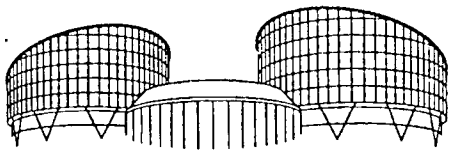

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF S.S. v. SLOVENIA

(Application no. 40938/16)

JUDGMENT

STRASBOURG

30 October 2018

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

In the case of S.S. v. Slovenia,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Vincent A. De Gaetano,
Faris Vehabović,
Iulia Antoanella Motoc,
Carlo Ranzoni, *judges,*
Boštjan Zalar, *ad hoc judge,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 40938/16) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Ms S.S. ("the applicant"), on 11 July 2016. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr R. Završek, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Ms V. Klemenc, State Attorney.

3. The applicant alleged that her rights under Articles 6, 8, 13 and 14 of the Convention had been violated because her parental rights had been withdrawn and consequently her biological daughter E. had been put up for adoption.

4. On 29 September 2016 the application was communicated to the Government.

5. On 30 November 2016, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, the President of the Section granted E. and her adoptive parents leave to submit written comments.

6. As Marko Bošnjak, the judge elected in respect of Slovenia, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court), the President decided to appoint Mr Boštjan Zalar as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1979.

8. The applicant is the biological mother of four children. Together with her husband, G., a French citizen, she has a son, P., who was born on 13 November 2001. In December 2005 he was placed in foster care in Slovenia and has remained there ever since, having only occasional contact with the applicant. The applicant does not attend meetings with the welfare workers and foster parents and does not pay maintenance for him. On 19 November 2007 the applicant gave birth to her second child, M. In April 2008 the competent French authorities placed M. in foster care in France and referred the applicant for psychological counselling. M. was later adopted in France and has no contact with the applicant.

9. On 5 January 2010 the applicant gave birth to her third child, A., in the Postojna Maternity Hospital. The hospital informed the Ljubljana Social Work Centre of A.'s birth. The Ljubljana Social Work Centre arranged for the applicant to be transported to and accommodated at her mother's home. The Cerknica Social Work Centre ("the Cerknica Centre") provided the applicant with a nursing service and housekeeping assistance three times a week. The T. Association also helped the applicant care for A. Nonetheless, it was noted that the applicant was unable to take care of A. and often travelled and left A. at home, and that the applicant's mother could not cope with this. Since December 2010 A. has been living with his father, G., in France.

10. The present application concerns the withdrawal of the applicant's parental rights in respect of her fourth child, E., who was born on 31 December 2010.

A. Factual background to the withdrawal of the applicant's parental rights in respect of E.

11. On 29 December 2010 the applicant's mother phoned the Cerknica Centre to inform them that the applicant was returning from France by train and was heading directly to Postojna Maternity Hospital, where she would shortly give birth. On 4 January 2011, after the applicant had given birth to E., the Cerknica Centre's social workers visited her in the hospital, where the medical staff brought to their attention that the applicant was unable to take care of E. and needed constant supervision and help. Consequently, on 7 January 2011 the applicant's stay in the hospital was extended until 10 January 2011. Following her discharge from the hospital, she went to live with her mother temporarily – an arrangement which the applicant and her mother agreed upon following an intervention by the Cerknica Centre.

The Cerknica Centre provided the applicant with family help at home, a social service which included the participation of the T. Association and the community nursing service, domestic help with household tasks three times a week, and the assistance of a peripatetic worker from the Ljubljana Psychiatric Hospital.

12. On 19 January 2011, via email, the Cerknica Centre asked the Slovenian Consulate in Paris to enquire of G. whether he was willing to take care of E. On 7 February 2011 the consulate replied to the Cerknica Centre that the French social services had talked with G., who had doubts as to whether E. was his daughter and whether he could take care of her. The Cerknica Centre's records of the phone call show that on 11 February 2011 it tried to telephone G. but was unsuccessful. On 15 February 2011, via email, the Cerknica Centre asked the consulate to enquire of G. whether he was willing to give his consent to E.'s adoption.

13. On 20 January 2011 the peripatetic worker who monitored the applicant at home (see paragraph 11 above) informed the Ljubljana Psychiatric Clinic of his concerns about the applicant's mental state. The applicant was referred for an emergency examination by a clinical psychologist, which she refused to undertake. In addition, the community nursing centre and the worker helping the applicant with household tasks informed the Cerknica Centre of problems they had noticed in the applicant's care of the newborn.

14. On 28 January 2011 the social workers talked to the applicant, who, considering E. old enough to travel, explained to them that she was planning to travel to France before 31 January. Subsequently, the team of professionals met at the Cerknica Centre and concluded that E.'s well-being was at serious risk.

15. On 30 January 2011 the applicant travelled to France to see her husband. She left E. with her mother, E.'s grandmother. As the applicant's mother was not willing to take care of E., on 1 February 2011 the Cerknica Centre issued an interim removal order with immediate effect whereby E. was removed from her parents and placed in the Crisis Centre for Children. The Cerknica Centre also filed a criminal complaint against the applicant for abandoning a child, but the criminal proceedings were later discontinued.

16. On 16 February 2011 E. was placed in the care of the Cerknica Centre on the basis of section 201 of the Marriage and Family Relations Act (hereinafter "the Family Act" – see paragraph 60 below). On 18 February 2011, by way of an interim care order, the Cerknica Centre placed E. in the care of foster parents, who later adopted her (see paragraph 50 below). On 23 March 2011 the Cerknica Centre issued a final removal and care order removing E. from her parents and placing her in foster care. It based its decision on sections 119, 120, 157 and 158(2) of the Family Act (see

paragraph 60 below). It does not appear that the applicant attempted to challenge the removal and/or care order in any way.

17. Following E.'s birth the applicant often changed places and travelled back and forth to France. Her location was not always known to her family or the Cerknica Centre, which tried to reach her, unsuccessfully.

B. The applicant's illness and treatment

18. The applicant has been diagnosed with paranoid schizophrenia. In October 2009 she was placed in a psychiatric hospital for the first time, in Ljubljana Psychiatric Clinic. Since giving birth to E. she has been placed in a psychiatric hospital several times, including against her will on at least one occasion.

19. In her statement of 10 January 2011 a doctor from the Postojna Maternity Hospital noted that the applicant had been refusing to take medication, and the peripatetic worker from the Ljubljana Psychiatric Clinic said the same in his statement of 20 January 2011 (see paragraph 13 above).

20. The case file indicates that as of 7 January 2011 the applicant was regularly examined by a psychiatrist from the Idrija Psychiatric Hospital, often on a monthly basis.

21. The Cerknica Centre's records of 9 April 2014 show that the Cerknica Centre offered services including counselling to the applicant, who refused this, arguing that she had already joined a self-help group and had monthly sessions with a psychologist and psychiatric examinations every three months.

22. Dr M., who examined the applicant, stated in his report of 31 March 2014 and at a hearing (see paragraph 41 below) that the applicant's illness, paranoid schizophrenia, had been in remission for some time and she had been taking her medication regularly. In 2015 the applicant's condition worsened and she had to be hospitalised twice in that year.

C. The applicant's contact with E. after the removal order

23. On 15 March 2011 the Cerknica Centre held the first meeting of the Individual Project Team (hereinafter "the IPT"), which was set up under the Foster Care Execution Act (see paragraph 61 below) to monitor E.'s foster care. Although, as E.'s parent, the applicant was invited to the meeting, she did not attend it because she was travelling. The IPT was composed of social workers, the foster parents and the applicant.

24. The Cerknica Centre's records of the IPT's meeting, prepared by a social worker, show that on 6 June 2011 the applicant visited the Cerknica Centre, enquiring about E. for the first time. On 5 July 2011 the first contact session with E. took place. The social worker who was supervising the contact session noted in the report that the applicant's behaviour during the

contact session had been inappropriate for E.'s age, because she had tried to put E., then six months old, on her feet.

25. The Cerknica Centre's records of the IPT's meeting show that on 12 January 2012 the applicant again asked the Cerknica Centre if she could see E. The second contact session took place on 31 January 2012. The applicant cancelled the next scheduled contact session which was to take place on 28 March 2012 because of her alleged departure to France. On 15 May 2012 the third contact session took place. The Cerknica Centre's records of a phone call with the applicant indicate that on 19 June 2012 the Cerknica Centre contacted her with a view to arranging another contact session, but no agreement was reached as she ended the conversation saying that she was busy. On 2 July 2012 the Cerknica Centre enquired with the applicant as to whether she wanted another contact session to be arranged, but she declined, referring to her poor "state". As further noted in the Cerknica Centre's records, the applicant confirmed that she was aware that the Cerknica Centre would organise another session as soon as possible if she so wished. Following a request by the applicant of 4 July 2012, the fourth contact session took place on 11 July 2012. A social worker from the Kranj Social Work Centre who was supervising the contact session noted in her report that the applicant was tired during the contact session and stopped playing with E. after a couple of minutes. The contact session scheduled for 26 September 2012 was cancelled due to the applicant's illness.

26. Another thirteen contact sessions between the applicant and E. took place before the end of 2014. They all took place in the presence of the foster parents and the Cerknica Centre's social worker. According to the records of the IPT meetings, the presence of the foster parents was necessary because of E.'s age and the need to ensure her sense of security, given that she and the applicant did not have a close relationship.

27. The reports of the contact sessions prepared by the social worker supervising them indicate that during most of the sessions the applicant appeared distant and remained largely passive, observing E. without having any interaction with her. Numerous reports of the contact sessions further indicate that during the sessions E. did not approach the applicant on her own initiative. On several occasions she wanted to leave before the end of the contact session and stayed only because the foster parents entertained her. Furthermore, in her reports of the sessions, the social worker noted that the foster parents encouraged E. to establish contact with the applicant and the relatives present at the sessions, and that they were accessible and communicative with respect to the applicant and her questions about E. Following a request made by the applicant at the IPT meeting in February 2014 for help in establishing her relationship with E., the social worker and the foster parents offered her help with regard to future contact sessions and encouraged her to engage more actively in establishing the relationship. It was noted in the reports of the contact sessions of 2 July 2014 and

10 September 2014 that the applicant had made efforts to establish a connection with E., which had led to some interaction between them. However, no such interaction had occurred at the last contact session, which had taken place on 26 November 2014.

28. The records of the IPT meetings, which took place every couple of months, show that the contact sessions took place on the dates agreed at the meetings based on the applicant's requests. The Cerknica Centre, the foster parents and the applicant agreed that the contact sessions would take place gradually because E. did not know the applicant.

29. On 8 January 2014 the applicant asked the Cerknica Centre for contact sessions on a more regular basis. The Cerknica Centre advised her to institute proceedings before the Ljubljana District Court, which was competent to decide on her contact with E. in the absence of the agreement.

30. As requested by the applicant in May 2016, the inspection authorities of the Ministry of Labour, Family, Social Affairs and Equal Opportunities carried out an inspection with a view to determining whether the Cerknica Centre had impeded contact between the applicant and E. Their report and the documents in the file show that on at least on five further occasions the Cerknica Centre informed the applicant that she should institute proceedings before the Ljubljana District Court if she was not satisfied with the existing arrangements. The IPT records also show that at that time the applicant was in contact with her lawyer, with whom she had discussed the possibility of taking the matter to court.

31. According to the report issued by the inspection authorities, the Cerknica Centre had acted in a professional way in arranging the contact sessions, and had good reasons to put the interests of the child first. The inspection report also noted that the Cerknica Centre had insisted on that contact pending a decision by the Constitutional Court, and had on numerous occasions informed the applicant of the judicial remedy she should use if she found the existing contact arrangements unsatisfactory. The report further found that after the Constitutional Court had confirmed the withdrawal of the applicant's parental rights (see paragraph 48 below), the Cerknica Centre had properly considered that the contact had been forced upon E. and thus was not in her best interests.

32. It would appear that the Cerknica Centre also asked the Human Rights Ombudsman to provide a general opinion on what would be in the child's best interests in the situation in question – the withdrawal of parental rights or permanent foster care. On 29 July 2015 the Human Rights Ombudsman replied to the Cerknica Centre, noting that if the child could not be reunited with her family, the next best solution was adoption. They confirmed that foster care should be understood to be a temporary measure and that, as regards a change in contact arrangements, advising the mother to institute court proceedings was the only available option.

33. The records of the Cerknica Centre indicate that on 23 September 2015 the Cerknica Centre enquired of the applicant whether she had taken any steps to change the arrangements by means of court proceedings. According to those records, she answered that she had been too busy with other things.

34. On 15 February 2016 the Cerknica Centre sent the applicant some photos of E.

D. Proceedings relating to divesting the applicant of her parental rights

1. First set of proceedings before the Ljubljana District Court

35. On 7 March 2011 the Cerknica Centre lodged an application with the Ljubljana District Court seeking that the applicant and G. be divested of their parental rights, on the grounds that they had neglected and abandoned E., had not taken care of her basic needs, had repeated the problematic behaviour, and had jeopardised the well-being of the child. In the Cerknica Centre's opinion, protecting the interests of the child required the withdrawal of the parental rights of both parents.

36. The applicant received legal aid and was represented by legal counsel in the proceedings. She disputed the Cerknica Centre's arguments in the application of 7 March 2011, and argued that she, as a result of mental illness, was not able to understand the proceedings. She submitted that since E. was safe in foster care there was no urgency to divest her of her parental rights. In her view, the court should wait for her mental health – which at that point was poor – to improve before deciding the application. Provided that she received appropriate therapy, she would be capable of taking care of the child, so the withdrawal of her parental rights was not necessary. In addition, the applicant argued that the aim of the proceedings was to give E. up for adoption and preclude her from later seeking to have her parental rights restored.

37. The court appointed an expert psychiatrist, Dr K., who met the applicant for an interview. In his opinion of 16 May 2012 he submitted to the court that the applicant suffered from a disease on the schizophrenia spectrum, but had the capacity to be a party in the proceedings. He noted that the applicant was in remission (the period when a patient does not have positive psychotic symptoms); however, that was a recent development and the remission was still unstable. He further noted that the disease could rapidly turn into its active form. Dr K. also stated that provided the applicant took the prescribed medication regularly, her health condition would not deteriorate; however, if she failed to do so, the deterioration would be inevitable. He attached the opinion of an expert in clinical psychology, J., who had also examined the applicant and found that her

attitude toward her health condition was not sufficiently serious and that her sense of reality was deficient. The applicant showed indications of extensive and persecutory delusions, while her emotional state was elated and inappropriate for the situation. Dr K. further explained that, in his opinion, the applicant was not able to take care of the child at that time. Her health condition had not improved to such a degree that she could assume the care and upbringing of a child who was a minor.

38. On 29 November 2012 the Ljubljana District Court issued a decision whereby it divested the applicant and G. of their parental rights in relation to E. on the basis of section 116(1) of the Family Act (see paragraph 60 below). With regard to the applicant's understanding of the proceedings, the Ljubljana District Court concluded, on the basis of Dr K.'s expert opinion as well as the applicant's own statements, that she was regularly taking the medication and that she did not lack the capacity to be a party to the proceedings at issue. With respect to G., who had not responded to the Cerknica Centre's application for the withdrawal of his parental rights and had remained inactive in the court proceedings, the court noted that he had not shown any interest in E. and had clearly demonstrated that he was not going to take care of her. With respect to the applicant, it found that the applicant had abandoned E. and had seriously neglected her parental responsibilities. The court pointed out that the same pattern could be observed as regards the applicant's attitude towards the other three children.

2. The applicant's first appeal

39. Following an appeal by the applicant, on 16 April 2013 the Koper Higher Court quashed the first-instance court's decision in the part relating to the applicant and remitted the case for re-examination. It stressed that the lower court had failed to clarify whether the applicant's behaviour in question and her attitude towards her illness and treatment was due to the mental illness itself, or was a result of her voluntary actions.

3. Second set of proceedings before the Ljubljana District Court

40. In the new proceedings, the Ljubljana District Court appointed a new expert psychiatrist, Dr M., and obtained the opinion of an expert psychologist, Dr P. The court held a hearing and, *inter alia*, examined the applicant and the two experts.

41. After personally examining the applicant on 23 September 2013, Dr M. submitted to the court a written expert opinion confirming that she had a mental disorder on the schizophrenia spectrum and noting that her character appeared to have been affected by the illness. According to Dr M., the applicant's lack of a realistic understanding of her illness, her negative attitude towards treatment, and her abandonment of E. were all the results of her mental illness. Acknowledging that the illness could be controlled and

the symptoms managed by medication, as well as noting that the course of the condition depended on each individual, Dr M. stressed that the prognosis for the applicant's illness was not good, and therefore it was not possible to expect her to be able to take care of E. In particular, it was noted that, notwithstanding the episodes of remission, schizophrenia, like some other mental illnesses, led gradually to a permanent deterioration in a person's capacities, and such a process would occur despite the applicant's medical treatment. Dr M. also noted that, in the interview, the applicant herself had openly expressed doubts as to whether she could take care of her daughter on her own.

42. After conducting an interview with the applicant and clinically examining her, Dr P. submitted a written report in which he noted that the applicant suffered from a chronic mental disorder on the schizophrenia spectrum which was incurable but treatable (manageable). In his opinion, deterioration causing the applicant's unpredictable behaviour was inevitable, and the old behaviour pattern was likely to repeat. According to him, the applicant's understanding and awareness of the child's needs had been reduced to an understanding and awareness of her primarily physiological needs. The applicant did not understand the parental role and was unable to see the child as an individual with her own needs and desires. He found that the applicant was properly equipped intellectually, but had emotional problems such as diminished empathy. In his opinion, at that time the applicant was not able to care for or bring up E., and was not a suitable person to do so because she could not be expected to provide a stable environment for the child. He also noted that she had not expressed a wish to have custody of E., but had expressed her desire to have more frequent contact with her. Dr P. found E. lively, communicative and cordial, but restrained in relation to the applicant. The expert concluded that contact with the mother was burdensome and forced upon E. The expert also noted that, when observing the contact session, he had not noticed any emotional connection between the applicant and E.

43. On 3 April 2014 the Ljubljana District Court issued a new decision divesting the applicant of her parental rights in relation to E. on the basis of section 116 of the Family Act (see paragraph 60 below). The court found, on the basis of the new expert opinions (see paragraphs 41 and 42 above), that the applicant had suffered from paranoid schizophrenia for many years before its critical manifestation. It further reasoned that the consequences of the disease in the applicant were a non-critical attitude to the illness, and as a result the applicant was not able to understand her health problems, their seriousness, or the importance of treatment. Equally, her neglectful conduct in relation to E. when she had left her did not reflect the true will and conscious action of the applicant. The court weighed the interests of the child against those of the applicant. It noted that, in the absence of any realistic possibility of the applicant resuming care of the child, it was more

appropriate to withdraw her parental rights and provide the child with a substitute family for permanent care and emotional stability. Having regard in particular to the above-mentioned expert opinions, the court concluded that the applicant should be divested of her parental rights. It based the conclusion on the fact that she suffered from paranoid schizophrenia which, though controllable, was incurable, could possibly worsen, and would in any event lead to negative personality changes. The court also had regard to fact that the applicant had four children but all the children were cared for by other foster or adoptive parents, and she had spent only a month with E., whereas E. had spent most of her life with the foster family, in an environment where she could be provided with permanent care and emotional stability, something which could not be provided by her mother.

4. The applicant's second appeal

44. The applicant appealed, arguing that it was unacceptable to divest her of her parental rights solely because of her mental illness, and that the legislation provided no basis for such an extreme and disproportionate measure. In her opinion, E.'s interests would be sufficiently safeguarded by foster care, which would be a less intrusive measure. Moreover, she argued that her illness was in remission, she was regularly taking medication, and did not present any danger to E. She further argued that the conclusion that contact was not in E.'s interests was unfair. In her view, the first-instance court had not taken into account that she had been doing her best, including by trying to find a job in order to improve her situation.

45. On 21 October 2014 the Koper Higher Court dismissed the applicant's appeal. It held that the fact that her actions had not been deliberate could not be a crucial factor in a decision under section 116 of the Family Act. The main criterion for a decision was the child's best interests. The court further found that the reason behind the withdrawal of the applicant's parental rights was the fact that there was no prospect that the family would ever be reunited. During the remission stage of her illness, the applicant could function in her daily life, but she could not take care of her daughter either at that time or in the future. In this connection, the court found that the applicant lacked empathy, did not understand her parental responsibilities, and had been mostly passive during the contact sessions with E. The court noted that the applicant had not abused her contact rights, but had failed to establish proper communication with E., and consequently a basic parent-child relationship. The court rejected the applicant's argument that E. should remain in foster care, finding that this was only a temporary measure intended to enable parents to exercise their parental responsibilities pending their children being returned to them. Since reunification of the applicant's family was not likely to happen, protection of the child's best interests required a more lasting measure aimed at ensuring permanent care and emotional stability for the child. The court

concluded that "when balancing the child's interests against the mother's rights, it was not possible to give priority to the mother's interest in maintaining her parental rights".

46. The applicant subsequently asked the Supreme State Prosecutor to lodge a request for the protection of legality. On 19 February 2015 the Supreme State Prosecutor informed the applicant that there were no grounds for his intervention in the case.

5. The applicant's constitutional complaint

47. On 30 January 2015 the applicant lodged a constitutional complaint against the Koper Higher Court's decision (see paragraph 45 above). She invoked several provisions of the Constitution, as well as Articles 6, 8 and 14 of the Convention and Article 1 of Protocol No. 12 to the Convention. She disputed the lower court's findings concerning the poor quality of the contact she had had with E., and argued that depriving her of her parental rights was unjustified because she had not posed any danger to E., and the court's preference for adoption over fostering in cases such as hers violated the biological parents' rights. In her opinion, the lower court's position implied that people with incurable mental illnesses who presented no danger to their children could not have parental rights just because they were unable to take proper care of their children. She also argued that the concept of proper care had not been defined by any of the lower courts. Furthermore, she pointed out that she wished to maintain contact with E., but had been unable to do so since the Koper Higher Court's judgment of 21 October 2014.

48. On 10 December 2015, by five votes to three, the Constitutional Court dismissed the applicant's constitutional complaint. It found that the lower court's arguments relating to the applicant's permanent inability to take care of E., the absence of a family bond between her and E., her inability to establish a relationship with E. during the contact sessions, and the benefits of providing E. with a substitute family for permanent care and emotional stability, justified the withdrawal of her parental rights in the child's best interests. In the Constitutional Court's opinion, when weighing the child's interests against the mother's rights, the interests which should prevail were E.'s interests in her permanent and stable care and upbringing. As regards the applicant's argument concerning discrimination against mentally ill people, the Constitutional Court found that the withdrawal of her parental rights had not been based on the fact that she suffered from mental illness, but on the fact that she had been permanently incapable of taking care of E. and the finding that there was no prospect that the family would ever be reunited. It was for domestic courts to protect the child's interests in the most appropriate way. In E.'s case, they had decided that this was possible only by ensuring a permanent and stable substitute family environment. Moreover, the Constitutional Court upheld the Koper Higher

Court's finding that section 116 of the Family Act could be applied to the present case despite the applicant lacking intent as regards her actions threatening E. (see paragraph 45 above). It considered that the Koper Higher Court's interpretation of the scope of the application of section 116 complied with Article 54 (1) of the Constitution, which provided that parents could be divested of their parental responsibility or have that responsibility limited only on the grounds provided for by law in order to protect a child's interests. In the Constitutional Court's view, that provision did not imply that the State was to protect the child's interests only when he or she was threatened by the deliberate actions or omissions of his or her parents. The Constitutional Court's decision was served on the applicant's representative on 12 January 2016.

49. Judge D. Jadek Pensa of the Constitutional Court, who voted against the above decision, wrote a dissenting opinion, joined by the other two dissenting judges. She pointed out that the interference in the applicant's case had been particularly serious, and noted that the right to know one's parents and have contact with them was an internationally recognised right of a child. In her view, the lower court should explain why E. would be at risk of harm by knowing her mother and having contact with her. She also found it questionable whether the applicant had been given sufficient opportunity to form a bond with E., and argued that the positive obligations imposed on the authorities, including the Cerknica Centre, had been disregarded.

E. Adoption of E.

50. On 16 May 2016 the Cerknica Centre issued a decision on E.'s adoption by her foster parents. On 2 June 2016 the decision became final and the foster care in respect of E. was terminated and in effect replaced by the adoption. The applicant was not a party to those proceedings.

51. In its decision, the Cerknica Centre relied on Article 20 of the Convention on the Rights of the Child and section 141 of the Family Act (see paragraphs 60 and 63 below). It emphasised that foster care was a temporary measure and that a child needed a long-term placement which provided him or her with permanent loving care and intimacy from the same person. The Cerknica Centre found that it had exhausted all possibilities for reunification with the biological family. Furthermore, the Cerknica Centre held that the relationship between E. and her foster parents was strong and safe, indicating that the foster parents would take care of her in a responsible and appropriate manner.

F. Contact proceedings

1. Proceedings before the Koper District Court

52. On 19 May 2016 the applicant initiated court proceedings against two social work centres which had been involved in the contact arrangements in the past and E.'s adoptive parents, seeking the regulation of her contact with E. and an interim decision setting out temporary contact arrangements pending the court proceedings. She requested that contact sessions take place every fortnight for three hours. In her opinion, it was in the child's interests for her to know her mother. She maintained that contact sessions with E. in the past had been rare, and that she had expressed her wish to have them more often; however, the Cerknica Centre had limited them even further and had suspended them after the Constitutional Court's decision (see paragraphs 31 and 48 above). The applicant received legal aid and was represented by legal counsel in the proceedings.

53. The Koper District Court appointed an expert in psychiatry and paediatric psychiatry, Dr Z., who, *inter alia*, carried out a psychiatric examination and an interview with the applicant, and held a paediatric psychiatric interview with E. In her expert opinion, Dr Z. emphasised the applicant's inability to establish an adequate relation with E. Notably, her findings showed that the applicant was emotionally unresponsive, lacked empathy, had a distorted view of reality, and was not capable of either perceiving the child as an individual or reacting to her needs. In Dr Z.'s opinion, E.'s contact with someone like the applicant, who did not understand and was not able to react to the child, would be unpleasant, painful and burdensome. Since, in the present case, it was the child's biological mother who did not know how to respond or touch the child, the contact experience could be traumatic for E. Dr Z. also emphasised the relevance of the applicant's negative attitude towards E.'s adoptive parents, which could be harmful to E. She observed that, in the past, E.'s adoptive parents had encouraged E.'s contact with the applicant and had not acted as her competition. The expert refused to arrange a contact session between the applicant and E., as she believed that that would be contrary to the professional rules of medicine and harmful for E.

54. On 9 August 2016, after holding a hearing, the Koper District Court dismissed the applicant's application for the regulation of contact (*predlog za ureditev stikov*) and an interim decision. It firstly observed that E. had been adopted after the contact proceedings had been initiated (see paragraph 50 above). Consequently, the social work centres had stopped playing a role in arranging the contact, and the court dismissed the applicant's application in so far as it was directed against them, without any further examination. Furthermore, the adoption had resulted in a different legal basis which the court had to apply in determining contact between the applicant and E. In particular, since the applicant was no longer considered

to be E.'s parent, the relevant provision for the regulation of contact became section 106.a of the Family Act, which regulated a child's contact with people who were not his or her parents (see paragraph 60 below). The court held that it would allow contact between E. and the applicant if it established on a cumulative basis that E. was personally attached to the applicant, had a family-type relationship with her, and that the contact was in E.'s interests. Therefore, it found the question of responsibility for the quality of contact sessions in the past irrelevant for the purposes of determining the case at hand.

55. In its assessment, the court relied on Dr Z.'s expert opinion (see paragraph 53 above) and the statements of the social worker who had supervised the contact sessions in the past and observed that, during the sessions, the applicant had been largely passive and there had been no proper interaction between her and E. It concluded that there was no personal connection between the applicant and E. Having regard to the nature of the actual relationship between the applicant and E., the applicant's health situation at that time, her inability to form a relationship that would be beneficial to E., her negative attitude towards the adoptive parents, and the consequences the contact would have for E., the court found that the contact would not be in her interests. As the child's interests constituted the first and paramount consideration in the case, it dismissed both the application for contact and the application for an interim decision.

2. The applicant's appeals

56. The applicant appealed, maintaining that the decision not to grant her any contact was disproportionate and based on flawed findings and an erroneous application of the law. She argued that Dr Z.'s expert opinion was incomplete and focused on the observations of contact sessions in 2014. In the applicant's opinion, Dr Z. had failed to examine the possibility that progress in establishing a relationship with E. could have been made had the Cerknica Centre not arbitrarily suspended the contact more than a year and a half earlier. Furthermore, invoking Article 8 of the Convention, she argued that the first-instance court had not carried out a proportionality test when weighing up the rights of the child and the applicant. It had also failed to assess whether the authorities had done everything to maintain her relationship with E., especially after her parental rights had been withdrawn.

57. On 4 April 2017 the Koper Higher Court dismissed the appeal. It found that the first-instance court had convincingly established in a well-reasoned decision that contact with the applicant was not in E.'s interests because of the applicant's lack of emotional capacity to establish a relationship with E. and her negative attitude towards the adoptive parents. The Koper Higher Court emphasised that in cases like the one at hand, where the interests of the biological mother, the child and the adoptive family had to be balanced against each other, the interests of the child

constituted the main guidance. Since the reintroduction of contact with the applicant would be harmful, even traumatic, for E.'s health and development, the mother's right to family life had to give way to the child's right.

58. The applicant lodged an application for leave to appeal on points of law, which was rejected as inadmissible by a decision of the Supreme Court of 8 August 2017. The court held that the decision against which the applicant had lodged an application for leave to appeal had been issued in non-contentious civil proceedings in which an appeal on points of law was inadmissible unless otherwise provided for by law.

59. A request by the applicant for free legal aid for the proceedings before the Constitutional Court had been rejected on the basis that the proceedings had no prospect of success owing to non-exhaustion of domestic remedies. She did not appeal against that decision, nor did she lodge a constitutional complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Marriage and Family Relations Act ("the Family Act", Official consolidated version published in Official Gazette no. 69/04, with amendments)

60. The relevant parts of the Family Act read:

Section 4

"...

(2) In order to ensure healthy growth [and] harmonious personal development and to develop capacities for independent life and work, parents have the right and obligation to care for the subsistence, personal development, rights and interests of their minor children. These rights and obligations constitute a parental right.

..."

Section 106

"(1) A child has the right to have contact with both parents. Both parents have the right to have contact with their children. The contact is provided especially for the benefit of the child.

..."

Section 106.a

"(1) A child has the right to have contact with others with whom he or she has a family connection and to whom [he or she] is personally attached, unless this is against the child's interests. These persons are, especially, the child's grandparents, brothers and sisters, stepbrothers and stepsisters, former foster parents, [or] a former or current spouse or cohabiting partner of one of the parents.

(2) The contact is agreed upon by the child's parents, the child – if he or she is able to understand the meaning of the agreement – and the persons [listed in] the preceding paragraph. If they do not reach an agreement themselves, the [relevant] social work centre helps them to find an agreement. The extent and the method of the contact have to be in the child's interests...

(3) If [the persons who are to agree upon contact] cannot agree on the contact, even with the help of the [relevant] social work centre, the court decides on the contact in a non-contentious civil procedure..."

Section 116

"(1) A parent who abuses his or her parental rights, or abandons a child, or demonstrates with his or her behaviour an unwillingness to take care of the child, or in any other way seriously neglects his or her responsibilities, shall be deprived of his or her parental rights by a court decision.

(2) The parental rights of a parent can be restored by a court decision, if the reason for which he or she was divested of his or her parental rights ceases to exist, unless the child has been adopted.

(3) The court decides on the issues referred to in the preceding paragraphs in a non-contentious civil procedure."

Section 119

"The [relevant] social work centre has to take measures necessary for the care of the child, for the protection of his pecuniary and other rights and interests."

Section 120

"(1) If the parents neglect to care for the child, or if [removal] is in the child's interests for another important reason, the [relevant] social work centre can remove the child from the parents and place him or her in another person's care or institution.

(2) Other parental rights and duties do not cease to exist upon the removal of the child.

(3) The [relevant] social work centre monitors the execution of the measure [referred to in] the first paragraph."

Section 141

"(1) Only where the child's parents are unknown, or their residence has been unknown for a year, or they have given their consent to a competent authority to give the child up for adoption, can that child be adopted. There is no need for the consent of a parent who has been deprived of his or her parental rights or who is permanently unable to express his or her will.

(2) Adoption can take place a year after one of the conditions in the preceding paragraph has been fulfilled. Exceptionally, adoption can take place before a year has passed, if the [relevant] social work centre considers it to be in the best interests of the child.

(3) A child who does not have living parents can also be adopted."

Section 143

"Upon adoption, all rights and obligations of the adopted child towards his or her [biological] parents and other relatives, as well as the rights and obligations of the [biological] parents and relatives towards the adopted child, are terminated."

Section 157

"(1) The [relevant] social work centre places in foster care: a child who does not have a family; a child who cannot live with his or her parents for various reasons; or a child whose physical and mental development is in danger in the environment in which he or she lives.

..."

Section 201

"The [relevant] social work centre places in care a minor child who does not have parents or is not being taken care of by his or her parents."

B. The Foster Care Execution Act (Official Gazette no. 110/02, with amendments)

61. The relevant part of the Foster Care Execution Act reads as follows:

Section 35

"(1) After the child is placed in the foster family, the child's social work centre must set up an Individual Project Team composed of a social worker representing the child's social work centre, a social worker representing the foster parents' social work centre, the parents, and the child, unless the child's social work centre is of the opinion that, in the circumstances of the case, the child's presence on the team would not be in his or her interests.

..."

Section 36

"(1) The Individual Project Team plans and proposes appropriate and professional steps (*ustrezno ravnanje in strokovno obravnavo*) in relation to the child and directly monitors the child in the foster family. To this end, it prepares an individual plan for each child ... which must be adapted to the age [of the child] or to the stage of the child's development, [and] to the needs of the child, and must be set up in such a way as to ensure the integrated treatment and monitoring of the child.

..."

C. Domestic jurisprudence

62. In decision no. II Ips 161/2013 delivered on 11 July 2013 the Supreme Court examined a case in which biological parents were divested of their parental rights. The mother suffered from multiple mental disorders and the father was, due to his pathological attachment to his wife, unable to take care of the children. The court pointed out that the guiding principle in

all proceedings concerning children should be the best interests of the child. It further noted that, in practice, the principle of the least intrusive measure should be applied, meaning that the measures which least affected the parents should be chosen as long as they could sufficiently protect the child's interests. It further found as follows:

> "When the competent authorities consider that the protection of the child requires his or her exclusion from the family, ... [they] must strive to rehabilitate the family, by offering professional help, so that the child can return... If it turns out that the child can never return to the parents, ... [he or she] should be provided as soon as possible with stable and permanent care. These fundamental principles are also relied on by the European Court of Human Rights in its decisions. The conditions which must be fulfilled for the removal of the child ... and those which must be fulfilled for the withdrawal of parental rights ... are not clearly distinguished in law. The difference is meant to lie in the weight of the acts or omissions of the parent, or in the intensity of a violation of parental ... [duty], but it is very difficult to determine the point when the reasons for removing the child from the parents [also] amount to reasons for withdrawing parental rights. When choosing one measure or another, it is most important to determine whether there is a possibility that the circumstances on the parents' side will improve to such an extent that the children can return to them and [the parents] can continue to care for [the children] and bring them up. When reunification or rehabilitation of the family is possible, the removal of the child from the family is a more appropriate measure. The measure of withdrawing parental rights should be applied when the circumstances indicate that there is no chance and no prospect that the parents can ever resume care of the child. The withdrawal of parental rights in such situations ensures the permanence of substitute care and emotional stability, which is also important for the psychological and physical development of the child.
>
> The findings of the experts confirm the opinions [expressed] in the expert literature, which point out that it is not acceptable to put the children's well-being at risk to protect the rights of parents who are not prepared or, due to various circumstances, not able to assume responsibility for the regular and continuing care of the child. It is emphasised that when there is no realistic chance that the parents will resume responsibility for the care and upbringing of the child, and the child is, due to the long-term substitute care, attached to the foster parents, the competent authorities should ensure that this relationship becomes permanent, to protect the child's well-being. Although the withdrawal of parental rights is the most severe measure against the parents, we should not attribute to it an exceptional place in the system of [available] measures for protecting the child's interests. When deciding on the ... measure, it is not important whether the defendant is or is not guilty of creating the situation, because the purpose of the imposed measure is not to punish the parents. It is likewise not important whether the competent authorities truly did everything they could with a view to rehabilitating the family in the particular case, ... [or] that the proceedings lasted an unduly long time, which was [confirmed], ... in the present case by the European Court of Human Rights ... Unfortunately, the court also cannot take into account how much the impugned measure emotionally affected the applicant. As mentioned at the beginning, in the instant case, what is important is only what is now in the best interests of ... [the children], in addition to what has been set out above and in the light of all the important circumstances."

III. RELEVANT INTERNATIONAL LAW MATERIAL

63. The Convention on the Rights of Child was adopted on 20 November 1989 and entered into force on 2 September 1990. On 6 July 1992 Slovenia succeeded to it. Article 20 reads as follows:

"1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

64. On 24 April 2008 Slovenia ratified the Convention on the Rights of Persons with Disabilities, which was adopted on 13 December 2006 and entered into force on 3 May 2008. The relevant parts read as follows:

Article 1

Purpose

"The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

Article 23

Respect for home and the family

"...

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

...

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

65. In essence, the applicant complained that the withdrawal of her parental rights and, as a consequence, the adoption of E. had breached her right to respect for her family life as provided for in Article 8 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for his private and family life ....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

67. The applicant argued that she had involuntarily neglected her parental responsibilities, and therefore should not have been divested of her parental rights. In particular, under the domestic law, her parental rights could have been withdrawn only if she had neglected E. consciously. However, in her case, it had been established that this had not been the situation, and thus there had been no legal basis for the withdrawal of her parental rights. In this connection, the applicant explained that, under the domestic law, the reasons for removing a child under section 120 of the Family Act should not be conflated with those for withdrawing parental rights under section 116 of the Family Act (see paragraph 60 above). In this connection, the applicant also disputed the relevance of the Supreme

Court's decision no. II Ips 161/2013 of 11 July 2013 (see paragraph 62 above) to the present case.

68. The applicant further argued that the withdrawal of her parental rights had been the most severe measure, which should have been used only exceptionally when no other measure could sufficiently protect the child. In the present case, E. could have remained in foster care, with the applicant retaining contact rights and legal ties. The applicant stressed that the withdrawal of her parental rights had had particularly grave consequences in her case, as she had been left with no opportunity to influence the adoption proceedings and, in turn, with no opportunity to ever request the return of her parental rights. Her ties with E. had been completely severed.

69. The applicant argued that she had tried to maintain ties with all of her children, but her relationship with her other children should not be considered relevant to the present case. She further argued that her symptoms of mental illness had initially been overlooked by the social workers, who should have been equipped to recognise her disease and should have responded promptly to it instead of focusing on removing her children from her care. In her view, the authorities had initiated the proceedings to withdraw parental rights on the basis of a wrong assessment of the facts. The removal of E., then a new-born baby, from the applicant had been an extreme, premature and reckless measure, and thus had been incompatible with Article 8.

70. Moreover, there were no obstacles in the Slovenian legal system to continuous foster care, which would ensure E.'s emotional stability. In fact, foster care typically lasted long periods of time, even extending into adulthood, and adoption was used only exceptionally in Slovenia. However, in the present case, the authorities had started making enquiries about a possible adoption fifteen days after the removal of E. The aim from the start had therefore been to put E. up for adoption.

(b) The Government

71. The Government acknowledged that there had been an interference with the applicant's right under Article 8 of the Convention. They further maintained that the interference had been based on section 116 of the Family Act (see paragraph 60 above) and had therefore been lawful.

72. As regards the proportionality of the interference, the Government argued that E.'s placement in foster care and her subsequent adoption had been necessary measures securing her long-term care and emotional stability. They maintained that E. had been abandoned by the applicant, and neither E.'s father nor the applicant's mother had been willing to care for her; substitute care had thus been inevitable. Moreover, in view of the doctors' opinions and the fact that the applicant, even when in remission, had negative symptoms, such as apathy, there had been no prospect of her assuming care of E. In this connection, they referred to *X v. Slovenia* ((dec.),

no. 4473/14, 12 May 2015), and argued that there too parental rights had been withdrawn because of the applicant's personality and how this had manifested itself in relation to his children. Since E. needed long-term care, and foster care was meant to be only a temporary measure, the adoption had been necessary.

73. The Government further argued that the authorities had done everything possible in the circumstances so that the applicant could maintain her parental rights. They pointed out that the applicant had been referred by a doctor in a gynaecology clinic for psychiatric treatment prior to the birth of A. (see paragraph 9 above), but she had refused this and subsequently changed her place of residence, her gynaecologist and the hospital dealing with her pregnancy, and had thereby avoided getting the necessary psychiatric help. The social services, which had initially been unaware of her mental health diagnosis, had been involved in the situation from the beginning, firstly trying to find accommodation for the applicant and E. They had also arranged for home assistance and assistance from the psychiatric hospital, and had later taken E. into foster care and organised contact. The Government drew attention to the fact that from March 2011 until August 2012 the applicant had suffered from positive symptoms of her illness (changes in her behaviour and thoughts), had been hospitalised on four occasions, and had been travelling between Slovenia and France, which, in their view, had made it particularly difficult for the social services to work on the reunification of the family. Only one contact session had taken place during this period, in July 2011 (see paragraph 24 above), when E. had been seven months old and already attached to her foster parents. The Government also argued that contact sessions with E. had been organised every time the applicant had asked for them, and had also continued after the withdrawal of her parental rights. The applicant's wish to have her relatives present at the contact arrangements had also been accommodated, but this had not led to any improvement in the relationship between her and E.

74. As regards the communication with G., the Government explained that he had first been contacted with a view to his taking care of the applicant and E. In the light of his reply of 7 February 2011, in which he had raised doubts as to his ability to look after E., and given that E. had been abandoned at that point, the authorities had further enquired of G. whether he would consent to adoption (see paragraph 12 above).

75. Lastly, the Government argued that basis for the removal and adoption of E. had been related to the fact that there had been no prospect that the applicant could ever take care of E., and not to the applicant's illness *per se*. They pointed out that under Article 23 of the Convention on the Rights of Persons with Disabilities (see paragraph 64 above), the best interests of the child were to be paramount, and argued that the authorities had weighed up the applicant's interests and those of E. and, given the

circumstances, had had to give priority to the latter. As regards assistance for the applicant owing to her disability, the Government pointed out that she would have needed twenty-four-hour assistance, which would in effect have amounted to complete substitute care, including as regards E.'s emotional needs. In the Government's view, the Convention on the Rights of Persons with Disabilities could not be interpreted so as to include such a far-reaching requirement.

2. Third-party intervention

76. The adoptive parents of E., also on E.'s behalf, submitted that E. had been very well integrated into the adoptive family, which also included two other children in addition to her – one adopted and another in foster care – who both maintained contact with their biological mothers. The children considered each other to be siblings. The adoptive parents further submitted that all their children understood their family history and were aware of their biological parents. They further submitted that personal contact with the applicant had also been maintained after the contact sessions had ceased, and the legal ties between E. and the applicant had been severed only after five years and five months of foster care.

77. The third-party interveners disputed that they had planned to adopt E. from the start, and submitted that no procedure for placing a child in foster care with a view to adoption existed within the Slovenian legal order or in practice. They also submitted that disallowing adoption in cases such as this one would result in a disparity between the *de facto* situation and the legal situation.

3. The Court's assessment

(a) Interference

78. The Court notes firstly that, by its very nature, the tie between the applicant and E. comes within the notion of family life within the meaning of Article 8 of the Convention. It follows that the withdrawal of the applicant's parental rights amounted to an interference with her rights under Article 8. This point is not contested by the Government (see paragraph 71 above).

79. According to the Court's case-law, such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society" (see, among others, *Buchleither v. Germany*, no. 20106/13, § 39, 28 April 2016).

(b) Legal basis and legitimate aim

80. The applicant disputed that the impugned measures had been "in accordance with the law". In her view, the interpretation of section 116 of

the Family Act (see paragraph 60 above) did not allow for the withdrawal of parental rights in a situation where a parent was unable to exercise parental responsibility through no fault of his or her own (see paragraph 67 above).

81. The Court examined that argument based on the material presented to it. Having regard to the text of the provision in question, other related provisions of the Family Act (see paragraph 60 above), the Supreme Court's interpretation in an earlier case of the conditions for withdrawing parental rights (see paragraph 62 above), and the reasons relied upon by the first and second-instance courts (see paragraphs 43 and 45 above) and endorsed by the Constitutional Court in the present case (see paragraph 48 above), the Court is satisfied that the impugned measures were adopted in accordance with the Family Act (see, *mutatis mutandis*, *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, §§ 59-60, Series A no. 246-A). Moreover, it has no doubts that they pursued the legitimate aim of protecting the "rights and freedoms" of E.

(c) Necessity in a democratic society

82. It remains to be ascertained whether, in the circumstances of the present case, the interference complained of by the applicant was also "necessary in a democratic society".

i. General principles

83. In *Kocherov and Sergeyeva v. Russia* (no. 16899/13, §§ 93-95, 29 March 2016) the Court summarised the principles concerning restrictions placed by the authorities on parental rights as follows:

> "93. Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and contact issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their discretionary powers (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299A, and *Kutzner* [*v. Germany*], § 66 [, no. 46544/99, ECHR 2002-I]).
>
> 94. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. The Court has thus recognised that the authorities enjoy a margin of appreciation when deciding on custody matters. However, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of contact, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Sahin v. Germany* [GC], no. 30943/96, § 65, ECHR 2003VIII; *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000VIII; and *Kutzner*, cited above, § 67).

95. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *IgnaccoloZenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII)."

84. The Court further reiterates that the State has in principle an obligation to enable the ties between parents and their children to be preserved (see *Kocherov and Sergeyeva*, cited above, § 92). Indeed, the Court has previously found that the fact that a child could be placed in a more beneficial environment for his or her upbringing would not on its own justify a compulsory measure of removal from the care of the biological parents; other circumstances must exist pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child (see *S.H. v. Italy*, no. 52557/14, § 56, 13 October 2015, and *K. and T. v. Finland* [GC], no. 25702/94, § 173, ECHR 2001-VII). The authorities' role in the social welfare field is, precisely, to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties. In the case of vulnerable persons, the authorities must show particular vigilance and afford increased protection (see *S.H. v. Italy*, cited above, § 54, and *Akinnibosun v. Italy*, no. 9056/14, § 82, 16 July 2015).

85. The Court further reiterates the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, in particular, *Olsson v. Sweden (no. 1)*, 24 March 1988, § 81, Series A no. 130). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see *K. and T. v. Finland*, cited above, § 178).

86. While family reunification might not always be possible, in cases where the authorities have decided to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption, the Court has had regard to the principle that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests"(see, among others, *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010). However,

Article 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents. Equally, when a considerable period of time has passed since a child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011, and *K. and T. v. Finland*, cited above, § 155). Thus, in the field of adoption, the Court had already accepted that it may be in the child's interest to promote the process of establishing bonds with his or her foster parents (see *S.H. v. Italy*, cited above, § 39).

87. Lastly, as to the decision-making process, in similar cases the Court has relied on the following principles, summarised in *Y.C. v. the United Kingdom* (no. 4547/10, §§ 138 -139, 13 March 2012):

> "138. As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see *Neulinger and Shuruk* [*v. Switzerland* [GC]], § 139, [no. 41615/07, ECHR 2010], and *R. and H.*, cited above, § 75). Thus it is incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child (see, *mutatis mutandis*, *Neulinger and Shuruk*, cited above, § 139). In practice, there is likely to be a degree of overlap in this respect with the need for relevant and sufficient reasons to justify a measure in respect of the care of a child.
>
> 139. The need to involve the parents fully in the decision-making process is all the greater where the proceedings may culminate in a child being taken from his biological parents and placed for adoption (*R. and H.*, cited above, § 76)."

ii. Application of the above principles to the present case

88. The Court observes at the outset that the present case does not concern the physical removal of a newborn baby from her mother against her will, as was the case in *K. and T. v. Finland* (cited above, § 168) and as the applicant seemed to suggest in her observations before the Court (see paragraph 69 above). It notes in this connection that E. was placed in public care because neither the applicant nor any other close relative was available to take care of her. The applicant inquired about E. for the first time on 6 June 2011, when E. was five months old (see paragraphs 15 to 24 above).

89. The Court further notes that the applicant does not appear to have disputed the need for E. to remain in foster care, but argued that it was not necessary to take the most extreme type of measure, namely the deprivation

of her parental rights, with the consequence of severing the parent-child ties between herself and E. (see paragraphs 68 and 70 above). In this connection, she also alleged that the welfare authorities had failed to respond properly to her illness (ibid.). The Court will now examine these complaints in the light of the principles exposed in paragraphs 83 to 87 above.

(α) Initial events and assistance provided to the applicant in relation to maintaining ties with E.

90. The Court observes that the applicant suffered from schizophrenia, and that on account of her vulnerability the authorities were required to show particular care and afford her increased protection (see paragraph 84 above; see also Article 23 of the Convention on the Rights of Persons with Disabilities, cited in paragraph 64 above). It further observes that the welfare authorities, being informed of the applicant's admission to a maternity hospital, visited her on 4 January 2010, just after she had given birth to E. Following her extended stay in the hospital and the Cerknica Centre's assistance in finding her accommodation, the applicant stayed with her mother for three weeks (see paragraphs 11 above). During those weeks, the applicant was provided with various social services, as well as the assistance of a worker from a psychiatric hospital. She was referred for an emergency examination by a clinical psychologist, which she refused to have (see paragraphs 11 and 13 above). On 30 January 2011 the applicant went to France, leaving E. with her mother (see paragraph 15 above).

91. In view of the measures taken by the Cerknica Centre, the Court is satisfied that the authorities promptly responded to the applicant's difficulties, and that there is no indication that they failed to take the necessary measures to assist the applicant prior to her leaving for France. However, once the applicant left, the authorities had no choice but to place E. in care – a step which the applicant does not contest. E., who was considered to be abandoned, was formally removed from her parents, and after an initial stay at the Crisis Centre for Children was placed in foster care (see paragraphs 15 and 16 above).

92. The Court notes that in seeking to protect E.'s welfare, the Cerknica Centre was required to respond to a complex family situation, and that, having direct contact with the family, it enjoyed a measure of discretion in its response (see, *mutatis mutandis*, *R. and H. v. the United Kingdom*, cited above, § 86). Given the applicant's history concerning her older children (see paragraphs 8 and 9 above), the concerns raised with respect to her difficulties in caring for E. (see paragraphs 11 to 14 above) and her departure for France (see paragraph 15 above), the Court finds nothing to indicate that the Cerknica Centre exercised its discretion improperly by promptly searching for suitable long-term care, or that its concerns for E. were not genuine or reasonable. While it is true that it initiated the

proceedings to withdraw the applicant's parental rights on 7 March 2011, just two months after E.'s birth (see paragraph 35 above), the Court cannot ignore the fact that the mere initiation of those proceedings did not have legal consequences for the applicant. In fact, she maintained contact with E. through contact sessions until November 2014 and took part in the IPT group, whose purpose was to monitor the foster care and organise contact sessions between the applicant and E. (see paragraphs 23 to 29 above) while the above-mentioned proceedings (which lasted until 10 December 2015 – see paragraph 48 above) were ongoing.

93. As regards the contact sessions, there is no indication that prior to January 2014 the applicant was ever refused contact with E. On the contrary, the welfare authorities approached the applicant of their own motion with a view to arranging contact sessions (see paragraph 25 above) and offered help and counselling (see paragraphs 21 and 27 above). Contact sessions took place on the dates agreed at the meetings, to which the social workers, the applicant and the foster parents were invited (see paragraphs 24 to 26 and 28 above). While the sessions often did not seem to help the applicant and E. form a bond, that does not appear to be in any way attributable to the welfare authorities or the foster parents, and was mostly due to the applicant's passive attitude and E.'s estrangement from her (see paragraph 27 above).

94. The Court further observes that in January 2014 the applicant asked the welfare authorities if she could have more frequent contact with E., but she was advised to institute judicial proceedings (see paragraph 29 above). The applicant, who was found by the court-appointed expert to have legal capacity to act (see paragraph 37 above), was reminded several times by the welfare authorities to institute the court proceedings (see paragraphs 29 to 33 above). However, despite being in contact with her lawyer and claiming that she had been unable to have contact with E. since October 2014 (see paragraphs 30 and 47 above), she instituted the proceedings concerning her contact rights only on 19 May 2016 (see paragraph 52 above), that is around the time E. had been adopted.

95. Having regard to the above, and also bearing in mind that contact arrangements are not at the heart of the applicant's complaint before the Court (see paragraphs 65, and 67 to 70 above), and that she failed to properly use the remedies available and approach the Slovenian Constitutional Court on that matter (see paragraphs 58 and 59 above), the Court would confine itself to noting the following. The domestic courts dismissed her application for contact after obtaining, *inter alia*, a report from a court-appointed expert who had examined the applicant and E. and concluded that, due to the applicant's psychological problems, such as emotional unresponsiveness and a lack of empathy, and her negative attitude towards the adoptive parents, contact would be traumatic and harmful for E. (see paragraphs 53 to 57 above). The applicant did not

present any arguments to call into question the accuracy of that finding. In this connection, the Court refers to the principle mentioned in paragraph 83 above that a parent cannot be entitled under Article 8 to have such measures taken as would harm a child's health and development

(β) Withdrawal of the applicant's parental rights and E.'s subsequent adoption

96. The Court reiterates at the outset that the deprivation of parental responsibilities can be justified only in exceptional circumstances. It observes in this connection that the decisions taken by the courts in this field are often irreversible, particularly in a case such as the present one, where the child was put up for adoption. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see *X v. Croatia*, no. 11223/04, § 47, 17 July 2008).

97. Bearing the above in mind, the Court observes that in the present case the domestic courts were called upon to make a difficult assessment and balancing of the applicant's rights and those of E. Finding no realistic possibility of the applicant resuming care of E., and taking into account the negative impact that the contact sessions had on E. and the lack of an emotional connection between them, the domestic courts considered it in E.'s best interests to withdraw the applicant's parental rights (see paragraphs 43, 45 and 48 above). Those decisions were based on, *inter alia*, the reports of the court-appointed experts who had examined the applicant and established that she was not in a position to take care of E. In particular, the expert in psychiatry noted that, despite treatment, the applicant would not be able to assume care of E. (see paragraph 41 above). The expert psychologist found that she had diminished empathy, that her understanding of the child's needs was limited, that the contact was burdensome for E., and that there was no emotional connection between the applicant and E. (see paragraph 42 above). Having regard to the above and the information in the case file, including the Cerknica Centre's reports and records highlighting the difficulties encountered in trying to assist the applicant and the lack of any significant progress made in establishing ties between the applicant and E. (see paragraph 27 above), the Court does not consider unreasonable the domestic courts' conclusion that the withdrawal of the applicant's parental rights was in E.'s best interests.

98. The Court further notes that the applicant was fully involved in the proceedings concerning the withdrawal of her parental rights, was assisted by a lawyer, and had her case examined at three levels of jurisdiction (see paragraphs 35 to 48 above; see, by contrast, *A.K. and L. v. Croatia*, no. 37956/11, § 75, 8 January 2013, and *X v. Croatia*, cited above, §§ 51-53). As regards the consequence of withdrawing the applicant's parental rights, namely the adoption of E. (see paragraph 68 above), the Court notes that although section 116(2) of the Family Act provided for the possibility to restore parental rights following their withdrawal, section 141

of the Family Act clearly provided that a child could be placed for adoption without the parent's consent if the latter had been deprived of his or her parental rights (see paragraph 60 above). An earlier Supreme Court decision (see paragraph 62 above), and the reasons given in the Ljubljana District Court's decision (see paragraph 43 above) clearly indicate that the aim of the proceedings to withdraw parental rights was to provide permanent substitute care for the child, when such care could not be provided in the biological family. The applicant must therefore have been aware of the consequences of the withdrawal of her parental rights, that is E. being made available for a possible adoption, and in fact she does not allege otherwise (see, for instance, the applicant's reply to the Cerknica Centre's application in which she argued that the aim of the proceedings was to give E. up for adoption – paragraph 36 above).

99. The Court must also address the applicant's argument that her neglectful conduct in relation to E. was caused by her mental illness, and that therefore she should not have been divested of her parental rights (see paragraph 67 above). It notes that it has previously examined applications concerning restrictions on the parental rights of a biological parent with a psychiatric condition, and its assessment was, as in all child-related cases, guided by the child's best interests (see *K. and T. v. Finland*, cited above, § 173). In *Kocherov and Sergeyeva* (cited above, §§ 109-112), for instance, the Court found that the domestic court's reference to the first applicant's diagnosis was not a "sufficient" reason to justify a restriction on his parental authority, because the domestic courts had not indicated what evidence the first applicant was requested to produce in order to show that his diagnosis would not put the second applicant, his child, at risk. Moreover, the first applicant produced before the domestic courts a report by a panel of experts which unequivocally concluded that his state of health fully allowed him to exercise his parental authority. Similarly, in *S.H. v. Italy* (cited above, §§ 15, 16, 19, 56 and 57) the Court found a violation of Article 8 because the judicial authorities had allowed the child's adoption but failed to consider that the family's difficulties, which partly related to the applicant's state of mental health, could be overcome by means of targeted social assistance, as found in the expert report produced in the proceedings. In the present case, however, the Ljubljana District Court's decision to divest the applicant of her parental rights was not based on her psychiatric diagnosis, but on her consequent inability to take care of E., which had been confirmed by all the expert reports produced in the proceedings. The Ljubljana District Court, following the remittal of the case in relation to precisely that point (see paragraph 39 above), acknowledged the fact that the applicant's problematic behaviour and neglectful conduct in relation to E. was caused by her mental illness. Nevertheless, balancing the competing interests, it concluded that E.'s interest in being provided with permanent care and

emotional stability outweighed that of the applicant in retaining legal ties with E. (see paragraph 43 above).

100. In this connection, the following considerations should also be taken into account. Firstly, E. lived with the applicant only for the first three weeks of her life and, as noted above, they did not establish emotional ties during subsequent contact. The Court has previously held that a finding to that effect has to have implications for the degree of protection that ought to be afforded to an applicant's right to respect for family life when assessing the necessity of an interference (see *Aune*, cited above, § 69).

101. Secondly, E. had lived with the foster, now adoptive, family from when she was one month old, and must have established strong bonds with them. The applicant has not argued that this was not the case or that the foster, now adoptive, parents were unfit to raise E. As regards the applicant's argument that the foster care could be prolonged, possibly until adulthood (see paragraph 70 above), the Court agrees with the domestic authorities (see, for example, paragraphs 32 and 45 above) that care orders are by their very nature meant to be temporary measures aimed at family reunification (see *K. and T. v. Finland*, cited above, § 178). Even in a situation where reunification might be possible at some point in the future, the interest of a child not to have his or her *de facto* family situation changed after a considerable period of time may override the interests of the parents in having their family reunited (see the case-law cited in paragraph 86 above). By the same token, in view of there being little or no prospect of the biological family's reunification, the Court considers that E.'s interest in fully integrating into her *de facto* family weighed particularly heavily in the balance when assessed against the applicant's wish to retain legal ties with her.

102. Thirdly, it appears that the disputed measure, namely the withdrawal of the applicant's parental rights, was not of such a nature to prevent her from continuing to have a personal relationship with E. or to cut E. off from her roots (see, *mutatis mutandis*, *Aune*, cited above, § 78). In particular, the domestic courts acknowledged that, despite the adoption, the applicant could in principle maintain contact with E. under section 106.a of the Family Act (see paragraphs 55, 57 and 60 above), provided that they were personally attached and that the contact would be in E.'s interests. The Court notes that after obtaining the opinion of a court-appointed expert who concluded that E.'s contact with the applicant would be harmful to E., and taking into account the observations of the social worker who had supervised the contact sessions, the Koper District Court concluded that there was no personal connection between E. and the applicant and that contact would not be in E.'s interests – a finding which was upheld on appeal (see paragraphs 53, 55 and 57 above). That decision of the Koper District Court not to resume contact between E. and the applicant was therefore not based on the fact that E. had been adopted, but on a concrete

assessment of the applicant's condition and whether contact with her would be in E.'s best interests.

103. Against the above background, the Court is satisfied that there were such exceptional circumstances in the present case as to justify the withdrawal of the applicant's parental rights, and that those measures were motivated by an overriding requirement pertaining to E.'s best interests (see the case-law quoted in paragraph 86 above).

(γ) Conclusion

104. Having regard to the positive steps taken to assist the applicant and to the relevant and sufficient reasons adduced in support of the decision to deprive the applicant of her parental rights, the Court considers that there has been no violation of Article 8 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUCTION WITH ARTICLE 8 OF THE CONVENTION

105. Relying on Article 14 of the Convention, the applicant complained that she had been discriminated against in the enjoyment of her rights under Article 8 on the grounds of her mental illness. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

106. The Government argued that it was clear that the applicant's mental illness had not in itself been a reason for the withdrawal of her parental rights.

107. The applicant argued that the courts' interpretation of section 116 of the Family Act in her case had amounted to discrimination against people with mental illnesses. In particular, the domestic courts' conclusion that a parent suffering from mental illness was unfit for the everyday care of his or her child and also unworthy of parental rights despite the fact that he or she did not neglect the child voluntarily was in breach of Article 14 in conjunction with Article 8 of the Convention. States should take effective measures to tackle discrimination against people with disabilities, and those people should be afforded an opportunity to influence decisions which interfered with their rights and interests. Moreover, there was no objective and reasonable justification for her discriminatory treatment.

108. As regards the applicant's complaint concerning her opportunity to influence the decisions interfering with her family life, which was raised by the applicant also under Article 14 in conjunction with Article 8 (see paragraph 107 above), the Court, being a master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, ECHR 2018) and

having regard to the applicant's arguments, considers that this issue has been appropriately dealt with under Article 8 alone (see paragraph 98 above). As to the remaining complaints raised under Article 14 in conjunction with Article 8, having regard to the lack of any indication in the present case that the applicant was divested of her parental rights on the sole basis of her mental health diagnosis (see paragraph 99 above), the Court considers that this part of the application is unsubstantiated. It must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

109. The applicant complained that the proceedings concerning the withdrawal of her parental rights had been unfair and thus in breach of Article 6 § 1 of the Convention, and that her right under Article 13 had been violated. In so far as relevant, the above-mentioned provisions read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

110. The applicant argued that the proceedings had been unfair, because the Koper Higher Court had not sufficiently explained why it had decided the same matter differently during its second examination, and had not addressed her arguments concerning the seemingly arbitrary application of section 116 of the Family Act. Relying on Article 13, she also argued that the domestic courts had overstepped the boundaries of the law, namely section 116 of the Family Act, by divesting her of her parental rights on the grounds that adoption was the preferred long-term solution for E.

111. On the basis of the material in its possession and in so far as those complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights enshrined in Articles 6 § 1 and 13 of the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention taken alone admissible;

2. *Declares*, by a majority, the remainder of the application inadmissible;

3. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 30 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of *ad hoc* Judge Zalar joined by Judge Motoc is annexed to this judgment.

G.Y.
M.T.

CONCURRING OPINION OF AD HOC JUDGE ZALAR, JOINED BY JUDGE MOTOC

1. I agree with the majority that there has been no violation of Article 8 of the Convention in this case. With this concurring opinion, I should like to underpin the majority reasoning with a particular legal and factual perspective, which is perhaps less visible from the methodology and argumentation in the majority's reasoning. At the same time, the purpose of this concurring opinion is to prevent a possible superficial reading of the judgment which could lead the Slovenian welfare authorities to develop a policy of withdrawal of parental rights that would entail an excessive risk of violations of the Convention in similar cases. This specific perspective in the concurring opinion relates to the fact that the applicant, at a critical period, was a person with disabilities and not merely a vulnerable person.

2. The applicant's disability was an undisputed fact between the parties. The evidence provided by two experts (Dr M and Dr P.) in the domestic court proceedings essentially corroborated each other's findings, in the sense that it was established beyond doubt that the applicant suffers from a mental disorder on the schizophrenia spectrum, and that her negative attitude towards treatment and her abandonment of child E. resulted from her illness and that it was not reasonable to expect her to care for E. Thus, the applicant falls under the term "*person with disabilities*" as set out in Article 1 § 2 of the UN Convention on the Rights of Persons with Disabilities (hereinafter: the CRPD), which has been ratified by Slovenia and by more than 170 other States.

3. This high number of ratifications of the CRPD indicates a broad consensus among the Contracting States to as regards their obligations towards persons with disabilities, including in family matters as described in Articles 1, 5 and 23 of the CRPD. In accordance with the Court's general case-law, a very broad legislative consensus among the Contracting States has an impact on the methodology for interpreting the Convention in the sense that the margin of appreciation, in accordance with the Court's general case-law, becomes narrower.[1]

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[1] For the general impact of the (non-)existence of a relevant consensus between Contracting States concerning a particular legal matter on use of the margin of appreciation doctrine, see, *mutatis mutandis*, the Grand Chamber's recent practice in: *Khamtokhu and Aksenchik v. Russia*, no. 60367/08 and 961/11, 24 January 2017, §§ 79, 85; *Naït-Liman v. Switzerland*, no. 41357/07, 15 March 2018, §§ 181-203; and *Correia de Matos v. Portugal*, no.56402/12, 4 April 2018, § 137. In the case of *Bayatan v. Armenia* (no. 23459/03, 7 July 2011, § 102), the Grand Chamber states that in defining the meaning of terms and notions in the text of the Convention, the Court can and must take into account elements of international law other than the Convention and the interpretation of such elements by competent organs. The consensus emerging from specialised international instruments may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases (see also *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 85, ECHR 2008).

In addition to this general approach, in a particular type of case, where the issue disputed between the parties is not a decision to take a child into foster care, but rather further limitations, namely the withdrawal of parental rights, the Court's specific case-law calls for "*stricter scrutiny*".[2]

4. Article 5 § 3 of the CRPD (equality and non-discrimination) states that in order to promote equality and eliminate discrimination State Parties are to take "*all appropriate steps*" to ensure that "*reasonable accommodation*" is provided. Reasonable accommodation means "*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden*" where this is necessary in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2 § 4 of the CRPD). Article 5 § 4 further states that "*specific measures*" which are necessary to accelerate or achieve *de facto* equality of persons with disabilities are not to be considered as discrimination under the terms of the CRPD.

5. While the Court did take the CRPD into account in section III of the present judgment (relevant international-law material), it did not refer to Article 5, but only to Article 1 and Article 23 §§ 2, 4 and 5 of the CRPD. However, even Article 1 and Article 23 §§ 2 and 4 of the CRPD, which the present judgment refers to, contain the legal +standard of *de facto* equal treatment in the enjoyment of all human rights and fundamental freedoms by all persons with disabilities. For that reason too, it was actually inevitable, as acknowledged by the Court in several parts of the judgment, that the Court would also examine the interference with the applicant's right to family life resulting from withdrawal of her parental rights (and from the adoption of E., which followed as a consequence of the withdrawal of parental rights) from the perspective of her illness and the standards on equal treatment, since this is an inseparable part of Article 8 of the Convention.[3] Cases involving the withdrawal of parental rights from persons with disabilities cannot be exceptions in this regard.

6. Thus, for example, the Court states in the present judgment that the applicant's complaint concerning her opportunity to influence decisions affecting her family life, which was raised also under Article 14 in conjunction with Article 8, has been appropriately dealt with under Article 8 alone. In addition, the Court states that the applicant's complaint that the welfare authorities had failed to respond properly to her illness is also examined in the present judgment. Furthermore, the judgment states that in

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[2] See *Gnahoré v. France*, no. 40031/98, 19 September 2000, § 54, and *Kutzner v. Germany*, no. 46544/99, 26 February 2002, § 67.

[3] Already in its early case-law the Court established that Article 14 formed an integral part of each of the provisions laying down rights and freedoms (see the judgment of 23 July 1968 in the Belgian Linguistic Case, Series A no. 6, pp. 33-34, § 9; *Case of National Union of Belgian Police*, judgment of 27 October 1975, Series A no. 19, p. 19, § 44; and *Marckx v. Belgium*, no. 6833/74, 13 June 1979, Series A, no. 31, § 32).

the case of vulnerable persons, the authorities must show "*particular vigilance and afford increased protection*". The case of *Kocherov and Sergeyeva v. Russia* (no. 16899/13, 29 March 2016) is cited in the judgment; in it, the Court stated that the margin of appreciation varies in accordance with the "*nature of the issues and the importance of the interests at stake*". There can be no doubt that the relevant aspect of the "*nature of the issue*" here is the applicant's illness.

7. Thus, in the present judgment the Court did verify whether the Slovenian welfare authorities had taken "*positive steps*" and whether they had provided "*particular care*" and "*increased protection*" in order to assist the applicant, who was vulnerable on account of her disability, in maintaining personal and family ties with her daughter, E. This approach by the Court, which is a well-established standard in the case-law regarding cases of serious interference in the family life of vulnerable parents (where parents are, for example, in harsh socio-economic situations, possibly combined with ethnic origin,[4] have a mild mental disability,[5] intellectual deficiencies[6] or another type of illness accompanied by psychological trauma[7]) corresponds, in my opinion, to the broad consensus among the Contracting States concerning their obligations to provide appropriate and effective assistance in terms of the "*specific measures*" which are a necessary adjustment to accelerate or achieve *de facto* equality of persons with disabilities, while not imposing a disproportionate or undue burden as this is regulated under the CRPD[8]. These are, therefore, the scope and criteria by which the Court in this case evaluated whether the Slovenian welfare authorities had violated the applicant's substantive right to family life as guaranteed by Article 8 of the Convention.

8. Thus, the crucial part of the reasoning concerning a non-violation of Article 8, including the relevant aspects of equal treatment, is set out in

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[4] See, for example: *Moser v. Austria*, no. 12643/02, 21 September 2006, § 68; *N.P. v. Republic of Moldova*, no. 58455/13, 6 October 2015, §§79-81; *Soares de Melo v. Portugal*, no. 72850/14, 16 February 2016, § 106.

[5] *A.K and L. v. Croatia*, no. 37956/11, 8 January 2013, §§ 72-73, 75, 80.

[6] *Kutzner v. Germany*, no. 46544/99, 26 February 2002, §. 75.

[7] *Zhou v. Italy*, no. 33773/11, 21 January 2014, §§ 57-58.

[8] Once this link between the Court's case-law on treating vulnerable categories with special attention and increased protection and the broad consensus under the CRPD on special and necessary measures or modifications for persons with disabilities is established, it is of secondary importance whether this can be legally defined as an aspect of "positive discrimination" towards disabled persons in the sense that the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different (see, *mutatis mutandis*, Case relating to certain aspects of laws on the use of languages in education in Belgium, 23 July 1968, Series A, No. 6, § 10; *Thlimmenos v. Greece*, no. 34369/97, 6 April 2000, § 44; *Posti and Rahko v. Finland*, no. 27824/95, 24 February 2002, § 82; *Andrle v. the Czech Republic*, no. 6268/08, 17 February 2011, § 48; *Khamtokhu and Aksenchik v. Russia*, no. 60367/08 and 961/11, [GC], 24 January 2017, §§ 64 and 82).

section B.3.c.ii.(a) of the present judgment, where the Court evaluates, from the standpoint of the Convention, some of the specific measures which were provided by the welfare authorities in this particular case. I also basically concur with this part of the judgment, but would like to add and emphasise certain particular factual and legal elements, as follows.

9. The judgment points out that the welfare authorities visited the applicant on 4 January 2010, just after she had given birth to E. The Cerknica Social Work Centre (SWC) assisted her in finding accommodation. She stayed with her mother for three weeks. During these three weeks the applicant was provided with various forms of social assistance and the services of an employee from a psychiatric hospital. She was referred for an emergency examination by a clinical psychologist, which she declined. In view of these measures by the Cerknica SWC, the majority is satisfied that the authorities responded promptly to the applicant's difficulties and that there is no indication that they failed to take the necessary measures to assist her prior to her departure for France (on 30 January 2011), and that, once the applicant had left, the authorities had no choice but to place E. in care.

10. I can certainly agree with this conclusion by the majority, which relates only to the period prior to the applicant's departure for France, but the child's placement in foster care is not a disputed matter in this case, as the Court itself has pointed out. Nevertheless, even for this period, I think it needs to be added in more specific terms that the afore-mentioned special measures – in the sense of increased protection – included the activities of the Cerknica SWC, which found the option of placing the applicant and the newborn baby in a Crisis Centre in Piran. This was ultimately not a suitable solution. For that reason, and based on an arrangement between the Cerknica SWC and the maternity hospital, the applicant was allowed to stay in the maternity hospital until January 2011. The Cerknica SWC then reached an agreement with the applicant's mother, so that the applicant and her child could stay at the home of the applicant's mother for three weeks. The Cerknica SWC then helped the applicant to complete the application forms for obtaining parental allowance and childbirth benefit. Via the diplomatic-consular mission, the Cerknica SWC sought the view of the applicant's husband and father of E. on how he intended to take care of the newborn child.[9] The father's answer did not help to resolve the situation in any sense, in that he expressed doubts about his fatherhood of E. In this early period, the Cerknica SWC provided the applicant and her child with social assistance in the form of family help at home, which included the possibility of participating in the Tamala association, the community nursing service, where social worker R.V., who knew the applicant's family

[9] Observations of the Government of the Republic of Slovenia on the admissibility and merits of the application, 28 November 2016 (hereinafter: the Government's Observations), pages 7-8, points 10-11.

history, was employed; in addition, a mobile worker from the Ljubljana Psychiatric Hospital was engaged. The Cerknica SWC also wrote the application for admission to the Gorenjska Maternity Home on the applicant's behalf, because the applicant had failed to do so and the period of agreed accommodation with her mother was running out.[10] The mobile worker who was monitoring the applicant informed two psychiatrists from the Ljubljana Psychiatric Clinics about her mental state. The applicant was offered the possibility of emergency psychological care. The community nursing service sent reports about events in the family to the Cerknica SWC.[11] On 31 January 2011 the Cerknica SWC was informed that the applicant had gone to France to see her husband and had left E. with the child's grandmother.[12] Taking into account these facts, which were not disputed in concrete terms by the applicant, I agree with the majority that the welfare authorities showed particular care and afforded to the applicant the necessary increased protection in the period before initiating the proceedings for the withdrawal of parental rights on 7 or 8 March 2011.

11. The problem, which is also highlighted in the judgment, is that on 7 or 8 March 2011, just two months after E.'s birth, and before the applicant had returned from France - she was hospitalised from 23 March to 15 June 2011 (initially in a closed ward of the Idrija Psychiatric Clinic) - the welfare authorities initiated the procedure to withdraw the applicant's parental rights.[13] In principle, this act by the welfare authorities and their active role in the court proceedings for withdrawal of parental rights could decisively jeopardise the State's obligations to put in place special measures and increased protection as regards the family life of the applicant and her child. Concerning this problematic issue, the majority's reasoning first relies on the "*measure of discretion*" enjoyed by the welfare authorities in searching for suitable long-term care, given the complex family situation and the fact that they are in direct contact with the family. I do not consider that a "measure of discretion" at that stage of the process could be an argument to justify early initiation of the proceedings to withdraw parental rights. Two months after the child's birth and without having at that stage any expert evidence on the (medical) nature of the applicant's vulnerability[14] nor any other evidence on the prospects of her ability to care for the child in the (near) future, and although aware of her serious psychological problems, the

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[10] Ibid. page 8, point 11.

[11] Ibid. page 9, point 12.

[12] On 1 February 2011 E. was taken from her parents and placed in the crisis centre for children (Palčica House of Shelter). The Cerknica SWC started searching for suitable foster family and on 18 February 2011 E. was placed in foster care (ibid. page 9, point 13).

[13] While in Italy, the applicant was forcibly interned in a psychiatric institution and subsequently transferred for treatment to Idrija Psychiatric Hospital in Slovenia; she was released on 20 January 2012 (ibid. pages 10-11, points 15 and 18.

[14] The relevant expert opinions, on the basis of which parental rights were withdrawn, were submitted in the domestic court proceedings in August 2013 and February 2014.

welfare authorities still had an obligation to respect the Convention standards concerning special measures and increased protection for a vulnerable parent and her child, as long as these measures were not disproportionate or did not cause an undue burden in the light of the child's best interests.

12. Instead of the "*measure of discretion*" argument, I consider that a decisive factor in this case, pointed to by the Court as the second basic argument for finding no violation, is the fact that although the welfare authorities initiated proceedings for withdrawal of parental rights very early in the process, they continued to provide special measures, which the Court would need to evaluate with strict scrutiny and from the standpoint of the "*increased protection*" standard.

13. In this respect, the judgment points out that the applicant maintained a relationship with E. through contact sessions until November 2014 and took part in the IPT group, the purpose of which was to monitor the foster care and organise contact sessions, while proceedings for withdrawal of parental rights were ongoing until 10 December 2015 (Up-70/15-35), when the Constitutional Court rejected the applicant's constitutional complaint. The majority also took into consideration that, prior to January 2014, the applicant was never refused contact with E; the welfare authorities offered help and counselling on their own motion; the judgment adds that although the sessions often seemed not to help the applicant and her child to form a bond, this was mostly due to the applicant's passive attitude and E.'s estrangement from her.

14. Since the period from the initiation of proceedings for withdrawal of parental rights (7 or 8 March 2011) until 10 December 2015 was the crucial timeframe for the Court's evaluation of whether the welfare authorities provided sufficient care and increased protection in view of the applicant's disability, I must emphasise that the involvement of the IPT, mentioned in the majority's reasoning, meant that contacts between the applicant and her child were not merely "organised" by the welfare authorities. If contacts were merely "organised" by the welfare authority, this could only - given the applicant's real disability - lead to additional evidence that contacts were not in line with the child's best interests and, therefore, could only support the pending application for withdrawal of parental rights. Instead, from the Government's Observations it can be concluded that the contacts were prepared in advance and actively facilitated by the IPT[15]. When on 15 March 2011 the applicant failed to respond to the IPT's preparatory session in Kranj, that contact session did not take place.[16] Thus, it has been shown that the IPT's role was to ensure, as far as possible, that the contact

[15] Government's Observations, page 44, points 110-111; page 46, point 116.

[16] Ibid. page 13, point 22. On page 20 (point 37), the Government's Observations state that the applicant at that stage had contacts mainly on the initiative of her parents, and that she was always brought to the contact sessions by them.

sessions were beneficial for the applicant and the child. Without the necessary preparation, contact sessions did not take place.[17]

15. The first two contact sessions between the applicant and her daughter, on 5 July 2011 and 31 January 2012, were held on the initiative of a professional staff member from the psychiatric clinic and of the employee of the Cerknica SWC. According to the Government's Observations, the third contact on 15 May 2012 *"was quite successful in terms of its substance"*. The next contacts were on 11 July 2012 (on an initiative of the applicant dating from 19 April 2012), 26 October 2012[18] and 12 December 2012; concerning the latter session, it was reported that communication between the applicant and her daughter was better and that the applicant was involved in E.'s play and stroked her daughter a few times during the session.[19] The seventh contact between the applicant and her daughter took place on 13 February 2013; before that, during an IPT meeting on 17 January 2013, it was agreed that contacts would take place gradually, as the girl did not recognise the applicant and that E. would also gradually get to know the rest of her relatives. The applicant also asked if she could bring her older son to the contact session with E.; this was approved, and occurred during the meeting on 13 February 2013.[20] The IPT's next preparatory meeting took place on 4 April 2013 and the eighth and the ninth contact sessions took place on 24 April 2013 and 12 June 2013 respectively. During the latter session, the applicant's son was also present, and he played with his younger sister.[21] The tenth contact session was held on 18 September 2013, following a preparatory meeting between the Cerknica SWC and the applicant on 14 August 2013.[22] The eleventh contact session took place on 6 November 2013 and the applicant was accompanied by her son and, unexpectedly, by her niece.[23] In early 2014, the applicant asked the Cerknica SWC to arrange contacts with her daughter on a more regular basis. The next contact session was on 8 January 2014, when the applicant's son was also present[24]. The next contact sessions were on 16 April 2014 and on 7 May 2014; during the latter, the applicant's mother was present. On 21 May 2014, the applicant again indicated that she wished to have a contact session with her daughter. On 4 June 2014, the IPT preparatory meeting took place and the fifteenth and the sixteenth contact sessions occurred on 2 July 2014 and on 10 September 2014. It is reported that *"both*

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[17] For the legal importance of *"preparatory counseling"* in family matters, see, *mutatis mutandis, Scozzari and Giunta* [GC], nos. 39221/98 and 41963/98, 13 July 2000, § 175.

[18] In August 2012 the applicant was re-hospitalised in the Idrija Psychiatric Clinic (Government's Observations, page 42, point 101; page 43, point 105, 13, points 24-25).

[19] Ibid. page 44, point 108.

[20] Ibid. page 44, point 110.

[21] Ibid. page 45, point 112.

[22] Ibid. page 45, point 113.

[23] Ibid. page 45, point 115.

[24] Ibid. page 46, point 116.

times the applicant made a great effort to establish contact with her daughter. Through an active approach, the applicant managed to communicate with E. After the conclusion of the contact session, E. gave the drawings she made to the applicant."[25] On 22 September 2014 the applicant again asked the Cerknica SWC to arrange a contact session. After the IPT's preparatory meeting, the seventeenth contact session took place on 26 November 2014; however, it was reported that the applicant failed to establish contact with her daughter.[26] The applicant continued to ask for contact sessions (for example, on 22 December 2014) despite the fact that on 21 October 2014 the court decision on withdrawal of the applicant's parental rights became final. From that point, the Cerknica SWC instructed the applicant that she had to apply to a competent court in order for decisions to be made on any potential further contact sessions. The applicant had access to a lawyer at that point.[27]

16. In view of the above dynamics and the substance of the welfare authorities' activities, I did not hesitate in joining the majority, based on my conclusion that the welfare authorities respected the standards on special measures for increased protection for the applicant on account of her disability; in addition to the above-mentioned preparation, facilitation and organisation of contacts between the applicant and her child, the Cerknica SWC also assisted in placing her in a residential community (Angela's Home of Sisters of the Family for Christ the Saviour) for treatment, at her own request. In 2012, the Cerknica SWC introduced the applicant to the coordinator of the "Paradox" residential community,[28] which she left in April 2012.[29] In March 2014, the Cerknica SWC offered a social service called "personal assistance" to the applicant, which was refused by her on the grounds that she was involved with the Šent community. Once a month she had sessions with a psychologist and once every three months she was examined by a psychiatrist.[30]

17. In my opinion, these activities, taken together, correspond to the Convention's standards for special protection of persons with disabilities. Nothing in the materials submitted to the Court indicates that the welfare authorities did not have a genuine interest in providing special attention and increased protection for the applicant's and E.'s right to a family life. If what the applicant said in her application is true, it seems that during contact sessions E. was instructed not to address the applicant with the term "mother", but only as Mrs S[31]; this could be considered as an isolated,

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[25] Ibid. pages 46-47, points 116-121.
[26] Ibid. page 47, points 122-124.
[27] Ibid. page 48, points 126-128.
[28] Ibid. page 41, point 95.
[29] Ibid. page 42, point 99.
[30] Ibid. page 36, points 70-71.
[31] Application dated 16 July 2016, submitted to the Court in Slovenian, page 5, point 3.

although not unimportant, incident, which in my opinion cannot affect the overall judgment in this case.

18. As regards further examination of the necessity test and a balance between the rights of the applicant, the rights of the child and the public interest, I must add or emphasise two issues which are covered in section B.3.ii.ß of the present judgment, where the Court sets out arguments concerning the short-term and rather weak emotional ties between the applicant and E., compared with the stronger and longer-term emotional ties between the adoptive parents and E., the "*reasonableness*" of using the best-interests-of-the-child test in ruling on this matter and the possibility of maintaining contact with a child even after withdrawal of parental rights under section 106.a of the Family Act.[32]

19. The first issue that I need to address relates to the judicial test that is referred to in paragraph 97 of the present judgment. The Court states that it does not consider "*unreasonable*" the domestic court's conclusions that the withdrawal of the applicant's parental rights was in E.'s best interests.

20. The so-called "*(un)reasonableness*" test should not be understood in the given context as some kind of a check on "*arbitrariness*". Generally, the test of arbitrariness is used by the Court when, for example, an applicant claims under Article 6 of the Convention that the national courts wrongly interpreted domestic law.[33] However, if the issue at stake before the Court is a legal concept which is integral to the Convention, as is the case with the principle of the best interests of a child under Article 8 of the Convention, the applicable judicial test is not limited to checks on arbitrariness or unreasonableness. For example, in the present judgment the arbitrariness test was applied in relation to the question whether the domestic courts interpreted section 116 of the Marriage and Family Relations Act in accordance with the Convention standards on the rule of law.

21. Therefore, I do not see or accept that the Court in this case applied only the test of arbitrariness or the so-called test of (un)reasonableness as regards the best interests of a child and the necessity of the interference with the applicant's right. Instead, as the Court itself defines "*general principles*" in relation to the examination of the necessity of interference in a democratic society in section B.3.(c) of the judgment, the judicial test that was actually applied in this case was much more stringent. In the words of the Court in section B.3.(c.), a measure such as withdrawal of parental rights should be applied only in "*exceptional circumstances*" and could only be justified if motivated by an "*overriding requirement*" pertaining to the child's best interests. When the Court in paragraph 87 cites its own previous

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[32] The latter option, available under Slovenian law, is confirmed by the case-law of the Constitutional Court of the Republic of Slovenia (Up-56/17, Up-57/17, 13 March 2018, paragraph 9) and by the Supreme Court (IV Cp 1309/2017, 15 June 2017, paragraph 17, footnote 21).

[33] See, for example, *Zubac v. Croatia*, [GC], no. 40160/12, 5 April 2018, § 79.

judgment in the case of *Y.C. v. the United Kingdom* (no. 4547/10, 13 March 2012), it reiterates that it is *"incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child."*[34] Therefore, the strict scrutiny test when examining the withdrawal of parental rights from a person with a disability, usually an irreversible step, calls for protection which goes beyond the usual assessment of the impact of the proposed care measure on the parents and child, and the usual check of whether there was a sufficient evidentiary basis, whether reasons were relevant and sufficient, whether parents had sufficient opportunity to participate in the procedure and whether the children themselves were able to express their views.

22. Based on this test, I came to the same conclusion as the majority that the interference was necessary and was motivated by an overriding requirement pertaining to the best interests of the child, even though the material submitted to the Court (the Government's Observations) showed that the applicant had "*demonstrated her interest*" in a relationship with her daughter after March 2012, through several initiatives to have contact with her daughter and had demonstrated commitment, which is visible from the positive aspects reported in 3 out of the 17 contact sessions, referred to in the Government's Observations.[35]

23. The second issue that I must address in relation to the examination of the necessity of interference in the applicant's Article-8 right relates to the Court's argument on the possibility to have contact with the child even after withdrawal of parental rights under section 106.a of the Family Act. The Court did include in section I.B.2 of the present judgment some important extracts from the letter sent to the Court by the third-party interveners (the adoptive parents).

24. In this regard, I must highlight another element of the afore-mentioned letter from the adoptive parents to the Court which is not included in section I.B.2 of the present judgment. According to the Court's case-law, it is important whether the withdrawal of parental rights – an extreme measure, running counter to the right of biological parents and children to enjoy a family life together – means that a child is prevented

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[34] See also footnote no. 2 in this concurring opinion on the strict scrutiny test in similar cases of withdrawal of parental rights.

[35] For the relevance of a parent's "*demonstrable interest*" and "*commitment*" as regards his/her relationship with a child in family disputes, in particular where the fact that family life between the persons concerned has not been (fully) established is not attributable to the applicant himself/herself, see, for example, *Anayo v. Germany*, no. 20578/07, 21 December 2010, § 57, and *Ahrens v. Germany*, no. 45071/09, 24 September 2012, § 58.

from having a personal relationship with his or her biological parents, since this could cut the child off from his or her "roots." Reference to the Court's relevant case-law is also made in the present judgment.[36] For that reason, I find it very important that, in their submission to the Court of 31 December 2016, the adoptive parents stated, *inter alia*:

> "The boys, who were already very well integrated into the nuclear and extended foster family when L. arrived, welcomed the little girl very warmly. The bond that had developed unusually quickly between them was extended to L. and the children now have very strong emotional ties to each other. The boys have called the little girl L. and since then we have used that name for her... In the wider social circle, they consider themselves, and are considered, as brothers and sister, although they have known since an early age that they grew in the stomachs of different mummies... They also know that they were born and lived for a certain period in another family which could no longer look after them, and that it is for that reason that they arrived in our family. Each of them knows those parts of the others' family histories which are not common to them all... Each child wishes to hear his or her own story, and the other two listen carefully. The children also ask questions and we reply in a way that is appropriate for their age. We are aware that they are not our biological children and that knowing about their family of origin is a matter of existential importance for them, as is contact with their biological families... The professional advisers from the Kranj, Radovljica, Domžale and Cerknica social welfare centres have helped us a lot, since they ... explained to us the human, legal and sociological importance of contacts between the fostered child and his or her biological family. To that end, we have always supported those contacts and we have also encouraged, actively supported and helped the three biological mothers, especially the applicant... We have facilitated and encouraged these contacts, even after the judgment on the withdrawal of parental rights was delivered, and still later after the judgment became final... Nonetheless, this right still exists; it is only its application that has been temporarily suspended, with the consent of all the parties, in order to protect L.'s best interests... We undertake to continue encouraging and strengthening the girl's right to know her origins in the future."[37]

25. This is important for compliance with the Convention, since the Court in the afore-mentioned case-law attaches particular importance to whether or not the withdrawal of parental rights is such as to prevent a parent from continuing to have a personal relationship with his or her child or to cut the child off from his or her roots. This Convention standard is in line with a broad legislative consensus among the States which have ratified and signed the UN Convention on the Rights of the Child, Article 8 of which regulates the right of a child to preserve his or her identity as recognised by law.

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[36] In the present judgment reference is made to the case of *Aune v. Norway* (no. 52502/07, 28 October 2010). See also *Zhou v. Italy*, no. 33773/11, 21 January 2014, § 56; *Gnahoré v. France*, no. 40031/98, 19 September 2000, § 59; *Soares de Melo v. Portugal*, no. 72850/14, 16 February 2016, § 93.

[37] English translation by the Court's Registry (original: French).

26. I have nothing to add to the reasoning of the Court, which states that this part of the application is unsubstantiated. I assume, since the applicant alleged a violation of the right to an effective legal remedy (Article 13) only in relation to the interpretation of section 116(1) of the Marriage and Family Relations Act, which was dealt with by the Court in its examination under Article 8 (legal basis and legitimate aim), that the Court did not communicate an eventual question in respect of Article 13 in conjunction with Article 8 to the Government, nor was any other aspect of Article 13 argued by the parties at the later stage of the proceedings before the Court.