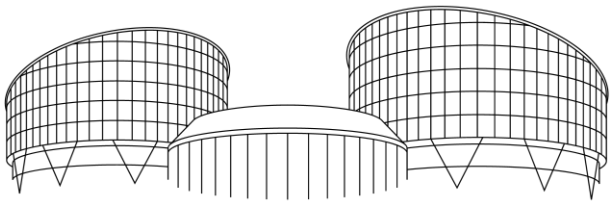

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF X v. SLOVENIA

(Application no. 40245/10)

JUDGMENT

STRASBOURG

28 June 2012

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 X v. Slovenia

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

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 40245/10) 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 X ("the applicant"), on 15 July 2010. The President of the Chamber granted anonymity to the applicant and other persons involved in the case of his own motion under Rule 47 § 3 of the Rules of Court.

2. The applicant was represented by Mr S. Jenčič, a lawyer practising in Maribor. The Slovenian Government ("the Government") were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

3. The applicant complained that his children had been unjustifiably taken into foster care, that he was unable to have contact with them and that there had been undue delays in the related proceedings.

4. On 6 June 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's family's situation, the care order and the applicant's contact with the children

5. The applicant was born in 1962 and lives in Sp. Duplek.

6. The applicant is the father of two children, Y, born in 2000, and Z, born in 2002. He was married to their mother, M., who suffers from mild intellectual disability and epilepsy.

7. In 2001 the Maribor Welfare Authority (hereinafter referred to as "the Maribor Authority") began monitoring the applicant's family after receiving a call from the applicant informing them that M. had left with Y, and expressing concern about their whereabouts.

8. It would appear from the case file that M. frequently left and returned to the apartment in which she was living with the applicant. This was often connected with conflicts between the applicant and M., as well as with conflicts between M. and the applicant's mother, who lived in the same building.

9. From 2001 onwards the welfare authorities conducted a number of visits to the applicant's home. The applicant and M. themselves also frequently contacted the authorities asking for help when conflict arose between them. After the birth of Z, the applicant and M. agreed to be advised by a special consultant with respect to their parenting. In April 2003 they refused any further cooperation in this connection. The police were also repeatedly called to intervene in their situation, and frequently informed the Maribor Authority of their concern that the children were being neglected. On 17 April and again on 11 June 2003 criminal complaints, alleging neglect of the children, were filed against M. (see paragraph 10 below).

10. Following a violent altercation between the applicant and M. on 3 June 2003, the police detained M. The children were taken to Maribor Hospital on suspicion that they had been subjected to violence and neglect. The Maribor Authority reached an agreement with the applicant that he would keep their home tidy and provide for the children's needs. After the Maribor Authority had established that the applicant had complied with the agreement, he was allowed to take the children home on 9 June 2003. M. apparently went back to the apartment she shared with the applicant.

11. On 3 September 2003 the police again intervened, after the neighbours informed them that the applicant had beaten M. up. Both the applicant and M. were detained; the applicant until 3 December 2003. The children were taken to Maribor Hospital, where it was observed that they were neglected and had haematoma on their bodies. The applicant and M. were informed that the children would be removed from them and a criminal investigation was opened against the applicant. It concerned charges of neglect of children and ill-treatment. In the context of the investigation a report was prepared by a forensic expert in paediatric medicine. On the basis of the examination of the children, their medical records, and the police file, the expert concluded that the children were undoubtedly occasionally subjected to physical violence and neglect from their parents. She also found that it was likely that the children were living constantly in a psychologically and hygienically inadequate environment.

She was of the opinion that the children's placement in foster care would be the only means of securing their normal psychophysical development.

12. On 4 September 2003 a written interim care order was issued by the Maribor Authority, and the children were placed in the care of a foster family.

13. On 12 December 2003 a psychologist employed at the Maribor Authority prepared a report on the applicant's situation. In her opinion the applicant was capable of providing sufficient care for the children. He never directly endangered the children and he expressed an appropriate level of affection for them. While noting that the applicant was devoted to his family, the psychologist also found that the applicant and M. were pathologically dependent on each other. She further found that the conflicts between the applicant and M. were of an explosive nature and therefore could at times override their care for the children.

14. On 18 December 2003 the Maribor Authority held a meeting at which the social workers involved in the case agreed that contact between the children and the parents would not be in the children's interest.

15. Following the removal of the children, the police were still frequently called to the applicant's home because of breaches of the peace, M. threatening violence against the applicant, M. attempting acts of arson, M. threatening suicide, and so on. In June, July and August 2004, and in January and May 2005, M. was admitted to a psychiatric hospital.

16. The applicant and M. repeatedly requested the Maribor Authority to return the children and to allow contact with them. The social workers told them that there would be no contact until further notice.

17. A report prepared by a child psychiatrist employed at the Health Centre in Maribor was submitted to the Maribor Authority on 4 February 2004. The report noted that the children were suffering from serious emotional disorders caused by exposure to neglect and violence at their primary home. Since the children were still in the process of adapting to the new environment in their foster family, and in view of the severity of the emotional consequences of their parents' behaviour, the child psychiatrist advised that contact be gradually allowed, but that it should not be more frequent than once a month under the supervision of the Authority.

18. On 2 March 2004 an internal expert panel (see paragraph 67 below) at the Maribor Authority issued an opinion that the children should continue to be removed from the parents. It further found that it would be in the children's long-term interest to have contact with their parents. It proposed that contact should be organised once a month with the applicant and with M., separately.

19. On 28 May 2004 another report was prepared by a forensic psychiatrist. It noted that the applicant was able to put the children's needs before his own, but not before those of M. It was established that he was only partially capable of parenting, because of his borderline personality disorder. Referring to the applicant's problematic relationship with M., the expert concluded that the applicant could not provide a safe home for the

children, let alone an appropriate family atmosphere and care. It was proposed that the applicant have contact with the children once a month, without M.

20. On 7 September 2004 the social workers involved in the case held a meeting at which they agreed that contact between M., the applicant and the children would not be in the latter's interest.

21. On 7 October 2004 the internal expert panel inquired as to the measures taken by the Maribor Authority with a view to complying with their proposal concerning contact between the children, M. and the applicant.

22. On 11 February 2005 the Maribor Authority issued an ordinary care order, by which the children were removed from the applicant and M., who were prohibited from having any contact with them. The children remained in foster care. In its decision the authority explained that the children had been exposed to violence and neglect at their primary home and that, despite their removal, the violent conflicts between the parents had not ceased, and had even intensified. As regards the contact between the parents and the children, the authority found that it could cause stress to the children and would not be in their best interest, since they had already need quite a while to adjust to the new family. The authority therefore advised that indirect contact be maintained through sharing of photographs and information. The applicant and M. appealed.

23. In the meantime, on 9 February 2005, the Maribor Authority instituted proceedings before the court, seeking withdrawal of the parental rights of the applicant and M. in respect of Y and Z (see paragraph 40 below).

24. On 12 August 2005, at the request of the applicant and M., the Ministry for Work, Family and Social Matters ("the Ministry") transferred the case from the Maribor Authority to the Ruše Welfare Authority (hereinafter referred to as the Ruše Authority).

25. On 17 October 2005 the Ministry quashed the part of the Maribor Authority's order of 11 February 2005 concerning prohibition of contact, and decided that contact should be allowed once a month for one hour for each of the parents separately, under the supervision of social workers. It upheld the remainder of the Maribor Authority's order.

26. During the above proceedings the applicant regularly inquired about the children and brought them toys and clothes and so on. It was eventually decided that he could do so once a month.

27. On 21 December 2005 the applicant had contact with his children, which was supervised by two welfare officers from the Ruše Authority. Contact subsequently took place as planned. In addition, the applicant and M. made frequent attempts to monitor the treatment of the children in the foster family and left gifts for the children at the foster parents' address or at the children's nursery.

28. In 2006 there were violent attacks and suicide threats from M. She was again admitted to a psychiatric hospital.

29. On 8 March 2006 the applicant was acquitted of charges of ill-treatment of his children relating to August and early September 2003. On 1 June 2007 the public prosecutor dropped charges against the applicant concerning minor bodily harm, for lack of evidence.

30. It would appear that an "individual project group" (IPG) was set up at the Ruše Authority in 2006, and that it has held meetings since then. The applicant, M., foster parents and social workers dealing with the case were usually invited to these meetings, where they discussed issues relating to the day-to-day life of the children and the applicant's and M.'s parenting and visiting arrangements. The applicant attended the meetings held in April and July 2006 and June 2007.

31. According to reports from the Ruše Authority of 27 December 2007 concerning contact between the applicant, M. and the children, the quality of contact improved after an initial period of tension on both sides. For two years the contact was successful, but later became stressful as the applicant and M. became impatient. It was concluded that continuing contact would not be in the children's interest.

32. On 5 March 2008 the applicant had his last contact with the children under the arrangement set out in the Ministry's decision of 17 October 2005.

33. On 13 March 2008 the applicant attended a meeting of the IPG at which it was agreed that he would be able to contact the children by telephone every Saturday between 7 p.m. and 8 p.m.

34. On 20 March 2008 the applicant informed the Ruše Authority that he no longer wished to have contact with his children under the supervision of the Authority. He attended an IPG meeting in June 2008. At an IPG meeting in October 2008 the applicant confirmed that he did not want to have contact with the children under the arrangement set out in the Ministry's decision of 17 October 2005. It was also noted in the report of that meeting that the applicant had telephoned the children only a few times. Subsequently, the applicant refused to attend any meetings organised by the Ruše Authority.

35. The applicant, refusing to cooperate with the welfare authorities, managed to have almost monthly contact with the children by visiting them at their foster home, school, playground, at special events (such as New Year or religious ceremonies) or while they were on holiday. On 16 December 2009 the parents were allowed to see Y and Z at the applicant's employer's New Year party for children.

36. According to a Ruše Authority report of 27 October 2009, M. had begun a relationship with another man and was in the process of establishing a family life with him. It was also noted that the applicant wished to live with the children alone, but that that was not possible as the family had had no positive experience of living together and the children were alienated. Another report, prepared on 24 December 2009, noted that the applicant had not had any supervised visits as envisaged in the Ministry's decision since 2008. It was also noted that he kept going on

Sundays to the foster parents' address, where he left gifts for the children on the fence in front of the house.

37. On 6 November 2009 the applicant instituted divorce proceedings against M., claiming intolerably unreasonable behaviour. He noted that M. had moved out of their home two years previously.

38. A report by the Ruše Authority of 27 October 2010, which was prepared further to the meeting held between the welfare worker and Y and Z, noted that the children preferred to stay with the foster family and did not wish to have contact with their parents.

39. In the course of the above proceedings the applicant and M. sent numerous submissions to the welfare authorities and the Ministry, asking for contact with the children to be increased or for the children to be returned to them. They also complained regularly about the work of the welfare authorities, the conditions in which visits were taking place, and about the foster parents.

B. Court proceedings concerning the withdrawal of the applicant's and M.'s parental rights

40. On 9 February 2005 the Maribor Authority lodged a proposal for the withdrawal of the applicant's and M.'s parental rights with regard to their children, Y and Z. After the transfer of the case, the Ruše Authority continued to pursue the proceedings (see paragraph 24 above). It was requested by the court to submit a report on the matter and subsequently to supplement the report by examining, in particular by interviewing the parents, options for the protection of the children's interests that would be less severe than withdrawal of parental rights.

41. On 8 September 2005 the court held a hearing and delivered a decision that the applicant and M. should be divested of their parental rights. The decision was served on the applicant on 30 September 2005. On appeal, the Maribor Higher Court quashed the decision on 28 February 2006 and remitted the case for re-examination, with an instruction that the court doing so should examine further evidence.

42. Later in the court proceedings the applicant and M. were granted free legal representation by a qualified lawyer.

43. In his submissions to the court, the applicant alleged that the withdrawal of parental rights constituted a serious interference with his family life, and that other, less severe, measures should be taken by the authorities in response to the situation. M. stated before the court that she would agree that the applicant should be granted resident parent status and asked to be allowed to have contact with the children.

44. Hearings were held on 14 September 2006 and 13 November 2007.

45. On 20 November 2007 the applicant and M. requested that contact arrangements be determined by the court.

46. In the course of the proceedings, the court, at the request of the applicant and M., appointed an expert in child psychology. It ordered the

parents to pay the costs, which they disputed, submitting that the welfare authority should bear the costs, and if not, the appointment of an expert should be at the court's expense. Both of those requests were refused. The applicant also requested that these expenses be covered by free legal aid, which was refused in separate proceedings.

47. On 3 February 2009 a hearing was held.

48. In May 2009 the applicant and M. cancelled their lawyer's power of attorney. Another lawyer took over the applicant's case, but after two months declined further cooperation.

49. On 28 October 2009 the Ruše Authority submitted a report concerning an interview held with the parents. That report indicated that M. was living with another man and had no contact with the applicant.

50. On 8 September 2009 the court held a hearing.

51. At a hearing on 28 January 2010 the applicant, represented by a new lawyer, and M. were examined. The court upheld the Ruše Authority's request to appoint an expert in child psychology and ordered it to pay an advance of 800 euros (EUR) for the expert's fees. The authority subsequently withdrew the request and on 3 June 2010 the court cancelled the decision to appoint the expert. It considered that the matter was ready for decision.

52. On 6 July 2010 the Maribor District Court issued a decision, finding that withdrawal of parental rights was the only appropriate measure. It had regard to the expert reports prepared in the context of the criminal proceedings (see paragraph 11 above) and the proceedings before the welfare authorities (see paragraphs 13, 17 and 19 above); to the fact that the children had been living with a foster family for six years and had not shown any desire to live with their biological parents, as well as to the fact that the contact which had taken place in accordance with the Ministry's decision had not improved the relationship between the parents and the children, and had not continued. The court also found that the mother was suffering from mild mental retardation and epilepsy, and was unable to take care of herself properly, let alone the children. With regard to the applicant, the court found that he had no mental disorder but was unable to put the children's needs before those of their mother and was unable to provide an appropriate environment in which to bring up children. The court also noted that the applicant and M. were no longer living together, as M. had found another partner, and that divorce proceedings were pending.

53. In the course of the above proceedings the applicant sent numerous letters to the court urging that the proceedings be speeded up and complaining, *inter alia*, about delays in the proceedings. On 13 November 2008 the applicant also lodged a supervisory appeal concerning the delays in the proceedings, which appeared to have been upheld by the president of the court on 13 November 2008.

54. On 15 July 2010 the applicant lodged an appeal against the decision of 6 July 2010. He argued that he had a good education, was employed, and was fully capable of taking care of the children. He stated that he had never

harmed the children, and observed that he had been acquitted of the charges against him. The applicant also submitted that the court should have taken into account that he was no longer living with M., and that it was M. who was not capable of taking care of the children.

55. Further to the applicant's and M.'s appeals, the Maribor Higher Court quashed the decision. It found that the expert opinions on which the decision was based were outdated, as they had been drafted in 2003 and 2004, and moreover had been prepared for the purposes of the other proceedings. The Maribor Higher Court remitted the case to the Maribor District Court for re-examination, instructing it either to appoint an expert in child psychology or to re-examine the experts appointed in the other proceedings concerning the applicant's family. The decision was served on the applicant on 7 October 2010.

56. On 7 January 2011 the applicant lodged a supervisory appeal, complaining about the length of the proceedings. On 7 January 2011 the president of the court informed him of the progress of the case.

57. On 14 January 2011 the court appointed the Ljubljana Consultant Centre for Children, Juveniles and Parents ("the Ljubljana Consultant Centre") to designate an expert to prepare an expert opinion. It requested that the expert prepare an opinion as to the applicant's and M.'s parenting ability. It also asked the expert to take into account the fact that the applicant and M. were no longer living together and that the applicant wished to have sole custody of his children.

58. On 17 February 2011 the applicant informed the court that he had cancelled the power of attorney for his lawyer, as he could not afford to pay his legal fees.

59. On 6 June 2011 the Ruše Authority requested that an interim order be issued prohibiting the applicant and M. from having contact with the children. In support of their request, the authority stated that the supervised contact, which was supposed to be a temporary measure, had not achieved its purpose; that, in any event, due to the parents' non-cooperation, no supervised visit had taken place since 2008; that the parents were disturbing the children in their daily activities and that the contact would therefore not been in the children's best interest.

60. On 14 June 2011 the applicant lodged a further supervisory appeal complaining about the delays in the proceedings. On 29 June 2011 the president of the court informed him of the stage the proceedings had reached.

61. After being repeatedly urged by the court, the expert of clinical psychology designated by the Ljubljana Consultant Centre (see paragraph 57 above) finally submitted her report on 6 July 2011. On the basis of the case file and interviews with the applicant and the children, the expert found that the children perceived the foster family's home as their home and were not attached to the applicant, but rather felt uncomfortable with him. She also noted that the applicant was not concerned about the children's needs, but primarily wanted to control them. This was why he kept approaching the

foster family's house and the children's school. The expert proposed that in order to assess M.'s capacity for parenting a psychiatrist's opinion be sought by the court.

62. On 19 July 2011, based on the expert's opinion (see paragraph 61 above) and the Ruše Authority's report, the Maribor District Court issued an interim order prohibiting contact between the applicant, M. and the children. As far as the applicant was concerned, the court found, *inter alia*, that he had not complied with the Ministry's decision of 17 October 2005 but had attempted to make contact with his children in his own way, disregarding the children's needs and best interests. The applicant appealed.

C. The applicant's and M.'s request for the return of the children

63. On 15 June 2006 the applicant and M. lodged a request with the Ruše Authority for the return of their children.

64. On 11 July 2006 the Ruše Authority discontinued the proceedings pending the outcome of the court proceedings concerning the withdrawal of parental rights.

65. On 6 February 2007 the applicant and M. lodged a new request for the return of their children, which was dismissed as identical to the previous one. Their appeal was rejected as unfounded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

66. For the relevant domestic law and practice see *V. v. Slovenia*, no. 26971/07, §§ 44-53, 1 December 2011.

67. In particular, section 88 of the Social Security Act (Official Gazette no. 3/2007 - official consolidated version) provides, in so far as relevant, as follows:

> "When welfare authorities deal with administrative matters concerning rights and interest of children according to sections 105, 106, 114, 120 and 121 of the Family Act, they shall, before taking any decision, ... obtain a report from an internal expert panel (*strokovna komisija*) and hold a hearing.
>
> The panel referred to in the preceding paragraph is formed by the council of experts of the welfare authority..."

68. In addition, section 116 of the Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*, (old) Official Gazette of the Socialist Republic of Slovenia no. 15/1976, with amendments), is relevant to the present case:

> "(1) A parent who abuses parental rights or abandons his child, or has clearly demonstrated by his behaviour that he is not taking care of the child, or seriously neglects his duties in that respect, should be deprived of parental rights by a court decision.
>
> (2) Parental rights may be restored to a parent by a court decision if the reasons for its withdrawal no longer exist, unless the child has been adopted.

(3) The above matters should be decided by the courts in non-litigious proceedings."

69. As regards the remedies before the Administrative Court see paragraphs 34 to 35 of *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

70. The applicant complained that the welfare authorities had unjustifiably taken his children into foster care and restricted his contact with them. He further complained that the court proceedings had not been conducted diligently; in particular that they had been excessively delayed, while his family ties with Y and Z had deteriorated. The Court considers that these issues fall to be examined under Article 8 of the Convention (see *V.A.M. v. Serbia*, no. 39177/05, § 115, 13 March 2007, and *Karadžić v. Croatia*, no. 35030/04, §§ 33-63 and 67, 15 December 2005).

71. Article 8 of the Convention 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

1. The parties' submissions

72. The Government argued that the applicant failed to exhaust domestic remedies available before the Administrative Court. In particular, they alleged that he should have lodged a claim under the first paragraph of section 4 of the Administrative Disputes Act read together with the second paragraph of section 33, of violation of human rights. The Administrative Court had full jurisdiction to decide questions of fact and law in such proceedings. According to the Government, such a claim constituted an effective remedy by which the applicant could have secured the immediate termination of the violation. In support of their argument, the Government referred to the administrative court's case-law, which they had submitted in the case of *Mandić and Jović*,(cited above, § 99).

73. The applicant provided no comments on the issue of admissibility of his application.

2. The Court's assessment

74. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

(a) Complaints concerning the care order and restrictions imposed on the applicant's contact with Y and Z

75. The Court notes with respect to the complaint concerning the placement of the children in foster care that the applicant failed to challenge before the Administrative Court the part of the Maribor Authority's decision of 11 February 2005 which concerned the removal of the children and which was upheld by the Ministry's decision of 17 October 2005. As regards the complaint concerning the restriction of contact with the children, the Court likewise notes that the applicant had not challenged before the Administrative Court the Ministry's decision of 17 October 2005, which allowed a supervised visit to take place once a month. The applicant therefore failed to use an available remedy, namely the claim before the Administrative Court. There is nothing to suggest that this remedy should be considered ineffective against the aforementioned decision issued by the Ministry (see *mutatis mutandis*, *V. v. Slovenia*, no. 26971/07, § 64, 1 December 2011).

76. In so far as the applicant could be understood to complain also about the recent interim court order prohibiting him from having contact with the children, the Court notes that this order is not yet final, as an appeal has been lodged against it and the related proceedings are still ongoing.

77. Having regard to the foregoing, the part of the application concerning removal of the children and restrictions imposed on the applicant's contact with them should be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Conduct of the court proceedings

78. As regards the applicant's complaint concerning delays in the court proceedings concerning withdrawal of parental rights and contact restrictions, the Court notes that the applicant, although not required to do so with respect to the issues under Article 8 of the Convention, availed himself of the remedies under the Act on Protection of the Right to a Hearing without Undue Delay. In particular, he lodged three supervisory appeals, which were unsuccessful. He cannot use the compensation claim until the proceedings are finally resolved (see *Žunič v. Slovenia* (dec.)

no. 24342/04, §50, 18 October 2007). As to the Government's argument that he could lodge a claim under the first paragraph of section 4 of the Administrative Dispute Act (see paragraph 72 above), the Court notes that this claim is conditional on a number of elements, one of them being that the result of the action is unlawful hindrance, limitation or prevention of the enjoyment of a human right, and another being the absence of any other judicial protection. It is not for the Court to speculate on the possible interpretation of the provisions concerned in the context of the issues raised in the present case. The Court would limit itself to observing that it is unaware of any decision that would demonstrate that a claim could be brought directly before the Administrative Court with any prospect of putting a timely end to the violation alleged by the applicant in the present case (see, *mutatis mutandis*, *Mandić and Jović*, cited above, § 112, and *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001). This Government's objection must therefore be rejected.

79. Having regard to the foregoing, the Court finds that the part of the application concerning delays in court proceedings on withdrawal of parental rights and determination of the applicant's contact rights 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

80. The applicant argued that the proceedings were unreasonably delayed and, as a consequence, he was left without his children for a prolonged period of time, which led to their complete alienation from him.

81. The Government maintained that these proceedings were conducted diligently and promptly. In particular, they argued that the court proceedings were delayed due to the pending divorce proceedings, which affected the legal-aid proceedings. Another factor which in the Government's view contributed to the length of proceedings was the change in the applicant's legal representation.

2. The Court's assessment

82. The Court notes that the ongoing placement of the applicant's children in foster care and his restricted access to them amounted to an interference with the applicant's right to respect for his family life. It was undisputed, and the Court is satisfied, that all the impugned measures had a basis in national law, namely the Marriage and Family Relations Act and the Social Security Act. Moreover, in the Court's view, the relevant law was clearly aimed at protecting the interests of the children. There is nothing to suggest that it was applied for any other purpose in the present case.

83. It further notes that the applicant failed to challenge the removal of the children by the care order of 11 February 2005 and the contact restrictions imposed by the Ministry's decision of 17 October 2005, by legal means available to him. This part of the application has therefore been rejected due to non-exhaustion of domestic remedies (see paragraphs 72-77 above). However, the Court should note 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 *K. and T. v. Finland* [GC], no. 25702/94, § 178, ECHR 2001-VII). Therefore, after the aforementioned measures had been imposed the authorities remained under an obligation to take all reasonable steps to reunite the applicant with his children (see, *mutatis mutandis*, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I, and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V). This obligation extended not only to the welfare authorities but also to the judicial authorities involved in the case.

84. The Court observes that the welfare authorities' actions have been aimed at implementation of the Ministry's decision of 17 October 2005 (see paragraphs 31 and 36 above). The latter set out monthly hour-long visits under the supervision of social workers. In March 2008 the applicant began to refuse all cooperation with the welfare authorities (see paragraphs 32 and 34 above) and therefore no supervised visit has taken place since then. The applicant, apart from choosing his own ways to make contact with the children, lodged a formal request for his children to be returned as well as to have contact rights determined by the court (see paragraphs 45 and 63 above).

85. The Court would note that in the view of the requests made by the applicant (ibid.), and those made by the welfare authorities (see paragraphs 40 and 59 above), the applicant's enjoyment of family ties with his children became dependent on the outcome of the court proceedings in which the court was called to decide on the applicant's parental and contact rights. In particular, the court's ruling was directly relevant to the return of the children to the applicant, as his request made in this connection to the welfare authorities was adjourned pending the outcome of the court proceedings (see paragraphs 63 and 64 above). Moreover, the Court notes that the applicant's relationship with M. appeared to have played an important role in the administrative decisions by which the children were removed and contact with them restricted (see paragraphs 13, 19 and 22 above). Therefore, his separation from M., no later than 2009 (see paragraphs 36, 37, 49, 54 and 57 above) became a relevant factor to be considered for the first time by the court.

86. Turning to the assessment of the conduct of the judicial authorities, the Court is struck by the fact that the court proceedings have been pending since 9 February 2005. In particular, the Court would note that due to the court's failure to obtain an up-to-date expert opinion, the case was remitted

for re-examination for the second time on 7 October 2010. It would appear that a certain responsibility for not appointing an expert was placed on the applicant's failure to pay expert fees (see paragraph 46 above). However, justifying the interference with the applicant's family life, such as divesting him of parental relationship with his biological children, should be primarily the responsibility of the authorities, and not the applicant. Although the court finally appointed an expert in January 2011, the latter submitted her report only six months later. No final decision has been delivered on the matter so far. The court, however, issued an interim order prohibiting the applicant from having contact with his children on 9 July 2011. This order is now being considered on appeal.

87. Noting that inexcusable delays incurred in the above proceedings, which are still pending, the Court would emphasise that the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit (see *Ignaccolo-Zenide*, cited above, § 102, and *Prodělalová v. the Czech Republic*, no. 40094/08, § 64, 20 December 2011). It has previously considered that ineffective, and in particular delayed, conduct of proceedings concerning contact with or custody of children may give rise to a breach of Article 8 of the Convention (see *V.A.M. v. Serbia*, cited above, § 49, *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 142, 1 December 2009).

88. Having regard to the documents in the case file, the Court finds no reasons to justify the delays in the court proceedings. Nor does it consider the facts to which the Government referred to be capable of explaining their excessive duration (see paragraph 81 above). The Court therefore concludes that the authorities failed to display the required diligence in the court proceedings, which outcome was and continued to be decisive for the applicant's enjoyment of his family life with Y and Z.

There has accordingly 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."

90. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conduct of the court proceedings instituted by the Maribor Welfare Authority on 9 February 2005 admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 28 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President