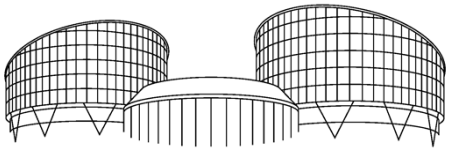

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A.V. v. SLOVENIA

(Application no. 878/13)

JUDGMENT

STRASBOURG

9 April 2019

FINAL

09/07/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of A.V. v. Slovenia,

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

Jon Fridrik Kjølbro, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Antoanella Motoc,
Carlo Ranzoni,
Péter Paczolay, *judges,*
Aleš Galič, ad hoc *judge,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 12 February 2019, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 878/13) 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, Mr A.V. ("the applicant"), on 18 December 2012. The President of the Section decided to grant the applicant anonymity (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Čeferin and Partners (*Odvetniška družba Čeferin in partnerji*), a law firm based in Grosuplje. The Slovenian Government ("the Government") were represented by their Agent, Ms J. Morela, State Attorney.

3. The applicant alleged, in particular, that his rights under Articles 6 and 8 of the Convention had been violated on account of the domestic courts' decisions to discontinue his contact with his three children.

4. On 30 March 2017 the application was communicated to the Government.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in Ljubljana.

7. He and M. have three children, triplets born on 28 October 1996.

8. On 20 January 2003 the Kranj District Court dissolved the marriage of the applicant and M., and determined that M. would have sole custody of their three children.

9. In November 2002 the applicant and M. concluded an agreement on contact arrangements with the assistance of the Kranj Social Work Centre (hereinafter "the Centre"). According to the agreement, contact between the applicant and his children was to take place twice a week and during the holidays.

10. The contact meetings initially took place without any apparent problems. However, the Centre's records show that in 2004 M. reported that the children no longer wanted contact with their father. In June 2006 M. sent a letter via her lawyer to the applicant, notifying him that contact was no longer possible because the children had been distressed in relation to the applicant's visits. The Centre's records of June 2006 indicate that the applicant was willing to cooperate with the Centre and attend parental counselling with M., who said that she was going to attend therapy sessions with the children, so that they could deal with the distress they felt in relation to their father. No contact between the applicant and the children took place between July 2006 and November 2008 (see paragraph 22 below).

11. In the years following the dissolution of marriage (see paragraph 8 above), the relationship between the applicant and M. deteriorated. The Centre's records indicate that by 2003 they rarely talked to each other and that their troubled relationship prevented the conclusion of any agreement with respect to the contact arrangements.

A. First set of contact proceedings

12. On 5 July 2006 the applicant initiated court proceedings, seeking an order to formalise his contact with the children three times a week and during the holidays. He argued, *inter alia*, that the mother had been trying to restrict his contact with the children and that the children had been refusing contact because she had manipulated them. The applicant also believed that the Centre had not been impartial in dealing with the case.

13. In her submissions to the court, M. objected to the applicant's allegations, maintaining that she had never restricted contact or been manipulating the children. She argued that the children had been expressing their discontent with the contact sessions since 2004 and that in 2006 they

had started rejecting contact with their father because they had been afraid of his anger and criticism.

14. The Centre in its opinion noted that both parents should join individual therapy. In case they did not manage to come to an agreement with respect to the temporary contact arrangements, it suggested the court to suspend the contact.

15. On 6 July 2006 the court issued an interim order stating that contact would continue in accordance with the 2002 agreement between the parents (see paragraph 9 above). On 14 July 2006 the applicant applied to amend the interim order, proposing that the mother be required to pay a monetary fine and that police assistance at the time of contact be given in the event that the bailiff did not succeed in taking the children to contact.

16. On 13 November 2006 a court-appointed psychiatrist, Dr T., submitted her opinion to the court. As regards the children, she noted that they expressed fear and reluctance to the way the applicant had acted in the past (yelling, physical punishment, the way they played games and his negative remarks about M.). They found the contact unpleasant and refused it. The expert further noted that while M. had not limited contact, she had stopped encouraging the children. Dr T. suggested that contact take place once every other week, initially in the presence of someone the children trusted, and in circumstances permitting their interests to be taken into account. Dr T. also opined that in order to improve the relationship between the applicant and his children, the parents would benefit from counselling.

17. On 29 April 2008 the Kranj District Court (in non-contentious proceedings) granted the applicant regular contact with his children once a week with an eventual extension of contact to weekends, until the end of the school year in the presence of the school psychologist or someone else from their school. The court also annulled the interim order and dismissed the request to amend it (see paragraph 15 above), finding that at the time the request had been made the court had not had sufficient grounds for making the decision.

18. On 2 October 2008 the Ljubljana Higher Court when deciding the appeal determined that starting from 12 November 2008 contact between the applicant and his children would take place every other Wednesday from 2 until 3.30 p.m. in the presence of an expert caseworker from the Centre. It also determined that M. was to ensure that the children went to the Centre. Relying on the opinion of Dr T. (see paragraph 16 above), the court held that the children had refused contact with the applicant and that this was not the result of the manipulation of M. but originated in their negative experiences with the contact sessions in the past. Nonetheless, in view of the fact that the father and the children had had no contact since June 2006 and that the contact sessions had never before been carried out with the assistance of experts, the court concluded that the negative attitude of the children was not enough to discontinue contact. When fixing the new

contact arrangements, the Higher Court emphasised that the presence of an expert from the Centre at the contact sessions was mainly to provide expert assistance in establishing mutual trust between the applicant and the children. It also opined that it was not necessary for the contact sessions to take place at the Centre, and that they could take place somewhere in the vicinity, in a more relaxed environment for the children and the applicant.

19. The applicant lodged an appeal on points of law, which the Supreme Court rejected as inadmissible on 18 February 2010.

B. The applicant's contact with the children following the first set of contact proceedings

20. The Centre cancelled the first contact session scheduled for 12 November 2008 because it had received the relevant court decision (see paragraph 18 above) only two days before and had found the organisation of the session impossible.

21. On 20 November 2008 the applicant and M. were invited to a meeting at the Centre to discuss and reach an agreement on how the contact sessions would work and be organised under the Centre's supervision. No agreement was reached. Nonetheless, on 10 December 2008 the Centre sent its proposed expert guidelines (*strokovna izhodišča*) for the organisation of the contact sessions to the parents, outlining its expectations and tasks. The Centre records show that in the course of preparing the children for contact, the caseworkers talked to the children, who firmly rejected the idea of any contact with the applicant and asked the caseworkers for permission not to attend the contact sessions.

22. On 26 November 2008 the first contact session between the applicant and the children took place under the supervision of two caseworkers of the Centre. The Centre's records show that during the session the children frequently asked if they could leave and told the applicant that they did not want to see him. The caseworkers interrupted the session after around fifteen to twenty minutes because they decided that the continuation of the contact session was not in the children's interests. The second contact session took place on 10 December 2008. According to the Centre's records, at the beginning of the session the children again told the applicant that they did not want to see him. After one of the children left the session, the caseworker told the other two children that they could leave if they so wished, but that it was their opportunity to listen to what their father had to say. According to the Centre's records, on 24 December 2008 the applicant arrived early to prepare for the third contact session. At the beginning of the session the children repeated that they did not want to see the applicant. The caseworker present at the session started crying and asked the father if he could feel the children's distress. The Centre's records show that on the next eight occasions, the last being on 15 April 2009, the

applicant arrived early to prepare for the contact sessions, which lasted at most a couple of minutes before the children left the room.

23. On 28 April 2009, after conducting an interview with the children, the Centre informed the applicant that a contact session scheduled for 29 April 2009 had been cancelled on the basis of section 119 of the Marriage and Family Relations Act (see paragraph 45 below) because it would be a serious psychological burden for the children.

24. The sessions were supervised by a team of four caseworkers (a psychologist, social worker and two pedagogues), with two caseworkers present during each session. After every session the Centre's caseworkers talked to the children and conducted a review (*evalvacija*) of contact with the parents. It appears from the Centre's records of the interviews with the children that they expressed a dislike of their father and refused any contact with him. The records of 18 February and 4 March 2009 indicate that one of the caseworkers told the children that she believed that they did not want contact but that the court had decided differently.

25. Meanwhile, the applicant via his lawyer repeatedly warned the Centre that they had not started with a meaningful implementation of the above-mentioned court decision (see paragraph 18 above). In particular, he complained that they had not offered any expert help to him or the children, had not been sufficiently active in helping to establish contact and had not cooperated with both parents. He also expressed the opinion that the Centre's officials had been biased, as they knew the mother personally and had worked with her in business matters, and asked the Centre to appoint an independent expert who would not know either of the parents personally and could work with both of them in establishing mutual trust between the applicant and the children. The applicant also suggested that the school psychologist (whom the children trusted) join the process at the Centre. Lastly, he proposed organising contact sessions outside the Centre in a more informal environment, such as during a short trip with someone they trusted.

26. The Centre's expert team, composed of a psychologist, social worker, pedagogue (*pedagog*) and lawyer, met five times between December 2008 and May 2010 to discuss implementation of the contact order under the Centre's supervision. On 15 January 2009 the expert team decided to propose to the court that it issue an interim order to suspend contact with immediate effect because the contact sessions were not in the children's interests.

27. On 11 October 2011 the Centre prepared a risk assessment for the children and an action plan for the children and parents (see paragraph 43 below). According to the assessment, the applicant did not trust the work of the caseworkers and was unaware of his problematic behaviour, while the mother had refused to attend counselling with the applicant and had been generally too passive. It opined that contact would benefit the children only

if the parents, through the parental therapy (*starševska terapija*) suggested to them, changed their behaviour.

C. Second set of contact proceedings – proceedings relating to the discontinuation of contact between the applicant and his children

1. Proceedings before the Kranj District Court

28. On 30 January 2009 the Centre lodged an application with the Kranj District Court asking the court to order that contact be organised within the framework of family therapy, initially with the parents attending the therapy alone or, if that was not possible, to suspend contact between the applicant and the children. It held in this connection that a parent refusing to attend the therapy would be responsible for the absence of contact between the applicant and his children. The Centre simultaneously applied for an interim order to immediately suspend the applicant's contact with his children. The Centre noted that, notwithstanding its professional work, and the applicant's cooperation and good intentions, the children continued to categorically refuse any contact with the applicant. It also noted that the four Centre officials (caseworkers) who had been present during the contact sessions saw no prospect of the relationship between the applicant and the children improving in the framework of the supervised contact sessions and that the children were not willing participants in them. In such circumstances, in the absence of any relationship between the applicant and his children, and for the time being, they also did not foresee the possibility of organising contact sessions outside the Centre. It submitted that the conditions for the applicant maintaining contact with his children could only be created by the applicant and M. jointly, and that they had been unable to achieve this so far. In their further submissions to the court, the Centre noted that the contact sessions were a serious burden for the children and that the continuation of contact would amount to gradual psychological abuse. It also emphasised that the applicant and his lawyer did not trust the Centre and believed that the officials were biased.

29. The applicant opposed the application, arguing that the Centre had aligned itself with M. and had neglected the obligations imposed on it by the court to monitor contact and assist the applicant and his children in improving their relationship (see paragraph 18 above). The activities of the Centre had been aimed at suspending contact instead of actively establishing it with the help of an expert. He noted, in particular, that at the first contact session the children had actively communicated with him. The first session after a long time had been crucial from an emotional standpoint, but had lasted only fifteen minutes because of the caseworker's intervention. The next contact session had started with the caseworker's appeal to the children that they could leave. He argued that the children had been put under

systematic pressure by M. and, indirectly, the Centre. Moreover, the Centre had been biased in its submissions and the only impartial opinion − on which the court should base its decision − was that of the expert psychiatrist, Dr T. In the course of the proceedings the applicant also requested that the court issue an interim decision ordering M. to attend family therapy with him with a view to establishing communication between them.

30. On 9 February 2009 the Kranj District Court dismissed the Centre's request for an interim order to suspend contact between the applicant and his children (see paragraph 28 above). It held that the 2008 contact order had taken into account the applicant's characteristics and attitude, as well as the fact that the children had not had any contact with him since 2006. In order to overcome the existing alienation and initial difficulties in re-establishing contact, the order specified a third party who would help and offer advice in this regard. The court noted that the records did not show that the Centre had played an active role in implementing the 2008 contact order. In particular, contact was limited to the children entering the Centre under strict protocol, stating that they did not want contact, and them leaving the premises together with the caseworkers. The court concluded that Dr T.'s recommendations regarding how the contact sessions should be conducted had not been followed properly. The court further held that there was no reason not to try systematic family therapy in parallel to the contact sessions at the Centre, especially by preparing the children for contact directly before the sessions. The children, represented in the proceedings by M., appealed against the decision. On 16 April 2009 the Ljubljana Higher Court allowed the appeal and remitted the case to the first-instance court. It noted that a critical change in circumstances had occurred since contact was formalised in 2008, and that there was a risk to the children's psychological development.

31. On 29 April 2009 the Kranj District Court issued an interim order temporarily suspending contact between the applicant and his children. The court observed that the children continued to refuse contact with the applicant and that during five supervised contact sessions there had been no progress in establishing a relationship between him and them. The court held that the Centre's experts responsible for counselling were of the opinion that their attempts at establishing contact had been unsuccessful and not in the children's interests, even though they had done everything possible. It thus concluded that continuing with contact would be a psychological burden, threatening the development of the children and that this could cause them irreparable harm. The applicant lodged an objection, arguing that the first-instance court had not taken into account the fact that the 2008 contact order had never been implemented because the Centre had not carried out any activities in this regard but had instead been working towards the discontinuation of contact. His objection was dismissed as

unfounded. He then appealed. On 13 April 2011 the Ljubljana Higher Court dismissed the appeal, finding that it was preferable for the children not to be forced into contact with the applicant. The court reiterated that in terms of the interim order it was irrelevant what the cause was of the traumatic experience the children had in relation to contact, but noted that this could be relevant in the context of potential family therapy.

32. During the proceedings the court asked the expert psychiatrist Dr T. to update the opinion provided during the 2008 proceedings (see paragraphs 17 and 18 above). Dr T. conducted interviews with each child and the parents. In her expert opinion of 20 October 2010 she noted that the children resented any contact with their father because they were preoccupied with their previous negative experiences with him (see paragraph 16 above). They saw it as a decision forced upon them which did not take into account their emotional needs and wishes. The expert observed that the children had not established an emotional connection with their father at a young age and had expressed an irrational fear of their father linked to them feeling insulted. Their resentment was also the main reason for the difficult implementation of supervised contact. Given their age and the circumstances, she believed that establishing contact would not benefit the children. In the opinion she also noted that M. had not prevented contact and that the children's resentment did not seem to be based on the alleged manipulation. Furthermore, noting that the applicant was capable, motivated and eager to act in his relationship with the children in a way that would not harm them, the expert suggested that the applicant and M. start parental therapy. She explained that the process of forming a relationship with the father was still open and dynamic and that therapy was aimed at establishing mutual trust between parents. When giving evidence to the court (see paragraph 34 below) Dr T. pointed out that therapy involving counselling and teaching appropriate communication to both parents would stand an 80% chance of success. She also noted that M. should obtain some advice on appropriate communication with the children regarding the importance of their contact with their father and communication with the applicant and submitted that if M. refused to attend counselling, this would call into question her motivation to help the children. Lastly, the expert held that she had not noticed any mistakes in the work of the Centre's caseworkers during the contact sessions.

33. At a hearing on 21 June 2011 the judge suggested concluding an agreement outlining everyone's participation in family therapy. While the Centre's representative agreed, noting that this would be in the children's best interests, M. refused to participate in any kind of family therapy.

34. The Kranj District Court held four hearings at which it examined the expert Dr T., the applicant, two caseworkers from the Centre, the school psychologist and M. It rejected a request by the applicant that psychological tests be carried out. It found in this connection that, taking into account the

children's age, the examination by Dr T. was sufficient as it fully explained the relationship between the applicant and children and that a psychologist would offer no other specific knowledge relevant to the outcome of the case.

35. On 21 June 2011 the Kranj District Court (in non-contentious proceedings) issued a decision on the basis of section 106(5) of the Marriage and Family Relations Act (see paragraph 45 below) discontinuing contact between the applicant and his children. It dismissed the remainder of the Centre's application, for the obligatory participation in family therapy (see paragraph 28 above), and the applicant's request for an interim measure ordering family therapy (see paragraph 29 above). The court observed that the supervised contact sessions had been unsuccessful, which had been acknowledged by the Centre, the expert psychiatrist and the applicant. It found that the children, who were almost fifteen years old at the time of the court's deliberations and thus able to form their own opinion on contact (section 410 of the Civil Procedure Act, see paragraph 47 below), had categorically refused any contact with the father because of their past negative experiences and that supervised contact had caused them mental distress. It held that in such circumstances the reason for the interruption of contact was no longer important. It noted that the children were going through adolescence and that it was possible that they were displaying loyalty to M. by refusing contact with the applicant. In any case, the contact sessions were no longer in the children's interests because they were a serious psychological burden for the children and were, due to the disagreements between the parents, traumatic for them. The court stated that, according to the expert's opinion, any attempt to establish contact under the current conditions would not benefit the children. It also noted that, although the applicant was very motivated and keen to establish contact with the children, he had appeared stressed and under pressure during the supervised contact sessions. Moreover, the court held that he was partly responsible for unsuccessful contact because he had been too impatient, had felt offended and angry and had been unable or had not known how to get close to the children, for which he had unreasonably blamed the Centre's caseworkers. Lastly, the court also found it inappropriate to order family therapy involving the participation of the children. It noted in this connection that M. had not agreed to it and that the children had clearly refused any cooperation with their father during the contact sessions and were seriously distressed. The latter was crucial for deciding that they should not be forced in any further proceedings for the establishment of contact. The court dismissed the applicant's request for an interim measure ordering family therapy for the same reasons, interpreting it as therapy for all family members, including the children.

2. The applicant's appeals

36. The applicant appealed, maintaining, *inter alia*, that the solution for re-establishing contact between him and the children, as advised by Dr T., was family therapy, initially with the parents alone and later with the children, which had been refused by M. He disagreed with the court's opinion that the reasons resulting in the discontinuation of contact were no longer relevant and pointed out that the children's alienation from him was the result of wrong decisions taken by the administrative authorities and wrong assessment of the evidence by the court. He repeated his request to appoint a psychologist, who could explore the negative attitude of the children towards him. He also argued that the initiation of family therapy and a gradual introduction of visits would have been in the best interests of the children, who needed a father figure in their life, as had also been confirmed by Dr T.

37. On 11 January 2012 the Ljubljana Higher Court upheld the Kranj District Court's decision (see paragraph 35 above). In the court's view, the main reason for the children's negative attitude towards contact with the applicant were his personal characteristics, as indicated by the court expert, combined with the inadequate participation of M. It found that the opinion of expert Dr T. based on a paedopsychiatric examination of the children and psychiatric diagnostics had provided sufficient grounds for the decision to discontinue contact and that the court-appointed expert had concluded that further tests were unnecessary given the age of the children. The court also stressed that the decision to discontinue contact had not been based solely on the opinion of the children. Other evidence, namely the expert's opinion, the Centre's report and the hearing of M. and the applicant, confirmed that contact was not beneficial to the children, who continued to refuse any contact with the applicant. It confirmed that M. had not prevented contact but that, according to the expert's opinion, she should have played a more active role. The court also observed that the expert believed that the children's interests required that family therapy be carried out and that such therapy would have an 80% chance of success in the present case. However, the Higher Court found that there was no case-law on the question of whether a custodial parent could, without any relevant legal basis, be forced to participate in family therapy. It also found that family therapy should not, in any event, be ordered because it would only be successful if the applicant's behaviour changed and M. displayed changes in her attitude. Lastly, although it had been established convincingly that family therapy could be successful in the present case, it had not been established equally convincingly that the applicant would succeed in overcoming the personal difficulties which had hindered the relationship between him and the children.

38. On 18 April 2012 the applicant lodged a constitutional complaint reiterating his previous complaints (see paragraph 36 above).

39. On 15 June 2012 the Constitutional Court decided not to accept a constitutional complaint by the applicant for consideration, finding that it did not concern an important constitutional issue or entail a violation of human rights which had serious consequences for him. The Constitutional Court rejected his constitutional complaint in part regarding the lower courts' decision not to order M. to join family therapy with him because the applicant lacked legal interest.

D. Findings of the Inspectorate for Social Matters

40. On 8 April 2009 the applicant lodged a complaint with the Inspectorate for Social Matters at the Ministry for Work, Family and Social Matters (hereinafter "the Inspectorate"). On 20 May 2009 the inspector to whom the case had been allocated (hereinafter "the Inspector") asked the Centre to submit a written report and copies of the applicant's family files.

41. On 25 August 2011 the Inspectorate issued an audit report, which found a number of flaws in the Centre's handling of the applicant's case. As a preliminary matter the report noted that, the decision to conduct an extraordinary inspection of the work of the Centre in the present case had not been taken until 11 August 2010 because the Inspector had found it inappropriate to influence the ongoing court proceedings. However, shortly thereafter the Inspector had been absent from work for almost a year and had been unable to conclude the audit until 31 August 2011.

42. As to the audit's findings, the report stated that the Centre had violated several legislative provisions and professional regulations, including section 106 and 119 of the Marriage and Family Relations Act and section 92 of the Social Assistance Act (see paragraphs 45 and 46 below). The report found, in particular, that the Centre:

(i) had not identified the problem that the parents had not been acting in the children's best interests as regards contact, particularly M., who had refused to cooperate with the applicant;

(ii) had, consequently, not tried to resolve the problems between the parents, which was one of the reasons that supervised contact could not be established;

(iii) had not offered the parents the social service of home or personal help even though the applicant had been willing to accept it;

(iv) had not assessed the attitude of M.'s parents, who had been living with the children, despite this issue being raised by the applicant;

(v) had not realised that, by not providing these services, it had been following M.'s wishes but failing to safeguard the children's best interests;

(vi) despite having been entrusted by the court with the task of re-establishing contact between the applicant and his children it had concluded, on the basis of an incorrect assessment of the facts regarding the alleged

harmful behaviour of the applicant during the contact visits in the past, that the children's contact with the applicant should be discontinued;

(vii) had not provided proper reasoning for the request to discontinue contact, even though the discontinuation ordered by the court had been ultimately justified because the contact visits under the Centre's supervision had not been in the children's interests;

(viii) had not treated both parents equally and its officials' methods of approach and communication, especially with the applicant, had been often inappropriate;

(ix) had not drawn up a proper assessment of the situation or an action plan;

(x) together with M., had burdened the then still young children with the need to make a decision concerning the desired contact even when different contact from that determined by the court could have been arranged only by the parents' agreement; and

(xi) had not assessed how well the children had been prepared for contact.

43. The report also noted that the situation in the applicant's family could not be fixed or changed by any measures within the remit of the Inspectorate but only by the parents themselves. In particular, the report emphasised that the parents were responsible for the situation of distress and were the only ones who could resolve it (with the intervention of the Centre). Consequently, the Centre could not be held responsible for the absence of contact. The Inspector, however, noted that the director of the Centre should appoint a new team to deal with the applicant's children, make a proper assessment of the situation and draw up an action plan, of which both parents should be informed. The Inspectorate also set out general measures to be undertaken in order to improve the Centre's work in protecting children's best interests following dissolution of marriage or family life. In particular, it stated that guidelines for internal monitoring, professional criteria for the improvement of teamwork, and special training programmes were to be set up for all officials responsible for assisting families after a marriage break-up. Finally, official J.P., who was the last remaining member of the team dealing with the applicant's family in the department of family assistance, was asked to retake certain parts of her professional examination.

44. On 31 August 2011 the Inspectorate ordered the Centre to carry out the proposed measures within the specified time-limit and to file written reports on their implementation. On 3 April 2012 the Inspectorate issued a final report on the extraordinary inspection, noting that the Centre had implemented all the imposed measures properly.

II. RELEVANT DOMESTIC LAW

45. The Marriage and Family Relations Act ((old) Official Gazette of the Socialist Republic of Slovenia no. 15/1976, with relevant amendments – "the Family Act") provides, in so far as relevant:

Section 5a

"(1) In all their activities and proceedings, parents, other persons, national authorities and holders of public authority must provide for the benefit of a child ..."

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. Such contact should be in the child's interests first and foremost.

(2) The parent with whom the child lives ... shall avoid anything that hinders or prevents such contact. He or she must strive to maintain an appropriate attitude in the child in respect of contact with the other parent...

...

(4) If the parents, despite the assistance of the social work centre, cannot reach an agreement about contact arrangements, the court shall make such arrangements at the request of one or both parents ...

(5) The court may withdraw or limit the right to contact only if this is necessary for the protection of the child's interests. Contact is not in the interests of the child if it creates a psychological burden or otherwise endangers his or her physical or mental development. The court can decide that the contact be carried out under the supervision of a third party or that it be carried out by means other than personal visits if the child's interests so require.

(6) If the custodial parent denies the non-custodial parent access to the child and contact cannot be assured with the assistance of the social work centre, the court shall, at the request of the non-custodial parent, transfer custody to him or her if this is in the child's interests.

(7) Before the court takes a decision pursuant to paragraph 4, 5 or 6, it should obtain an opinion from the social work centre concerning the best interests of the child. The court should also take the child's opinion into account if he or she expresses such an opinion alone ... and understands its purpose and consequences."

Section 119

"The social work centre must take all the necessary measures which are required by the ... rights and interests of the child."

46. Section 92 of the Social Assistance Act (Official Gazette no. 54/92 with relevant amendments) provides that social work centres should strive to reach an agreement with the recipients of their services as regards the duration, type and means of delivery of their assistance.

47. Section 410 of the Civil Procedure Act (Official Gazette no. 26/99, with further relevant amendments) provides that the court should, when

deciding on contact between children and parents, inform in an appropriate manner children who are capable of understanding the meaning and consequences of the decision in the proceedings and of their right to state their opinion.

III. RELEVANT INTERNATIONAL LAW INSTRUMENTS

48. 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. Its provisions read, in so far as relevant, as follows:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration ..."

Article 9

"...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

49. In General Comment no. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, published on 29 May 2013 (CRC/C/GC/14), the Committee on the Rights of the Child stated, *inter alia*, the following:

"**3. The child's best interests and the right to be heard (art. 12)**

43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child... [Articles 3, paragraph 1, and 12] have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are

not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives.

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing. Similarly, as the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view."

50. On 17 November 2010 the Committee of Ministers of the Council of Europe adopted Guidelines on Child Friendly Justice. One of the fundamental principles is that all children have a right to be consulted and heard in proceedings involving or affecting them. The best interests of the children are a primary consideration for the Member States. The Guidelines also provide that children should be treated with care and sensitivity throughout any procedure, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. Judgments and court rulings affecting children should be duly reasoned. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law. In family law cases, courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations. Once the judicial proceedings are over, national authorities should take all necessary steps to facilitate the execution of court decisions involving and affecting children without delay. Lastly, after judgments in highly conflictual proceedings, guidance and support should be offered to children and their families by specialised services (see points nos. 49-51, 76 and 79).

51. On 16 November 2011 the Committee of Ministers of the Council of Europe adopted the Recommendation on Children's Rights and Social Services Friendly to Children and Families. The Recommendation builds on three principles: the provision of social services in the best interests of the child, the child's rights to participation and the child's right to protection. Bearing in mind that the parents have the primary responsibility for the upbringing and development of the child, social service delivery should, according to the Recommendation, ensure a supportive environment for the child by providing the appropriate level and diversity of services and resources necessary for positive parenting and the empowerment of parenting skills. The Recommendation also provides that children should be treated as full bearers of rights, as active subjects in the planning, delivery

and evaluation of social services, with special attention for their age, development and individual circumstances. In all processes where social services are provided to children, they should, *inter alia*, have the right to be listened to and be informed of decisions taken and the extent to which their views have been taken into account. Specialist social services should be in place to ensure immediate emergency interventions and address negative impacts of adverse childhood experiences, and provide social and psychological support to children and their families. These multidisciplinary services and/or programmes should be based on assessments of the children's individual needs and preferably evidence-based interventions. They should, *inter alia*, include services for children and parents with regard to parents in special need of parenting skill training, for example due to deficient parental practices.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. The applicant complained, under Articles 6 and 8 of the Convention, that his right to a fair trial and respect for his family life had been violated on account of the courts' decisions to discontinue contact between him and his three children and their refusal to order family therapy, and the allegedly inadequate work of the welfare authorities. The Court, 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), will examine these complaints from the standpoint of Article 8 of the Convention alone (see *Kutzner v. Germany*, no. 46544/99, §§ 56 and 57, ECHR 2002-I, and *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, § 111, 1 December 2009). This provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

53. The Court notes that the application 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 submissions of the parties

(a) The applicant

54. Firstly, the applicant argued that the domestic courts had arbitrarily deprived him of contact with his children because they had ignored the mother's influence on the children and had refused to order family therapy without providing any valid reasons for that decision. In particular, he believed that the decisions to discontinue contact had not been in accordance with the law because the interpretation of section 106(5) of the Family Act (see paragraph 45 above) did not allow for a total discontinuation of contact without considering less invasive alternatives. He maintained that in the absence of any exceptional circumstances justifying the Centre's conduct during the supervised contact sessions and the domestic courts' decisions to discontinue contact, total severance of contact had been disproportionate and thus not necessary in a democratic society.

55. Secondly, relying on the Court's case-law in *Elsholz v. Germany* ([GC], no. 25735/94, ECHR 2000-VIII) the applicant maintained that the domestic courts should have appointed an expert psychologist to assess the need for contact between him and his children. He submitted that the courts had rejected his request to appoint such an expert without providing sufficient reasons. Furthermore, the opinion of the Centre, whose role in the court proceedings had been similar to the role of the court-appointed experts, had been biased and in breach of professional standards.

56. Lastly, the applicant argued that the national authorities had failed to discharge their positive obligation to facilitate contact between him and his children. In particular, the Centre had failed to provide proper assistance in relation to the contact arrangements determined by way of judicial decision. Relying on the Inspectorate's report (see paragraphs 45 and 46 above), the applicant maintained that the Centre had not carried out all the activities necessary to supervise contact between him and the children. The applicant submitted that the contact, as it had been carried out under the Centre's supervision, had not benefited the children. Furthermore, the Centre had caused the children additional distress by expecting them to make a decision regarding contact themselves. The unprofessional and biased work of the Centre, in his opinion, had contributed to the tensions between the parents and had prevented him from establishing any meaningful contact with his children. Owing to these irregularities, contact could not be established, despite him following the Centre's guidelines and advice. He also maintained that he had constantly pointed out deficiencies on the part of the

work of the officials of the Centre, namely that they had not conducted the tasks impartially, had been unprofessional and had failed to prepare the children for contact.

(b) The Government

57. The Government acknowledged that there had been an interference with the applicant's right under Article 8 of the Convention. However, they submitted that the interference had been in accordance with the law and had pursued a legitimate aim – the protection of the rights of the applicant's children.

58. As regards the proportionality of the interference, the Government argued that contact between the applicant and the children had not benefited the children. The Centre had carried out all the activities necessary to supervise contact between the applicant and his children as determined by the contact order of 2 October 2008. The children had continued to refuse contact and had clearly expressed their wish not to have any contact with their father. Moreover, they had been in distress at each contact session. For this reason, after four contact sessions the Centre's expert team had decided to apply to the court to change the determined contact arrangements.

59. The Government further argued that the judicial proceedings which had ended with the discontinuation of the applicant's contact had been fair, timely and had not violated any of his rights. The domestic court had relied on an expert opinion. The Government referred to Article 12 of the Convention on the Rights of the Child (see paragraph 48 above), noting that it had been the duty of the courts to take into consideration the views of the children, who had had the capacity to make their own decisions and had categorically refused any contact with the applicant. Consequently, the children could not be forced against their will to participate in any further proceedings, let alone family therapy.

60. Furthermore, the Government contended that under section 106 of the Family Act (see paragraph 45 above) the Centre had only had an advisory role and in the court proceedings had been primarily acting in its role of pursuing the best interests of the children.

61. With respect to the findings of the Inspectorate, the Government emphasised that it had been principally the parents, particularly the mother, who had not pursued the interests of the children in the implementation of the right to contact. Furthermore, they argued that the measures imposed on the Centre by the Inspectorate had demonstrated that an effective internal system of supervision over the work of the welfare authorities had been in place.

62. Lastly, relying on the Court's case-law, namely *Glaser v. the United Kingdom* (no. 32346/96, 19 September 2000) and *Juha Nuutinen v. Finland* (no. 45830/99, 24 April 2007), the Government submitted that as long as the State strived for the implementation of the contact agreement between a

parent and a child in good faith and the main obstacle to the contact was action on the part of the person having custody of the child, as in the present case, the Court would not find a violation of Article 8 of the Convention.

2. The Court's assessment

(a) The interference

63. The Court points out that mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see *Johansen v. Norway*, 7 August 1996, § 52, *Reports of Judgments and Decisions* 1996-III). It follows that the discontinuation of the applicant's contact with the children amounted to an interference with his rights under this provision. This point is not contested by the Government (see paragraph 57 above).

64. 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 and can be regarded as "necessary in a democratic society" (see, among other authorities, *Elsholz*, cited above, § 45).

(b) Legal basis and legitimate aim

65. The applicant disputed that the impugned decisions to discontinue the contact had been "in accordance with the law" (see paragraph 54 above). In his view, the interpretation of section 106(5) of the Family Act (see paragraph 45 above) did not allow for a total discontinuation of contact without considering less invasive alternatives.

66. The Court notes that the issue raised by the applicant essentially relates to the question of necessity of the interference and should be addressed accordingly. It considers that the impugned decisions to discontinue the applicant's contact with the children had a basis in national law, namely, section 106(5) of the Family Act (see paragraph 45 above). Having regard to the text of the provision in question and the reasons relied on by the Kranj District Court and the Ljubljana Higher Court in the present case (see paragraphs 35 and 37 above), the Court is satisfied that the decisions were adopted in accordance with the Family Act. Therefore, the Court concludes that the interference with the applicant's contact rights had been "in accordance with the law".

67. Moreover, the Court accepts that the decisions at issue were aimed at protecting the best interests of the children, which is a legitimate aim within the meaning of Article 8 § 2 of the Convention (see, for example, *Gobec v. Slovenia*, no. 7233/04, §131, 3 October 2013).

(c) Necessity in a democratic society

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

(i) General principles

69. In determining whether the discontinuation of the applicant's contact with his children was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. 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 *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII; and *Kocherov and Sergeyeva v. Russia*, no. 16899/13, § 93, 29 March 2016).

70. 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. In particular, when deciding on custody, the Court has recognised that the authorities enjoy a wide margin of appreciation. 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 (see *Elsholz*, cited above, § 49; *Kutzner*, cited above, § 67; *Sahin* and *Sommerfeld*, both cited above, §§ 65 and 63 respectively).

71. 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 (see *Elsholz*, cited above, § 50; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Sahin* and *Sommerfeld*, both cited above, §§ 66 and 64 respectively).

72. While the Court's case-law requires children's views to be taken into account, those views are not necessarily immutable and children's objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child (see *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). In particular, the right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination

being carried out to determine their best interests (see *C. v. Finland*, no. 8249/02, §§ 57-59, 9 May 2006); such interests normally dictate that the child's ties with his or her family must be maintained, except in cases where this would harm his or her health and development (see, for example, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010).

73. The Court further reiterates that, although the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life (see, amongst other authorities, *Glaser*, cited above, § 63). The Court has repeatedly held that in cases concerning the contact rights of one of the parents, the State has in principle an obligation to take measures with a view of reuniting the parents with their children and an obligation to facilitate such reunions, in so far as the interests of the child dictate that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see, among other authorities, *Ignaccolo-Zenide*, cited above, § 94).

74. The obligation of the national authorities to take measures to facilitate contact is not, however, absolute. It is an obligation of means, not of result, and may require preparatory or phased measures. The nature and extent of such preparation will depend on the circumstances of each case, but the cooperation and understanding of all concerned will always be an important ingredient. However, since the authorities must do their utmost to facilitate such cooperation, the lack of it is not a circumstance which can by itself exempt them from their positive obligations under Article 8. Rather, it requires the authorities to take measures to reconcile the conflicting interests, keeping in mind the best interests of the child as a primary consideration (see *Ribić v. Croatia*, no. 27148/12, § 94, 2 April 2015; for the position of the Committee on the Rights of the Child as regards the right of the child to have his or her best interests taken as a primary consideration, see paragraph 49 above). What is therefore decisive is whether the domestic authorities have taken all necessary steps to facilitate contact that can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Kuppinger v. Germany*, no. 62198/11, § 101, 15 January 2015, and *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A). Another important factor to be taken into account is that in cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (see *Ribić*, cited above, § 92). This duty applies not only to proceedings involving the determination of custody and contact rights, but also to proceedings concerning the implementation of those rights (see *Ignaccolo-Zenide*, cited above, § 102).

(ii) Application of the above principles to the present case

75. The applicant complained about the decisions to discontinue contact with his children. The Court observes that in 2006, when the children were almost 10 years old, the applicant took measures to obtain contact with them (see paragraph 12 above), and that on 29 April 2009, when the children were 12 years old, the Kranj District Court temporarily suspended the applicant's contact (see paragraph 31 above), whereas on 21 June 2011, when the children were almost 15 years old, it decided to discontinue it (see paragraph 35 above). The Court's task in the present case is therefore to assess whether the reasons relied on by the Kranj District Court were relevant and sufficient, in particular having regard to the best interests of the children. However, in making this assessment, the Court will take into account not only the judicial decisions which discontinued the contact, but also the acts and omissions of the involved authorities, in particular the Centre, as they had a direct bearing on the situation on which such decisions were based (see paragraph 74 above).

76. As regards the background of the case, the Court observes that the applicant and M., following their separation, managed to reach an agreement on contact arrangements (see paragraph 9 above). However, problems with regard to its implementation arose in June 2006. Subsequently, the contact arrangements were formalised in an order of the Kranj District Court, as modified by the Ljubljana Higher Court on 2 October 2008 (hereinafter "the 2008 contact order", see paragraph 18 above). The Court further observes that the Ljubljana Higher Court already in the first set of contact proceedings observed that the children, then twelve years old, refused to have contact with the applicant (see paragraph 18 above). The aforementioned court, however, did not deem the children's negative attitude towards their father sufficient for discontinuing contact. Consequently, the Higher Court decided to authorise the applicant to have contact with his children one and a half hours every fortnight under the Centre's supervision. In the 2008 contact order it explicitly held that the main role of the welfare authorities in the case was to provide expert assistance in establishing mutual trust between the applicant and the children (see paragraph 18 above).

77. As to the measures taken by the Centre in the implementation of the contact order, the Court observes that the welfare authorities organised a meeting with the parents before the first contact session with a view to reaching an agreement on how contact would be organised under the Centre's supervision. They also talked to all three children together before the first contact session (see paragraph 21 above). It also appears from the case file that after each session two of the caseworkers of the Centre who were present at the contact sessions interviewed the children and the parents (see paragraph 24 above). No other measures seem to have been taken by the authorities.

78. The Court finds that the children kept refusing contact with the father and were leaving the sessions after only a couple of minutes (see paragraph 22 above). It has not been disputed that no meaningful contact between the applicant and the children was established at these contact sessions. The Court further observes that after four unsuccessful attempts at meetings to establish contact between the applicant and the children, the Centre decided to initiate court proceedings, seeking to modify or discontinue contact. Subsequently, seven further contact sessions took place under the supervision of the Centre (see paragraph 22 above).

79. The Court draws attention to the fact that the reason the children resented contact with the applicant – their negative experience with the contact sessions in the past – was outlined in the 2008 contact order (see paragraph 18 above). However, the Court observes that the Centre, which was by virtue of that order entrusted precisely with the task of assisting the applicant and the children, failed to take any meaningful measures to address what the domestic courts, relying on the expert's opinion, considered to be the root cause of the children's negative attitude to contact (see paragraphs 32 and 35 above). Moreover, the children were not offered any help or advice aimed at overcoming the alienation stemming from the fact that they had had no contact with their father for more than two years (see paragraphs 18, 30 and 42 above; compare and contrast with *Z.J. v. Lithuania*, no. 60092/12, § 102, 29 April 2014; for the position of the Committee of Ministers, see also paragraph 51 above).

80. Furthermore, it stems from the Kranj District Court's decision of 9 February 2009 (see paragraph 30 above) and the report of the Inspectorate (see paragraph 42 above) that the sessions were not arranged in circumstances such as to encourage positive developments in the relationship between the applicant and his children. In particular, the sessions, which were organised in a rather formal environment on the Centre's premises, lasted a few minutes at most and came to an end when the children, who were clearly not prepared in any way, left the designated room with the caseworkers (see paragraphs 30 and 42 above; and, *mutatis mutandis*, *Ignaccolo-Zenide*, cited above, § 112).

81. In this connection, the Court notes that the Inspector appointed to audit the work of the Centre in the present case identified a number of other shortcomings concerning the way the welfare authorities had handled the case, including their bias in favour of M. and numerous omissions in providing services to the family (see paragraphs 42 and 43 above; see also *Zoltán Németh v. Hungary*, no. 29436/05, § 51, 14 June 2011). The audit report also noted that there had been no proper assessment of the situation and no action plan drawn up by the Centre for dealing with the case. The Inspector found the fact that the caseworkers had not identified the problems with the parents and had not acted accordingly as one of the reasons for the failed attempts in re-establishing contact (see paragraph 42

above). As outlined in the report, the manner in which the welfare authorities had dealt with the situation had helped to accentuate the difficulties in establishing contact between the applicant and the children.

82. As regards the applicant's conduct, the Court observes that he was never considered unsuitable for maintaining contact with his children. He repeatedly sought the assistance of caseworkers, and demonstrated an openness and readiness to work with professionals in order to achieve positive developments in his relationship with the children and to find the best arrangements for contact with them (see paragraph 25 above). In this connection, he proposed contact sessions outside the Centre's premises, in a less formal environment in accordance with the interests of the children, the engagement of the school psychologist and the presence of an expert not related to the Centre during the sessions. The Centre did not follow any of the applicant's suggestions.

83. The Court further notes that the applicant's case was marked not only by the persistent refusal of contact by the children but also by the absence of active cooperation on the part of the other parent and the strained relationship between the applicant and the children's mother. Even though it was never established that the mother had actively sought to thwart the implementation of the 2008 contact order, the Court cannot overlook the fact that following the order she categorically opposed the counselling process and any form of family therapy that would require her participation (see paragraph 33 above). The Court takes note of the Government's objection that the mother's conduct was the main obstacle to the contact, not the work of the Centre (see paragraph 61 above). It however emphasises that a lack of cooperation on the part of a custodial parent does not of itself absolve the authorities of their responsibility under Article 8 to take measures that can reasonably be demanded in the circumstances of the case to reconcile the conflicting interests (see paragraph 74 above). In this connection, the Court observes that the domestic authorities were well aware of the negative effect that the conflict between the parents had on the children, and recognised family therapy for the parents as the only viable option for the successful establishment of contact between the applicant and the children (see paragraphs 28, 32, 33 and 37 above). Notwithstanding that, there is no indication in the case file that any measures were taken in response to M.'s opposition to the counselling process or that this would have any consequences for her (see also paragraph 33 above).

84. It follows from the above that faced with the persistent refusal of the children and absence of active engagement of the other parent, the Centre failed to make sure that professional, targeted support was effectively provided to the children, which was critical for them to get used to the idea of seeing their father again, and to the parents, who needed assistance in recognising what was in the children's best interests (see, *mutatis mutandis*, *Z.J. v. Lithuania*, cited above § 102). The assistance of the Centre, as

determined in a judicial decision (see paragraph 18 above), was in the specific circumstances of this case therefore part of the necessary measures that the authorities were reasonably required to take in line with their positive obligations under Article 8 (see, *mutatis mutandis*, *Aneva and Others v. Bulgaria*, nos. 66997/13 and 2 others, § 109, 6 April 2017, and *K.B. and Others v. Croatia,* cited above, § 144; for the position of the Committee of Ministers, see also paragraphs 50 and 51 above). However, in the present case, instead of taking the aforementioned measures, the welfare authorities after only four unsuccessful contact sessions applied to the Kranj District Court to have the contact between the applicant and his children discontinued (see paragraph 28 above). The Kranj District Court and the Ljubljana Higher Court followed the Centre's application and discontinued the applicant's contact with his children on the grounds that the forced supervised contact had caused the children mental distress and could harm their development (see paragraphs 35 and 37 above).

85. The Court takes note of the applicant's complaint that the Centre's opinion in the court proceedings was biased (see paragraph 55 above). It observes that, under the relevant domestic law provisions (section 106(7) of the Family Act, see paragraph 45 above), the courts in contact proceedings have to obtain an opinion concerning the best interests of the child from the social work centre but are not bound by the views of the centre expressed therein. In any event, the domestic courts in the present case appointed an expert psychiatrist who was independent from the Centre with a view to establishing what was in the best interests of the children under the given circumstances (see paragraph 32 above). As to the applicant's argument regarding the absence of an expert psychologist report (see paragraph 55 above), the Court, having regard, in particular, to the expert psychiatrist report, to which the applicant had not objected and which was based on, among other things, an interview with the children, finds the domestic court decision not to order an expert psychologist report reasonable (see *Sommerfeld*, cited above, § 71).

86. That said, the Court observes that the Kranj District Court and the Ljubljana Higher Court accepted the word of the caseworkers that they had done everything in their power to implement the 2008 contact order but did nothing to examine how well they had performed their activities or evaluate the effect of their inaction on the incumbent proceedings (see paragraphs 31, 35 and 37 above). The Inspectorate's intervention, which revealed serious shortcomings in the Centre's work in the applicant's case, came only after the domestic courts had already discontinued the contact and the shortcomings could thus no longer be remedied (see paragraph 41 above).

87. Lastly, the Court draws attention to the expert psychiatrist's opinion that the possibility of establishing contact between the children and the applicant was only possible within the context of family therapy (see paragraph 32 above) – a measure previously requested by the applicant and

suggested by the Centre and the domestic courts (see paragraphs 14, 28-30 and 33 above). However, it notes that the domestic courts never ordered such therapy, even though they accepted it as the only viable alternative to the discontinuation of contact and as such in the children's interests (see paragraph 37 above; compare and contrast *Płaza v. Poland*, no. 18830/07, § 81, 25 January 2011; *Kacper Nowakowski v. Poland*, no. 32407/13, § 86, 10 January 2017; and *Răileanu v. Romania* (dec.), no. 67304/12, § 51, 2 June 2015). As regards the Ljubljana Higher Court's doubts as to whether M. could be legally forced to participate in family therapy (see paragraph 37 above), the Court reiterates that it is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its positive obligations under Article 8 of the Convention (see *Ignaccolo-Zenide*, cited above, § 108). With regard to its reference to the applicant's personal characteristics as an obstacle to successful therapy (see paragraph 37 above), the Court notes that this finding does not seem to be based on any evidence. The expert psychiatrist evaluated the possible success of the therapy at 80%, without mentioning any changes in the applicant's behaviour as a prerequisite for it to be put in place.

88. In the light of the above considerations, the Court finds that in the present case the domestic authorities did not strike a fair balance between the applicant's right to respect for his family life, on the one hand, and the aims referred to by the respondent Government, on the other, and did not discharge their positive obligations under Article 8 of the Convention. There has therefore been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

90. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He submitted that contact as exercised by the Centre had been painful for him. He had been treated with disrespect and had felt humiliated, which had caused him great suffering. Furthermore, the termination of contact had caused irreparable damage to him and the children.

91. The Government argued that the claim was unsubstantiated and exaggerated.

92. The Court, ruling on an equitable basis, awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant also claimed EUR 4,563.20 for the costs and expenses incurred before the domestic courts and EUR 3,708.80 for those incurred before the Court.

94. The Government argued that the applicant had not provided any evidence of the costs he had incurred. Moreover, they submitted that the amount of lawyer's fees claimed by the applicant was excessive. As regards value added tax (VAT), which the applicant had added to every amount of the lawyer's fees claimed, the Government pointed out that, according to the Court's case-law (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 127, ECHR 2012 (extracts)), the applicant was entitled to reimbursement only if he actually had to pay the VAT, which he had failed to prove.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court further reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009).

96. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,700 covering costs under all heads.

C. Default interest

97. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,700 (three thousand seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Jon Fridrik Kjølbro President