

## Prohibiting contact between children and their mother in Slovenian custody and contact rights case was unjustified

The case of [X and Others v. Slovenia](#) (application nos. 27746/22 and 28291/22) concerned custody decisions and contact rights following the separation of X from her children's father in 2018. It also concerned the reassignment of X's court case to a particular judge.

In today's **Chamber** judgment<sup>1</sup> in the case, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights, as regards X's right to a tribunal established by law, and

**violations of Article 8 (right to respect for private and family life)** with respect both to:

- the applicant children, as regards the order to remove them from X's (their mother's) care in March 2020, their not being represented in the contact and custody proceedings, and their not being allowed contact with their mother;
- X, for not being allowed contact with her children.

The Court found in particular that the President of the District Court, in assigning the applicants' cases to a particular judge, contrary to objective pre-established criteria, had defied the clear purpose of the law – namely, to ensure randomness in the assignments of cases. It also considered that two interim orders and a judgment prohibiting contact between the children and their mother had not been justified and that the removal of the children from X had not been supported by relevant and sufficient reasons. Moreover, the national courts' failure to ensure proper representation of the children's interests during the contact and custody proceedings had amounted, in itself, to a breach of the children's right to respect for their family life.

### Principal facts

The first applicant, X, is a Slovenian national born in 1976. The other applicants are her three children. She lodged the applications on her own and their behalf.

X and Y, former spouses, have a son born in 2011 and two daughters born in 2014. They separated in 2018, and both filed for divorce and custody of the children. The separation was acrimonious, and they could not agree on custody or contact arrangements. Two welfare centres and various experts were involved in the proceedings.

Although X was the primary caregiver and was given custody of the children to begin with, Y was granted provisional custody of the children in 2019, when X was found to be trying to alienate the children from him. The son, aged eight, and his twin-sisters, aged six, were subsequently forcibly removed from X in March 2020 by a bailiff. The operation took four hours and was witnessed by neighbours, police, and social workers. It ended up with the children being dragged to a waiting car where their father was. The case attracted significant media attention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Between March and August 2020, X was not allowed any contact with her children following the issuing of an interim order. She was again refused contact in August 2022, when another interim order was issued before a judgment in November 2022, but that decision was overturned on appeal in July 2023. Following their placement with their father, the children kept trying to run away to their mother's. They ended up being placed with her at the end of 2023.

Throughout the domestic proceedings, both X and Y used many remedies and also lodged many applications: (i) requesting interim orders; (ii) disputing court decisions or applications lodged by the other party, and the welfare centres' or experts' opinions; and (iii) requesting that the other parent be fined for his or her failure to comply with court orders. They also lodged numerous criminal complaints, making accusations of child abduction and child neglect.

The custody and contact proceedings were for the most part presided by Judge P., to whom the case had been allocated following the departure of the judge originally in charge of the case. Most of the absent judge's cases had been reassigned to Judge P., on the basis that she was the judge with the lowest number of unresolved family-law cases on the day of reassignment within the respective court, instead of being allocated to judges randomly as was the norm. X made several requests to have Judge P. recused from the proceedings

A final decision on long-term custody and contact has yet to be made.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), X complained that her case had been reassigned to Judge P., in breach of the established method of allocating cases to judges randomly, thereby not respecting her right to be heard by an independent and impartial tribunal. Relying on Article 8 (right to private and family life), she and the children complained that their wish to live with her had been disregarded by the authorities, that they had been treated like "objects" without any rights, that their removal from X had been unjustified, as had been the restrictions on X's custody and contact rights.

The applications were lodged with the European Court of Human Rights on 1 and 8 June 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,  
Marko Bošnjak (Slovenia),  
Alena Poláčková (Slovakia),  
Georgios A. Serghides (Cyprus),  
Erik Wennerström (Sweden),  
Raffaele Sabato (Italy),  
Frédéric Krenc (Belgium),

and also Liv Tigerstedt, *Deputy Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court noted that there were rules in Slovenia, including in its Constitution, regulating the transfer of cases when judges were absent for prolonged periods. However, not only had the President of the District Court failed to publish in advance the criteria he had chosen for the assignment of the cases in question, but by adopting those criteria he had also circumvented the rules governing the manner of assigning cases without explanation. By assigning family-law cases to

the judge with the lowest number of unresolved cases of this type, the President had effectively assigned these cases to a particular judge, contrary to objective pre-established criteria and defying the clear purpose of the law – namely, to ensure randomness in the assignments of cases. The Court considered that his decision, issued by decree, had blatantly violated national legislation and the judicial order, had undermined X’s confidence in the case-assignment process and had impaired the essence of the right to a “tribunal established by law”. Therefore, there had been a violation of Article 6 § 1 in this regard.

### Article 8

The Court reiterated that children and parents being able to enjoy time in each other’s company was a fundamental element of family life – even when the relationship between the parents had broken down. Only exceptional circumstances could justify severing family ties, and every effort should be made to maintain personal relationships. The harm caused to children by parental alienation should not be underestimated, and the interests as well as the rights and freedoms of all concerned had to be considered, with the best interests of the child being paramount.

In considering whether the decision to remove the children from their mother in March 2020 had been justified, the Court noted the District Court’s view that the children’s resistance to spending time with their father had resulted from their mother’s attempts to alienate them from him. However, the District Court’s order that the children be removed from their mother by a bailiff, had contained no explanation as to why no other alternative, less restrictive, approaches had been considered and attempted first. Also, no serious steps appeared to have been taken to prepare the children for spending time at their father’s house, although their resistance to going there had clearly presented a very important obstacle to custody and contact arrangements from the outset.

The Court noted that other sanctions existed, such as fines; yet X had never been fined. There was also no indication that she had received any prior court order instructing her when, where and how to hand the children over to Y, or that she had ever refused to present the children to the authorities. On the day of the removal, she had not actively sought to prevent the children from being handed over to their father. There was no doubt that the removal had been traumatic for the children and had caused them considerable distress. Judge P. must have been aware of their resistance to going with Y; yet she had ordered their removal by a bailiff, without first resorting to less severe – and more appropriate – measures. Therefore, the Court found that the reasons behind the removal order had been insufficient and had violated the children’s rights under Article 8.

As regards the March 2020 interim order for there to be no contact between X and her children, the Court did not doubt that it had been to ensure family ties between the children and their father. However, it contained no assessment as to the impact it would have on the children, even though they were very close to their mother and used to her being their primary carer. It had also not been accompanied by any plan to provide specific assistance to the family and a timeframe within which the situation would be reviewed and the measure possibly adjusted.

The Court noted that the August 2022 interim order had been based on a recent expert report which, without interviewing the family members, had recommended that no contact be allowed between the children and their mother at all, despite the fact that it had been 18 months since the family situation had been assessed and that the experts, in their September 2021 opinion, had found that preventing contact would not be in the children’s best interests.

Moreover, the Court noted that the District Court had attributed responsibility to X for one of the then eight-year-old daughters running away from her father’s home in May 2022, but had not investigated the child’s motives for running away. Similarly, when their 11-year-old son had run away in January 2023, the District Court had refused X’s request for an interim measure against Y’s allegedly neglectful and violent behaviour without even hearing the child; it had found that the

father's conduct was "very beneficial for the children". In fact, the District Court had never heard the children, not even the oldest of the three, who had always demonstrated his opposition to the court's decisions, including by repeatedly running away. The escalation of the situation ultimately led the welfare centre to request that the children be handed over to their mother, finding that they were being neglected in their father's home, and that the 11-year-old boy was possibly at risk of harm, including self-harm. The welfare centre's repeated requests for changes to the arrangements, emphasising the urgency of the situation, had remained unaddressed by the District Court.

The Court considered that the two interim orders and the prohibition of contact ordered by a judgment in November 2022 had not been based on an in-depth examination of the entire family situation and had not been justified. They had violated the applicants' right to respect for family life. Moreover, the Court found that the national courts' failure to ensure proper representation of the children's interests during the contact and custody proceedings had amounted, in itself, to a breach of the children's right to respect for their family life.

### Just satisfaction (Article 41)

The Court held that Slovenia was to pay the mother 7,000 euros (EUR) and the children jointly EUR 20,000 in respect of non-pecuniary damage, and EUR 7,000 to all the applicants jointly with an additional EUR 2,500 to the mother in respect of costs and expenses.

### Separate opinion

Judge Serghides expressed a partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

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