

In the case of Wallová and Walla v. the Czech Republic,

The European court of Human Rights (Section V), sitting as a Chamber composed of:

P. Lorenzen, *President*,

V. Butkevych,

M. Tsatsa-Nikolovska,

J. Borrego Borrego

R. Jaeger,

M. Villigier, *judges*,

and C. Westerdiek, *Section Registrar*,

Having deliberated in private on 2 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 23848/04) against the Czech Republic, two nationals of which, Ms Emilie Wallová and Mr Jaroslav Walla ("the applicants"), applied to the Court on 22 June 2004 under with Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

2. The applicants, who were granted legal aid, are represented by Mr F. Fusil, lawyer. The Czech government ("the Government") is represented by its Agent, Mr V.A. Schorm.

3. On 21 February 2005, the President of the Chamber decided to give priority to the case (Article 41 of the Rules).

4. On 13 May 2005, the Second Section decided to give notice of the application to the Government. Invoking the provisions of Article 29 § 3, it decided to examine the merits of the application at the same time as its admissibility.

5. On 1 April 2006, the application was attributed to the newly established Section V (Articles 25 § 5 and 52 § 1 of the Rules).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, husband and wife, were born in 1963 and 1949 respectively and live in Vesce.

7. They have five children, born in 1985, 1988, 1995, 1997 and 2000.

8. On 25 September 2000, the District Court (Okresní soud), Tábor, in receipt of an application originating from the Department of Social Welfare of the Tábor District Office (hereinafter referred to as "the competent social authority"), issued a supervision order for the children of the applicants, for lack of adequate housing. Admitting that the parents were making efforts to resolve this issue, the court noted that a fast solution was compromised by their lack of resources. The purpose of the supervision order was therefore to ensure that the children would quickly benefit from adequate accommodation, failing which, according to the court, another measure of assistance would have to be considered.

9. On 15 November 2000, the competent social authority asked the court to adopt an interim measure ordering the placement of the children in an educational care establishment. It stated in support of this request that since 1997 the family did not benefit from adequate

and stable housing, that the parents had not been able to find a solution and that they avoided the checks resulting from the supervision order.

10. On the same day, this request was granted by the court which decided to provisionally place the three eldest children in an establishment at V. and two other children in that of K. Issued under Article 76a of the Code of Civil Procedure, the measure was aimed at ensuring the proper development and health of the children.

11. On 29 December 2000 the regional court (*Krajský soud*) dismissed as belated the applicant's appeal against the provisional measure of 15 November 2000.

12. On 2 February 2001, the district court, on its own motion, initiated proceedings for the custody of the five children.

13. By judgment of 1 March 2001, the court decided to place the children in an educational care establishment, considering that the education provided by the applicants was lacking because they were not able to provide to their children with adequate and suitable housing from a hygiene and health perspective. He informed the interested parties of the possibility of requesting the annulment of this measure as soon as circumstances change.

On 26 July 2001, this judgment was voided by the Regional Court, which requested the Court of First Instance to supplement the evidence concerning the need for such an placement.

14. According to the information provided by the Government, the District Court declared the proceedings to have been discontinued on 1 November 2001 on the ground that the applicant had submitted a lease agreement for an appropriate apartment. This decision was annulled by the Regional Court on 30 January 2002; the latter noted that both parents were unemployed and that it was not certain that the said fixed-term lease (until February 2002) would be renewed.

15. On 21 March 2002, the District Court, hearing the request of the competent social authority, decided that the applicants' consent was not required for the adoption of their two younger children. It considered that, in accordance with Article 68 § a) of the Family Law, the interested parties had not shown any real interest in their children for at least six months. In particular, they did not send them gifts, did not discharge their maintenance obligations and did not attempt to obtain adequate housing; the applicant's only visit to the K. establishment failed because of a quarantine.

16. On 18 April 2002 the District Court again decided, under Article 46 § 1 of the Family Law, to entrust the care of the five children of the applicants to an educational care establishment. It noted that the lease contract entered into by the applicant (see paragraph 14 above) had not been renewed because the persons concerned had not paid rent and expenses and had only applied once to the municipality of Tábor to provide them with an apartment. Moreover, the first applicant did not have a stable job and the unemployed applicant was only mentioned on the list of persons seeking employment since February 2001 and had not yet made all the necessary steps to obtain social benefits. Since they had not made sufficient efforts to overcome their material difficulties and to find accommodation for the family, the court held that, for subjective reasons, the applicants were not able to assume the education of their minor children. He further noted that the persons concerned did not show an interest in their children, that they had not visited them since April and December 2001 and that there was no written or telephone contact between them.

17. On 26 June 2002, the District Office granted, in respect of the three eldest children, at the request of the applicants to receive them at home during part of the school holidays. Such a visit took place also at Christmas 2002.

18. On 22 August 2002, the Regional Court, hearing the appeal brought by the applicants, upheld the judgment of 18 April 2002. Without claiming that the placement of the children in educational care establishments was the ideal solution and admitting that such a

measure constituted a considerable interference with the rights of the parents and the children, the court noted that the material needs of the children were provided for, particularly since the parents remained negligent in performing their parental obligations. The court also noted that in accordance with the principle underlying Article 46 § 2 of the Family Law, placement in a public establishment may only be considered when it was not possible to leave children in a family environment. However, it was established in this case that the children's maternal grandmother was not able to care for them and that there was no other person willing to provide their education. Lastly, the court stated that if the parents were to make genuine efforts to create appropriate living conditions and a stable family environment, there would be no obstacle to putting an end to the placement of the three older children in the future.

On the same day, the Regional Court upheld the judgment of 21 March 2002 on consent to the adoption of the youngest children.

19. On 20 November 2002 the applicants brought a constitutional appeal alleging that the decision to place their children in educational care establishments and the decision relating to consent to adoption did not comply with the law or Article 8 of the Convention or the Convention on the Rights of the Child. According to the applicants, these interferences were not necessary in a democratic society, as they do not satisfy the proportionality test, and the courts did not take due account of the opinion of the minors. The applicants argued that the placement of the children in public establishments was motivated solely by their material difficulties, without the authorities fulfilling their positive obligations, whether in terms of counselling or assistance and allowing them to improve their situation. According to them, it was only if such positive steps failed that the contested interference would satisfy the subsidiarity requirement. Although they admitted their share of responsibility, the applicants alleged that their financial difficulties were caused, *inter alia*, by the fact that the person who had bought their house stopped paying the agreed instalments and the accumulation of several negative circumstances. They also emphasized the right of children to enjoy the presence of their parents and drew attention to the risk of emotional deprivation. They further alleged that the unsatisfactory social and material situation of the children cannot be mended through the interference of public authorities in their right to respect for family life, which enjoys qualified protection. Lastly, the applicants argued that the conditions for overriding their consent to adoption had not been met in the present case.

20. On 13 November 2003, the Constitutional Court (Ústavní soud) appointed a guardian for the minor children for the purposes of the proceedings before it, and suspended the enforceability of decisions relating to consent to adoption.

21. By judgment of 28 January 2004, the Constitutional Court vacated the Regional Court's judgment with respect to consent to adoption, on the ground that it had violated the rights of the applicants to a fair trial and to the respect of their family life. However, it rejected the challenge in the section relating to the placement of the children in public institutions. Noting that the applicants' situation had been carefully examined, the court considered that the contested interference by the State was the only possible solution and that it was in line with the law and with the children's interests. The Court stressed that the responsibility for ensuring adequate life and development conditions for the children are primarily the responsibility of the parents, while the help of public institutions may only intervene when the family was temporarily confronted, through no fault of its own, with a difficult situation. Concerning the interview of the children whose age permitted it, the Court noted that the girl born in 1988 had been heard; the hearing of the applicants' son, born in 1985, failed because he had fled the institution at the time.

In this decision, the court also found that the main problem underlying the entire proceedings was the lack of adequate housing for such a large family and the applicants'

inability, particularly as a result of their poverty, to obtain such housing. As further problems appeared thereafter, it was difficult for the Constitutional Court to say whether the applicants were the irresponsible parents or whether they were unlucky and could not succeed, despite their efforts.

22. On 29 March 2004, the M. spouses requested to be able to host, beforehand, the two younger children of the applicants. On April 27, 2004, their application was granted by the municipal office of Tábor. The applicants appealed and the appeal was dismissed on 22 June 2004.

23. On 6 April 2004, the Regional Court, bound by the opinion of the Constitutional Court, rejected the request that the applicants' younger children be adopted without the consent of the applicants.

24. In April 2004, the applicants were asked to pay their debts to the V. establishment, where all their children were then placed (see paragraph 10 above). It seems that this debt was still not settled, which gave rise to criminal proceedings against the applicants.

25. On 13 May 2004, the applicant [the mother] was informed by the competent local authority that her request to rent an apartment (in the context of a call for tenders) was late and could not therefore be taken into account.

26. Upon the applicants' request, an investigation was carried out at their home by the assistants of a children's aid association on 20 May 2004. They found that the persons concerned were living in unacceptable conditions and that they were irregularly applying for housing. It was also established that on 13 July 2000, after the birth of her last child, the applicant [the mother] had accepted temporary accommodation (for the month of July 2000) in a specialized structure, but that she did not have the means to pay the price (7,000 CZK¹). She was not informed of the possibility for the whole family to live in another, less expensive establishment run by the same association, and no such request had been made by the competent social authority.

27. On 3 June 2004, the M. spouses applied to the District Court to host the two younger children. By decision of 14 June 2004, the two younger children were appointed a guardian. The applicants appealed, objecting to their children being placed in foster care.

28. In January 2005, the applicants inquired about the possibility of hosting their children during the holidays. They were informed by the competent social authority that their visiting rights were not limited, that they had to agree with the M. spouses and cooperate with the competent body with respect to the two younger children, and that they were required to apply to the establishment concerned with respect to the other two children (the third had already reached majority), in accordance with Article 30 of Law No 359/1999. In March 2005, it informed them that it was necessary to request the visits well in advance so that the competent local authorities could provide their opinion thereon.

Subsequently, the competent social authority summoned the applicants to an interview and gave its consent to several stays of the older children (including during the weekends).

29. By judgment of 31 January 2005, the District Court granted the request of the M. spouses dated 3 June 2004 and decided to entrust them with the care of the two younger children. The Court noted that the applicants had not duly concluded a lease contract for the flat they occupied and that their financial situation was still unsatisfactory because they did not have a stable job. The court also observed that the applicants had not visited their children in 2003 and 2004, had not inquired about their condition, and that it was in the interests of minors to grow in a family environment.

¹ About EUR 246.

30. The applicants appealed, alleging that they had already concluded a lease and that the father had found a job.

On 24 March 2005, they asked to be given the younger children.

31. On 6 May 2005, the contested decision was confirmed by the Regional Court. According to the Court, the applicants situation was not stable enough since the [father], who was hired since 10 March 2005, was still within his probationary period, since the lease contract had been concluded for a fixed period (with the possibility of renewal), and the applicant [the mother] was suffering from health problems. The court therefore considered that, despite their efforts, the applicants were not ready to take their children home.

32. On 6 May 2005, the applicants requested the return of the two older children, noting that their week-ends spent together unfolded without any problem.

At the same time, the director of the V. establishment informed the competent social authority that the applicant [the father] had acted vulgarly with him; and that therefore, he would no longer allow the older children to live with the family because he was convinced that such behaviour of the applicant had negative repercussions on their education.

33. By judgment of 9 November 2005, the District Court cancelled the placement of the two eldest children (born in 1988 and 1995) in the educational care establishment and entrusted them to the applicants, under educational supervision. The court took into account the fact that the children were already spending every other weekend with their parents, in the absence of neglect or problems, and that they had themselves wished to return there. It was established that the applicants rented a three-room apartment since November 2004 under a six-month renewable lease, that the applicant [the father] had been working since March 2005 and that the applicant [the mother] benefited from a disability pension. In these circumstances, the court found that the reasons that led to the placement measure were no longer pertinent.

34. The competent social authority appealed against this judgment, noting in particular that the applicants did not have stable accommodation and that they had debts (among others, to the V. establishment). The interested parties contested this.

35. On 23 February 2006, the Regional Court upheld the contested judgment (while correcting a formal defect in its operative part). According to the court, it was clear from the record that the fundamental problem facing the parents in this case was to provide adequate housing for such a large family. The court noted that, despite their efforts to improve the situation, the applicants did not have, until then, stable housing, which was due to their financial difficulties as well as to a certain laxity. However, it was possible to conclude on the day the decision was rendered, that the applicants had done their utmost and that, having found adequate housing, they had satisfied the main condition of their children's education. Moreover, it had not been established that the lease contract might not be renewed soon or that their debts would prevent the applicants from ensuring the education of their children. The court finally noted that, since the relationship between the employees of the V. establishment and the applicants was far from ideal and the children wanted to return home, the placement ceased to be a solution and became traumatic.

This judgment acquired *res judicata* on 23 March 2006.

36. It appears that the two older children are still in the care of a foster family.

II. RELEVANT DOMESTIC LAW

Charter of Fundamental Rights and Freedoms

37. In accordance with Article 32 § 1, the family is protected by law. Special protection for children and minors is guaranteed. Under Article 35 § 5, parents caring for children are entitled to State aid.

Code of Civil Procedure

38. Article 76a provides that if a minor child is deprived of care or if his life or favourable development is seriously threatened or disturbed, the President of the Chamber shall issue an interim order to place that child in the care of a designated person (physical or legal person).

Family Law No. 94/1963

39. According to Article 46 § 1, if the education of the child is seriously threatened or disturbed and if other educational measures have not remedied the situation, or if for other serious reasons the parents cannot ensure the child's education, the court may order the placement of the child in an educational care institution. If the interests of the minor so require, the said order may be made even if it was not preceded by other educational measures.

40. Article 46 § 2 requires the court to consider, before ordering the placement mentioned above, whether the child's education may be provided by a foster family, this type of education being a priority. If the reasons for the placement order cease to exist or if the child may be placed in foster care, the court will terminate the placement in the public institution.

41. Under Article 68 (1) (a), the consent of the parents acting as legal representatives of the child is not necessary for the adoption of the child if, for a minimum period of six months, they did not consistently show a real interest in the child, especially if they did not visit him or if they did not fulfil their maintenance obligations on a regular basis and of their own free will and if they did not make efforts to redress, as far as possible, their family and social situation so that they themselves can take care of their child.

Law No. 114/1988 on the powers of the authorities regarding social aid

42. According to Article 14 §§ 1 and 2, municipalities and district offices organize and provide citizens with social protection. To this end, they are seeking, in cooperation with national authorities, associations and churches, people in need of social assistance. If the municipality is not competent to provide these citizens with the necessary services and allowances, it notifies the district office or acts as an intermediary. It can also grant an exceptional allowance to citizens who find themselves in very unfavourable social conditions. Under Article 15 (2), the municipality informs the district office which families, children and pregnant women are in need of social assistance.

Law No. 359/1999 on the social protection of the child

43. Article 29 § 1 requires the competent local authority to verify compliance with the rights of the child placed in a public institution, to monitor the development of his or her capacities and relations with the parents and to establish whether the grounds for placement are still relevant. It also goes towards placing brothers and sisters in the same establishment.

44. According to Article 30, the public establishment in which a child is placed may allow the latter, subject to the written consent of the competent local authority, to stay with his parents or other persons; such a stay is in principle limited to fourteen consecutive days. If the addresses of the parents' and the child's permanent homes are different, the consent of the two competent local authorities is required.

III. OTHER SOURCES

Committee on the Rights of the Child established by Article 43 § 1 of the Convention on the Rights of the Child

1. Observations on the report submitted by the Czech Republic pursuant to Article 44 of the Convention, dated 17 June 2002 (extract)

45. “Children who require special protection and care, who were temporarily or permanently deprived of their family environment, or whom it was not possible to leave in their current environment in their best interests are recorded and monitored by childcare authorities at the appropriate District Offices and Municipal Offices. If all attempts at family therapy fail (material assistance, financial assistance, counselling), the childcare authority files an application with the court to issue a preliminary injunction or an application to order institutional care. In the experience of the NGOs, however, family therapy is often inadequate owing, on the one hand, to a lack of social workers and, on the other hand, to a lack of financial resources for the necessary material and financial assistance.”

2. Concluding observations on the report submitted by the Czech Republic pursuant to Article 44 of the Convention, dated 18 March 2003 (excerpt from paragraphs 31-44)

46. “While noting that the principle of the “interest and welfare” of the child is contained in the Act on the Family and in the Law on Social and Legal Protection of Children, the Committee is concerned that the principle of primary consideration for the best interests of the child is still not adequately defined and reflected in all legislation, court decisions and policies affecting children. Furthermore, the Committee is concerned that there is insufficient research and training for professionals in this respect.

The Committee welcomes the information on the Policy Statement on measures to be taken relating to child and family welfare and on the preparation of a national programme of support to families with children. The Committee is concerned at the insufficient assistance and guidance given to parents in their child-rearing responsibilities for the upbringing and development of the child, resulting in numerous cases of custody procedures or in alternative care in institutions. The Committee is further concerned that preventive efforts and family counselling are inadequate and that placement in an institution may be a solution to social problems and crisis situations in the family.

The Committee notes the adoption of the Act of Residential Care in 2002, but is concerned that it has not addressed the full range of rights covered by the Convention. (...) The Committee welcomes the policy of deinstitutionalization, but remains deeply concerned by the increasing number of children placed in institutions by preliminary injunction and at the frequent use of this special measure, which can be revoked only after a lengthy and complex procedure. Furthermore, the Committee is concerned that the general principles of the Convention are not always observed in such situations and that:

(a) Institutional responses to providing assistance to children in difficulty are predominantly used and a disproportionately large number of children are placed in a residential institutional care environment;

(b) Temporary measures may be extended for lengthy periods and that there are no regulations for review of placement;

(c) Children are often placed at significant distances from parents, who, in turn, may not be aware of their visiting rights; punitive measures such as limitation of phone calls or meetings with parents may also be used;

(d) Contacts with parents are sometimes made conditional upon the behaviour of children in care;

(e) The conditions and treatment of children in some institutions may not be provided in a manner consistent with the evolving capacities of the child and the obligation to ensure his or her survival and development to the maximum extent possible;

(f) Institutions are large and an individual approach to each child is lacking, child participation is minimal, and treatment in some institutions (such as diagnostic institutions) may have undesirable effects.”

ON THE LAW

I. ON THE VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. In their complaint form, the applicants complained in particular that they had been separated from their children and complained of the lack of assistance from the national authorities. In this regard, they relied on Articles 1, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 12.

Having discretion with respect of the legal classification of the facts of the claim, the Court considers it appropriate to examine the complaints raised by the concerned parties only from the perspective of Article 8, which requires that the decision-making process leading to interference measures be fair and respect as appropriate the interests protected by this provision (*Kutzner v. Germany*, No. 46544/99, § 56, ECHR 2002-I). Article 8 thus provides in its relevant parts:

“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.”

48. The Government rejects the applicants’ argument.

A. On Admissibility

49. The Government first argues non-exhaustion of domestic remedies.

1. Provisional Measure of 15 November 2000 and Placement of Younger Children in a Foster Family

50. With regard to the measure of 15 November 2000, whereby the children of the applicants were provisionally placed in an educational assistance establishment, the Government observes that the appeal filed by the applicant was dismissed for being submitted late (see paragraph 11 above).

It further notes that the applicants did not lodge a constitutional complaint against the decision of 6 May 2005, according to which their two younger children were definitively transferred from the public establishment to a foster family.

51. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity to prevent or remedy the violations alleged against them before they are submitted to the Court. States may therefore only be held accountable before an international body after having had the opportunity to rectify the situation in their domestic legal order (*Aksoy v. Turkey*, judgment of 18 December 1996, Reports of Judgments and Decisions 1996- VI, § 51, *Fressoz and Roire v. France* [GC], No. 29183/95, § 37, ECHR 1999-I). The aforementioned provision therefore requires that the complaints to be subsequently brought in Strasbourg be brought before the relevant internal body, at least in substance and in accordance with the forms and timeframes provided in the internal law (*Akdivar and Others v. Turkey*, judgment of 16 September 1996, Reports 1996-IV, § 66).

52. In the present case, it must be stated that the applicants have not duly exercised their rights to the remedies available to them for challenging the above-mentioned decisions.

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

2. Definitive placement of the children in an educational care establishment pursuant to the decisions of 18 April and 22 August 2002

53. The Government notes that on 24 March and 6 May 2005, the applicants request the court to terminate the placement of their four minor children in the public establishment and in the foster family and to be transferred to their custody (see paragraphs 30 and 32 above).

At the time of the preparation by the Government of its observations, these requests introduced by the parents remained pending. The Government argued that if the applicants' allegations that their situation was already satisfactory were to be justified, the courts would have the opportunity to remedy the alleged violation of the Convention by ordering the return of the children to their parents' care. For this reason, the Government considered this part of the application premature.

54. The Court notes that the applicants and their children were definitively separated by virtue of the decisions of 18 April and 22 August 2002, in which the courts decided to place the children in educational care establishments.

According to the information available to the Court to date, the two younger children remain in foster care. The fact that the proceedings for the invalidation of this placement is pending does not detract from the reality of the interference in the applicants' right to respect for their family life resulting from the separation. Therefore, since the decisions to place these children became final in 2002 and were approved by the Constitutional Court in January 2004, the Government's objection to the effect that the request was premature must be rejected.

With respect to the two eldest children, still minors, the petitioners' request dated 6 May 2005 was granted. Consequently, these children were reunited with the applicants pursuant to the Regional Court's judgment of 23 February 2006. It follows that the measure constituting an interference with the applicants' right to the respect of their family life was in place for almost four years; therefore, the complaint based on these facts cannot be premature.

Therefore, the defence raised by the Government is rejected.

55. Furthermore, the Court considers it necessary to note that, notwithstanding the judgment of the Regional Court ordering the return of older children into the applicants' care, they may still be considered "victims" of a violation of the Convention within the meaning of Article 34. Indeed, "a measure of a public authority eliminating or mitigating the effect of the act or omission at issue deprives a person the status of victim only if the national authorities recognise, explicitly or substantively, and then repaired the violation of the Convention" (DH and Others v. Czech Republic (dec.), No. 57325/00, 1 March 2005; Nsona v. the Netherlands, judgment of 28 November 1996, Reports of Judgments and decisions 1996-V, § 106, Scordino v. Italy (No. 1) [GC], No. 36813/97, § 180, ECHR 2006 -...). However, in this case, the authorities did not in any way acknowledge any violation of the applicants' rights and the decision of 23 February 2006 was not based on the alleged violation of Article 8 of the Convention.

56. Therefore, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is unaffected by any other ground of inadmissibility. It must therefore be declared admissible.

B. On the merits

1. The parties' positions

57. The Government accepts that the measure being challenged in this case by the applicants constitutes an interference with their right to the respect for family life within the meaning of Article 8 of the Convention. The Government argues that the decision to place the children in an educational care establishment was based on the provision of Article 46 § 1 of the Family Law and that it was taken in order to protect the health and safety of children, as well as their rights and freedoms. The Government strongly opposes the applicants' allegations that the district office had submitted incorrect information to the courts and treated them in a discriminatory manner.

58. The Government also asserts that the said placement order was necessary in a democratic society; on this point, the Government observes that the first judgment of 1 March 2001 was vacated in order to better examine the issue of a need for a placement (see Paragraph 13 above).

Subsequently, it was found in the judgment of 18 April 2002 that the applicants did not have suitable accommodation, that they had not made sufficient efforts to find one and that they were unemployed and without resources. The Government agrees with the court that the applicants were not in a position to provide the education of their minor children for want of adequate housing; therefore, interference by the national authorities in the form of taking over the care of children was essential.

Furthermore, according to the Government, the judgment of 22 August 2002 and its detailed and convincing reasoning show that the appellate court was aware of the importance and the consequences of the placement measure for the applicants' family life. In accordance with the principle of subsidiarity, the court noted that it was only possible to place children in a public establishment if the aim could not be achieved through less restrictive means, which was the case here as the children could not be entrusted to another person. After taking into account the conflicting interests in the present case, the court properly explained the reasons for which the placement of the children was, in the concrete circumstances of the case, more conducive to the effective protection of their interests. Finally, the tribunal informed the applicants under which conditions it would be possible to put an end to the disputed placement.

Lastly, the Government notes that these decisions were validated by the Constitutional Court, which showed a balanced attitude towards this complex problem.

59. According to the Government, there is thus no reason to doubt that the above-mentioned decisions of the national courts satisfied the condition of “necessity in a democratic society” in that they were based on relevant and sufficient grounds. The main reason was the long-standing inability of the applicants to provide adequate housing for their children. Since the applicants had not remedied their situation even after the provisional placement of the children had been ordered, the national authorities had only to decide on the final placement of the children; therefore, the judicial decisions of 25 September 2000, 1 March and 1 November 2001 cannot be regarded as incompatible, as the applicants claim. Before ordering such a measure, the courts also examined, with a negative result, the question whether there were other less restrictive alternatives. As to the applicant’s allegation that the authorities did not contact her brothers and sisters, the Government asserts that most of them had been adopted or lived under the same conditions as the applicants and that the applicants had never suggested that their children be placed with their relatives. Thus, bearing in mind the delicate nature of the case, the courts in this case endeavoured to best protect the rights of the applicants and, in particular, those of their children.

60. Further, the Government consider irrelevant the applicants’ argument that the national authorities did not act in accordance with their positive obligations in that they did not help them find adequate housing. Referring in particular to the judgment of 18 April 2002, the Government pointed out that the applicants had been sufficiently active. It should be noted that after the birth of her last child, the applicant was offered accommodation by the District Office for herself and all her children at a price which cannot be regarded as disproportionate and that the applicants were able to pay. However, the applicant only took up this offer in July 2000; afterwards, she secretly moved elsewhere and refused to return, which triggered the procedure leading to the placement of the children.

61. Finally, with regard to the procedural safeguards provided for under Article 8, the Government argued that the applicants had been sufficiently involved in the decision-making process and had actively participated in the hearings held by the district and regional courts, so that they were able to express themselves on the measure envisaged.

62. It follows, in the opinion of the Government, that the national authorities did not exceed their discretion as allowed by Article 8 of the Convention, and that this provision was not violated in this case.

63. The applicants allege that the Government’s observations lack impartiality and objectivity; according to them, the Government focuses on the procedural aspect of the case and does not examine the question of the fair protection of their rights and interests. The applicants admit that, formally, the courts acted in accordance with national law, but denounce that they relied solely on information provided by other national authorities, which was false and distorted. They argued that, despite their requests, these authorities never helped them to remedy their situation and find housing corresponding to their financial possibilities, as evidenced by, among other things, the report drawn up by the assistants of a children’s aid association (see paragraph 26 above). On the contrary, they merely noted the applicants’ incapacity and resolved the case administratively, separating them from their children and even separating the children from each other, as they were placed in two different establishments. The applicants therefore claim that the authorities committed an injustice towards their children and caused them psychological trauma.

64. The applicants further argue that their efforts to find housing were monitored by the Tábor Department of Social Welfare since their arrival in the district in 1997. Apart from this monitoring, however, this authority did not undertake any positive actions. To the contrary, it caused the issuance of the supervisory order of 25 September 2000 by the District

Court. The applicants consider that by this decision, the court indirectly invited the Department of Social Welfare to assist the applicants. However, only two months later, it ordered the temporary placement of the children (see paragraph 10 above), without examining the question of how the said department had fulfilled its obligation of assistance. According to them, the “aid” provided by the authorities was therefore limited to the adoption of various decisions that did not take into account the circumstances of the case and violated Articles 8 and 14 of the Convention.

The applicants assert that the decision to place their children in public schools was in contradiction with the facts mentioned in the judgment of 25 September 2000 and was based on distorted information as presented by the District Office; thereafter, the courts considered such information to be true without verifying its authenticity. They also contest the Government’s argument that the courts had looked for other persons to care for the children; they state in this respect that the authorities never contacted the applicant’s five siblings.

65. According to the applicants, who point out that they had obtained only basic education, the authorities showed a disdainful and discriminatory attitude towards them because of their social background and their poverty. Thus, after the birth of her last child and for fear of losing her, the applicant was forced to accept housing in a specialized structure for a month, at the price of 7,000 CZK fixed by the municipality, although the normal price was CZK 2,695 per month.

In this respect, the applicants note that in its decision of 28 January 2004, the Constitutional Court took note of, on the one hand, their efforts and, on the other hand, the limits of their capacities. Thus, while the district and regional courts attributed their situation to their lack of responsibility, the constitutional court did not exclude that they were hit by bad luck.

66. The applicants conclude by underlining the trauma suffered by their children as well as their relentless efforts to obtain their return.

2. *Appraisal of the Court*

67. The Court notes that in November 2000 the applicants’ five children were provisionally placed in public educational care establishments. This measure was definitively extended by the decisions of 18 April and 22 August 2002 on the ground that the applicants were facing material difficulties and were unable to provide their children with adequate and stable accommodation. In 2003, the oldest child reached majority. In April 2004, the two younger children were placed in foster care where they are today. As for the other two children, their placement was definitively annulled in February 2006, at which date they were able to return to the applicants.

68. According to the Court’s established case law, for a parent and their child, being together is a fundamental element of family life (*Kutzner v. Germany*, cited above, § 58) and domestic measures which prevent them from doing so constitute an interference with the right protected by Article 8 of the Convention (*K. and T. v. Finland* [GC], No. 25702/94, § 51, ECHR 2001-VII). Such interference violates Article 8 unless it is “provided for by law” and it pursues one or more legitimate aims under the second paragraph of that provision and is “necessary, in a democratic society” in order to achieve such aims. The notion of “necessity” implies an interference based on a pressing social need, and in particular proportionate to the legitimate aim sought (see, for example, *Couillard Maugery v. France*, No. 64796/01, § 237, 1 July 2004).

69. In this case, it is not disputed before the Court that the placement of the children amounted to an “interference” in the exercise of the applicants’ right to respect for their family life. Based on Article 46 § 1 of the Family Law, the disputed measure was

“provided for under the law”. It is also apparent from the reasons given by the domestic courts that their decisions in this case were aimed at safeguarding the interests of the children. The interference in question therefore pursued a legitimate aim provided for in Article 8 § 2 of the Convention: “the protection of the rights and freedoms of others”.

70. In order to assess the “necessity” of the contested measure “in a democratic society”, the Court will consider whether, in the light of the case as a whole, the grounds relied on in support of it were relevant and sufficient with respect to paragraph 2 of Article 8 of the Convention. To this end, it will take into account the fact that breaking up a family constitutes a very serious interference; such a measure must therefore be based on considerations inspired by the interests of the child and having sufficient weight and solidity (*Scozzari and Giunta v. Italy* [GC], Nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII). However, the Court’s task is not to substitute itself to the domestic authorities in the exercise of their responsibilities in regulating the issues of the care of children by the public authority and the rights of the parents whose children have been placed, but to review under the Convention the decisions they have made in the exercise of their discretion (*K. and T. v. Finland* [GC], cited above, § 154; *Couillard Maugery v. France*, cited above, § 242).

71. In this context, the Court reiterates that the fact that a child can be accommodated in a context more conducive to his education can not in itself justify being forcibly removed from the care of his biological parents; such interference with the right of parents, under article 8 of the Convention, to enjoy family life with their child must in addition be “necessary” because of other circumstances (*K. and T. v. Finland* [GC], cited above, § 173, *Kutzner v. Germany*, cited above, § 69). In addition, Article 8 imposes positive obligations on the State which are inherent to the effective “respect” for family life. Thus, where the existence of a family bond is established, the State must in principle act in such a way as to allow such bond to develop and take the necessary measures to reunite the parent and the child concerned (*Kutzner v. Germany*, cited above, § 61).

72. In this case, the Court notes that all the national courts, including most recently the Regional Court deciding to terminate the impugned placement of the two older children (see paragraph 35 above), acknowledged that the fundamental problem facing the applicants in this case was to find adequate housing for such a large family.

Thus, unlike most of the cases which the Court had the opportunity to examine, the children of the applicants in this case were not exposed to situations of violence or abuse (see, conversely, *Dewinne v. Belgium* (dec.), No. 56024/00, 10 March 2005, *Zakharova v. France* (dec.), No. 57306/00, 13 December 2005), and sexual abuse (see, conversely, *Covezzi and Morselli v. Italy*, No. 52763/99, § 104, May 9, 2003). Neither did the courts find in this case affective deficits (see, conversely, *Kutzner v. Germany*, cited above, § 68), a worrying state of health or a mental imbalance affecting the parents (see, conversely, *Bertrand v. France* (dec.), No. 57376/00, 19 February 2002, *Couillard Maugery v. France*, cited above, § 261). While it is true that in certain cases declared inadmissible by the Court, the placement of the children was motivated by unsatisfactory living conditions or material deprivations, this was never the only ground on which the courts’ decision was based, and other elements such as the mental imbalance affecting the parents or their emotional, educational and educational incapacity were added to such reason (see, for example, *Rampogna and Murgia v. Italy* (dec.), No. 40753/98, May 11, 1999, *MG and MTA v. Italy* (dec.), No. 17421/02, 28 June 2005).

73. In the present case, the applicants’ educational and emotional capacities have never been called into question and the courts have acknowledged their efforts to overcome their difficulties. Accordingly, the placement of the applicants’ children was ordered solely because the family at that time occupied inadequate housing. In the Court’s opinion, it was therefore a material deficiency which the national authorities could have compensated by

means other than the total separation of the family, which seems to be the most drastic measure which can only be applied to the most serious cases.

74. The Court considers that, in order to comply with the proportionality requirement in this case, the Czech authorities should have considered other measures, less radical than the placement of the children. Indeed, the Court considers that the role of the social welfare authorities is precisely to help people in difficulty who do not have the necessary knowledge of the system, to guide them in their efforts and to advise them, among other things, on the different types of social benefits, the possibilities of obtaining social housing or other means of overcoming their difficulties. In the Czech Republic, for example, Article 14 of Law No. 114/1988 tasks the local authorities with identifying persons in need of social assistance (see paragraph 41 above), and the Constitutional Court has also stated in its decision of 28 January 2004 that public institutions should intervene in cases where families were temporarily and through no fault of their own facing a difficult situation.

75. In this case, the national authorities had the opportunity to monitor the applicants' living and hygienic conditions, and could have advised them on the steps to be taken so that they themselves could improve the situation and find a solution to their problems. This would have been in line with the Czech social assistance legislation.

76. It is clear that, although the competent authorities were aware of the problems faced by the applicants, they merely followed their efforts and remedied their situation by ordering the placement of the children in a public establishment. Subsequently, the Tábor Department of Social Welfare also insisted on the need to extend this placement (see paragraph 34 above), there being no evidence that it reassessed the applicants' situation or had shown a constructive attitude as soon as there were signs of improvement.

77. It is true that, in addition, the applicants criticise the authorities for failing to provide them with social housing. The Government, on the other hand, contended that the applicants had shown a lax attitude and that they had not done enough to obtain an apartment or social allowances (see paragraph 16 above). The Court takes note of the parties' differing positions, while noting that the Government has not provided any information concerning the possibility for the applicants to be granted, where appropriate, social housing.

In any event, as it considers the placement measure to be disproportionate in this case (see paragraphs 74-75 above), the Court does not consider it necessary to rule on this issue.

78. In view of all of these elements, the Court considers that, although the reasons given by the national authorities and courts were relevant, they were not sufficient to justify this serious interference with the applicants' family life which was the placement of their children in public institutions. Moreover, it does not appear from the facts of the case that the social welfare authorities made any serious efforts to help the applicants overcome their difficulties and reunite with their children as soon as possible.

79. Accordingly, there has been a violation of Article 8 of the Convention.

II. ON THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH RESPECT TO THE DURATION OF THE PROCEEDINGS

80. The applicants also complain that the length of the "proceedings concerning their children" has breached the principle of "reasonable time" as provided for in Article 6 § 1 of the Convention, which reads as follows:

"[E]veryone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]."

81. First, the Court notes that on 27 April 2006, Law No. 160/2006, which provides for the possibility of awarding compensation for moral damage resulting from the length of the proceedings, entered into force in the Czech Republic. However, the Court does not deem it necessary to consider in this case the question whether this remedy is effective within the meaning of Article 13 of the Convention, and whether the applicants should exercise it, since their grievance is in any event inadmissible for another reason indicated below.

82. The Court reiterates that the reasonableness of the length of proceedings depends on the circumstances of the case and on the criteria established by the Court's case law, in particular the complexity of the case, the conduct of the applicant and that of the competent authorities. On this last point, the stakes of the dispute for the person concerned come into play. It is therefore essential to deal expeditiously with child custody cases; a delay in a given phase may be tolerated provided that the total duration of the proceedings is not excessive (*Nuutinen v. Finland*, no 32842/96, § 110, ECHR 2000-VIII, *Voleský v. Czech Republic*, No. 63267/00, § 102, 29 June 2004).

83. In the present case, the Court considers that the period to be considered began on 2 February 2001, the date on which the tribunal initiated the proceedings relating to the custody of the applicants' children. These proceedings ended with the decision of the Constitutional Court of 28 January 2004. It therefore lasted almost three years for three courts, two of which ruled on several occasions. It should be noted in this regard that the proceedings concerning the applicants' claims for the annulment of the placement, filed after the lodging of the application with the Court, were a separate proceeding following a change in circumstances alleged by the applicants.

84. The Court considers that the present case was rather complex, in particular because of the need to monitor the evolution of the applicants' situation and to reassess the best interests of the children accordingly. As for the behaviour of the lower courts, it is clear that they have acted at a rapid pace. Thus, the first judgment was rendered in the case one month after the initiation of the proceedings; it was vacated six months later (see paragraph 13 above). Then, the District Court only took three months to render the following decision extinguishing the proceedings, which was annulled three months later, on 30 January 2002 (see paragraph 14 above). The new judgment, rendered on 18 April 2002, was confirmed four months later, on 22 August 2002. Therefore, the only specific delay that the authorities could be held responsible for is the lapse of one year and two months between the applicants' submission of their constitutional appeal, on 20 November 2002, and the decision of the Constitutional Court of 28 January 2004. However, the issues to be determined by that court were complex in nature, given that part of the appeal (concerning consent to adoption) was upheld, and the decision to place the children in a public establishment became final with *res judicata* effect of the judgment of 22 August 2002. While it is true that during this whole period (and even after) the applicants continued to be separated from their children and that the stakes were high for them, the Court notes that the prolonged interference in the exercise of the right to respect for family life has already been examined under Article 8 of the Convention.

85. It follows that this ground must be rejected as being manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ON THE ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

86. The applicants also allege that the attitude of the authorities in this case reflects a discriminatory approach towards them, motivated by their social origin and their poverty.

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

87. The Government contests this argument.

88. The Court notes that this ground, closely related to that raised under Article 8, is based on the same facts as those examined above. It must therefore be declared admissible. Nevertheless, in view of the conclusion reached by the Court under Article 8, it considers that there is no need to examine the case under that provision.

IV. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Under Article 41 of the Convention,

“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

90. The applicants claim 1,000,000 Czech crowns (CZK), or approximately 35,150 euros (EUR), for moral damage which they and especially their children allegedly suffered. They ask that the State compensate them for the damage sustained in the amount of 200,000 CZK (7,030 EUR) for each of their children.

91. The Government submits that the applicants make their claim on behalf of their children, which amounts to an *actio popularis* because the present application has not been lodged by their children. In the alternative, the Government asks the Court to award the applicants an amount corresponding to its case law practice on the subject.

92. The Court notes that the applicants' claims relate to compensation for the moral damage that they and their children suffered. It considers that, in so far as the question of non-pecuniary damage requires a fair approach, it would be too formalistic to reject those claims on the ground that the persons concerned claim financial means for their children, and therefore accepts the request in principle.

The Court is of the opinion that the applicants have suffered undeniable moral injury as a result of their separation from their children. Given the circumstances of the case and ruling on an equitable basis as required by Article 41, the Courts awards them jointly the amount of 10,000 euros (EUR).

B. Costs and expenses

93. The applicants, who were granted legal aid, do not claim reimbursement of costs and expenses. The Court considers that it is therefore not necessary to rule on this point (see, *mutatis mutandis*, *Králíček v. Czech Republic*, No. 50248/99, § 41, 29 June 2004).

C. Default interest

94. The Court considers it appropriate to base the default interest rate on the interest rate on the European Central Bank's marginal lending facility by three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the application admissible in respect of the grounds founded on Articles 8 and 14 of the Convention, and dismisses the remainder of the application;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that no distinct issue arises as to whether there has been a violation of Article 14 of the convention combined with Article 8;
4. *Holds*
 - a) that the respondent State shall pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) for moral damage plus any tax that may be applicable; this sum is to be converted into the national currency of the respondent State at the rate applicable on the date of payment;
 - b) that from the expiry of that period until payment, that amount shall be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during that period, increased by three percentage points;
5. *Rejects* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 16 October 2006 in accordance with Article 77 §§ 2 and 3 of the rules of the Court.

Claudia WESTERDIEK

Registrar

Peer LORENZEN

President