum of ITL 800,000 on account.

256. The Government left the issue to the Court's discretion.

257. With regard to the costs incurred before the domestic courts, the Court observes that although at least part of those costs were incurred with a view to obtaining redress of the various violations of Article 8 of the

Convention, the first applicant has failed to produce any evidence in support. Her claims under that head must therefore be dismissed.

258. As to the costs incurred before the Convention institutions, the Court considers that the case was indisputably complex. It nevertheless finds the sum requested by the first applicant's lawyer excessive. Ruling on an equitable basis and having regard to the practice of the Convention institutions on this subject, it considers a sum of ITL 26,250,000 to be reasonable. From that amount should be deducted the sum which the lawyer has received on account from the applicants (ITL 800,000) and the sums already paid to her by way of legal aid for the applicants that was granted by both the Commission and the Court. The latter amounts come to a total of 28,030.75 French francs (ITL 7,765,000). Accordingly, the balance payable to the applicant's lawyer, in accordance with her request, comes to ITL 17,685,000.

### **C. Default interest**

259. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been no violation of Article 8 of the Convention on account of the suspension of the first applicant's parental rights and of the fact that her children were taken into care;
3. *Holds* that there has been a violation of Article 8 of the Convention on account of the delays in and limited number of contact visits between the first applicant and her children;
4. *Holds* that there has been a violation of Article 8 of the Convention on account of the placement of the first applicant's children at "Il Forteto";
5. *Holds* there has been no violation of Article 8 of the Convention as regards the second applicant;
6. *Holds* that no separate issue arises under Article 6 § 1 and Article 14 of the Convention;

7. *Holds* that there has been no violation of Article 3 of the Convention on account of the treatment of the first applicant's children at "Il Forteto";
8. *Holds* that the applicants are estopped from raising their complaint of a violation of Article 3 of the Convention based on the suffering linked to their situation taken as a whole;
9. *Holds* that there has been no violation of Article 2 of Protocol No. 1;
10. *Holds*
  - (a) that the respondent State is to pay the first applicant, within three months, ITL 100,000,000 (one hundred million Italian lire) in respect of non-pecuniary damage;
  - (b) that the respondent State is to pay each of the first applicant's children in person, within three months, ITL 50,000,000 (fifty million Italian lire) in respect of non-pecuniary damage;
  - (c) that the respondent State is to pay the first applicant's lawyer, within three months, ITL 17,685,000 (seventeen million six hundred and eighty-five thousand Italian lire) in respect of costs and expenses;
  - (d) that the respondent State is to pay the first applicant, within three months, ITL 800,000 (eight hundred thousand Italian lire) in respect of the fees which the first applicant has paid her lawyer on account;
  - (e) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;
11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and notified in writing on 13 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER  
President

Michele DE SALVIA  
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Zupančič is annexed to this judgment.

L.W.  
M. de S.

## CONCURRING OPINION OF JUDGE ZUPANČIČ

I fully agree with the judgment in this case. I thought it might be useful, however, to make a few general observations concerning the procedurally idiosyncratic nature of cases such as the one we have decided today.

Cases such as *Scozzari and Giunta v. Italy* are not paradigmatic legal disputes. They generate specific problems relating to our own doctrine of access to court and to the rule of law itself. Since the *Olsson v. Sweden* (no. 1) judgment of 24 March 1988 (Series A no. 130) and up to the recent case of *Nuutinen v. Finland* (no. 32842/96, ECHR 2000-VIII), the whole series of Article 8, that is, family law, cases have raised specific procedural difficulties. These difficulties are offset mostly, as we shall see, by the non-retrospective nature of judgments in family law disputes. For example, difficult last-minute developments in the evolving fact patterns oblige the Court to engage in first-instance fact-finding and even in probability assessments.

Legal theory has, to the best of my knowledge, not offered any ready-made solutions to the recurring questions outlined below.

A classic legal dispute has certain procedural characteristics. First, right and remedy are usually interdependent; second, the lawsuit is retrospective, that is, it usually concerns only past events (facts); third, the polarities of the legal aspects of the dispute must be monocentric, that is, ultimately there is one question to be decided; fourth, there is a deontological tension between the legally relevant facts and the applicable norm.

The so-called “best interests of the child”, for example, are not specific enough to establish the usual judicial *aut-aut* monocentric polarity. This, in turn, obliges the court to become involved in polycentric choices, that is, to assume an active *parens patriae* role. Moreover, this active involvement of the court is a continuing one, sometimes until the child reaches maturity.

The impartiality, that is, the passive non-involvement of the court, as well as the respective roles of the parties to the dispute are also predetermined by specific characteristics of family law cases. For example, the passive impartiality of the courts clearly results from the interaction of the two polarised partialities of the parties. In turn, the case is in this sense ripe – I am referring to the ripeness aspect of the justiciability doctrine – once it is focused on one or two essential issues. This focus, while shifting as a mirror image of the burden of proof, is nevertheless fixed in the past, i.e. it is entirely retrospective. The finality of the judgment, which is irrebuttably presumed to be valid (*res judicata pro veritate habetur*), depends on the pre-existent finality of the facts, that is, on the judicial retrospective. In the end, implementation, enforcement and execution of the judgment, too, as I pointed out in my dissenting opinion in *Nuutinen*, may be adversely affected.

Furthermore, the choice of the applicable norm hinges on the legally relevant facts (past events) and, vice versa, what facts are legally relevant depends in turn on the choice of the norm. This dialectical process implies a fact pattern that has *crystallised* in the past, not one that is constantly changing. The normal truth-finding function of the courts of law is to consider and assess such crystallised facts, rather than to pronounce on people's future suitability and fitness to perform parental functions, for example. Epistemologically, the law of evidence is predicated on the historical method, not on the assessment of future probabilities.

In both national and international appellate jurisdictions these complications are even more critical. In such cases, the appellate court is faced with more recent events, that is, events that are subsequent to the decisions of their lower courts. The appellate courts, in other words, are faced with the continuous evolution – improvement or deterioration – of the disrupted family relationship. The appellate court is therefore *volens nolens* involved in a fresh appraisal of new facts (*questiones facti*). It cannot limit itself, as it would normally do, to the fact pattern as established by the lower courts and recorded in the case file but must, on the contrary, remain receptive to the latest developments. This makes it difficult for an appellate court to limit itself to questions of law (*questiones juris*).

This puts even the international court of last appeal, although further removed from the direct factual assessment of sensitive relational issues, into the uncomfortable – but inevitable – role of a direct fact-finder. Consequently, the principle of immediacy of fact-finding is affected. Inevitably then, since the appellate court must reach a definable aspect of the case's complex and continuously evolving fact pattern, there arises the need for a thoroughly reductive, namely minimalist, judicial approach.

Also, the right to non-disruption of family life and our own remedy of just satisfaction cannot be in any meaningful sense interdependent. In paragraph 249 of the judgment we outlined our hope that the Italian State will choose one of the options consistent with our judgment and attempt to remedy, in so far as possible, the tragic situation of the Scozzari family. However, while there are in fact several obvious options at the disposal of the Italian State, none of them has the clear meaning of the usual *quid pro quo* of the classical *restitutio in integrum*. The passage of time, when dealing with small children is, irreversible and irremediable.

In the past, I think, the Court has performed a formidable service both in finding wise solutions to individual cases and in establishing general principles and doctrines governing certain aspects of European family law. By virtue of the case-law, it is now largely clear what the rights and obligations of the Contracting States under the European Convention on Human Rights are, or more specifically, what the limits on proportional interference in disrupted family relationships are.

To summarise these principles and doctrines, the *ultimum remedium* of interference is justified if (a) it is objectively in the best interest of the child, (b) it balances the rights of the parents (and other close relatives) against the best interests of the child and (c) it demonstrably strives to re-establish the parent-child relationship. Needless to say, (d) the right to speedy decisions by the family courts, which derives more from Article 8 of the Convention than from Article 6 § 1<sup>1</sup>, is here especially prominent.

The case before us, however, raises two additional issues. The first issue concerns the intensity as well as the continuity of the *control* which the State authorities are required to exercise over the implementation of their decisions by those to whom they have entrusted the care of the child. The second issue concerns the parents' and children's right to the provision of alternative care that is beyond reproach.

As to the latter issue, it is understood that such an exceedingly grave interference in family life cannot be proportionate unless the alternative care facility imposed by the State is *beyond reproach*.

Moreover, since the question of the nature of alternative care is usually the subject matter of a secondary dispute between the parents and the State – arising from the primary judicial decision to interfere in the family life – this issue merges with the question of continuous access to the courts for parents, children and close relatives.

A State cannot justifiably disrupt the most fundamental human relationship, which is that between parent and child, unless it is willing and able to *continue* to render judicial decisions going beyond the retrospective *res judicata* of balanced interference in the life of the family. In a simple divorce case involving a childless couple, the State's courts may simply establish and declare an end to the relationship and perhaps draw the necessary consequences concerning the dividing up of property accumulated during its subsistence. If there are children, however, extremely grave and *prospective* long-term decisions must continually be made concerning their custody. Even if the child is entrusted to one of the two parents, this is already a sphere in which the judgment has no immutable finality.

*A fortiori*, in a case in which the behaviour of both parents has proved detrimental to the child, the decision cannot be simply to break up the family. An initial alternative care arrangement followed by continuous judicial commitment is required of the court. Again, this function of the family court is idiosyncratic, because a dispute of this kind cannot in any sense be deemed as finally resolved – at least not until the child has attained legal maturity. Therefore, if the State does decide to interfere in the natural long-term relationship between parent and child, it must accept that it will have continuing future *parens patriae* duties and responsibilities.

---

1. See the Johansen v. Norway judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, opinion of the Commission, pp. 1023-24, §§ 106-12.

Historically, the *parens patriae* legal doctrine was based on the (wrong) assumption that in family-law, civil-commitment and juvenile-delinquency cases the State acts *in loco parentis* and that, therefore, the conflicting “hostile attitudes”, typical of criminal and even private law, are here replaced by a “friendly attitude” of the State *in loco parentis*. Legally speaking, there was an irrebuttable presumption of “friendly attitude”. This presumption effectively blocked all further access to the courts.

About thirty years ago, however, the *parens patriae* doctrine collapsed in a series of constitutional cases in different national jurisdictions. It became legally clear that these wards of the State (children entrusted to State agencies, committed mental patients and juvenile delinquents) found themselves in the worst of both worlds. Due to the “friendly-attitude” presumption, children, mental patients and juvenile delinquents lost the procedural and the substantive guarantees of the *law* – but did not really receive the treatment and the *care* of the State. The consequence of that was the resurgence of strict judicial protection – “access to court” in the language of our own case-law – and the departure from the naïve *parens patriae* ideology.

The case of *Scozzari and Giunta v. Italy* clearly demonstrates that the State must balance its initial decision to interfere in the family life against future *parens patriae* responsibilities it has thus assumed.

These responsibilities, more specifically, imply, first, the balancing duty of the family courts. When they consider the possible legal interference in the family relationship, they must be certain that the care imposed by the State will be clearly and demonstrably better than the troubled situation the court is seeking to redress. Second, these *ex officio* responsibilities of the family courts continue for so long as the basic child-parent relationship, which should be the purpose of the interference, is not re-established. Third, the aggrieved parties must continue to have access to court, that is, the courts must continue to resolve secondary disputes arising from the primary judicial decision that had interfered with the relationship between parents and children.

In other words, if the State's courts are, legally or otherwise unable to assume such long-term commitments, they should not interfere.

On the other hand, the courts cannot themselves provide the day-to-day care for the children. This is usually entrusted to social services. However, the social services department to which the courts have entrusted the child, must be under the court's continuous *ex officio* supervision.

The strictly judicial power of conflict resolution – i.e. the power to resolve *further* disputes arising out of the initial alternative care arrangements – must not be left to psychiatrists, psychologists, social workers, managers of alternative care institutions, etc. The alternative custody and care arrangements, while in place, will often generate a series of new conflicts between parents and the welfare authorities. In many other

cases decided by this Court it was apparent that welfare authorities have a tendency to arrogate to themselves an arbitrary decision-making power far exceeding their judicially granted authority. Undoubtedly, this problem derives from the non-retrospectivity and other idiosyncrasies of child custody and care cases outlined above. However, the fundamental principle of the rule of law requires that the parents' and children's access to court be strictly and continuously maintained.

Too much is at stake here for these grievances to be arbitrarily decided by those authorised only to provide the alternative care. The presumption of their bona fides must remain a rebuttable one, i.e. subject to subsequent legal challenge and uninterrupted access to court. Since this would amount to the so-called khadi-justice, foster parents, social workers, psychologists, psychiatrists, alternative care institutions, etc., cannot be arbiters in situations in which their own decisions are the target of parents' criticism and grievance.

Procedurally, such disputes are *prima facie* admissible, if the issues they raise transcend the strictures of judicial decisions establishing the alternative care arrangements.

This issue goes to the core of the rule of law. The doors of the family court should remain wide open.