



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

FIFTH SECTION

CASE OF JÍROVÁ AND OTHERS v. THE CZECH REPUBLIC

(Application no. 66015/17)

JUDGMENT

Art 8 • Family life • Court-ordered prohibition on contact between former foster parents and their foster child who was removed from their care on the grounds of negative impact on the child's psychological well-being • Domestic courts' decision corresponded to child's best interests, within their margin of appreciation and based on relevant and sufficient reasons

STRASBOURG

13 April 2023

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 Jírová and Others v. the Czech Republic,

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

Georges Ravarani, *President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
Mattias Guyomar,
Kateřina Šimáčková, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 66015/17) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Czech nationals, Ms V. Jírová, Mr M. Jíra and Mr V. Bláha (“the applicants”), on 9 September 2017;

the decision to give notice of the application to the Czech Government (“the Government”);

the parties’ observations;

Having deliberated in private on 20 September 2022, 31 January and 14 March 2023,

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

INTRODUCTION

1. The case concerns a court-ordered prohibition, allegedly in breach of Article 8 of the Convention, on contact between former foster parents (the first and second applicants) and their former foster child (the third applicant), following the latter’s removal from their care and his placement in institutional care at the age of 13, on the grounds of the foster parents’ negative impact on the child’s psychological well-being.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

2. The applicants were born in 1958 (the first and second applicants) and 1998 (the third applicant). They live in Hodkovice nad Mohelkou. The applicants were represented by Mr D. Strupek, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Events preceding the proceedings prohibiting contact

5. The third applicant was placed in institutional care in 1999 at the age of one, in a situation where his father was not named in the birth certificate and his mother was unable to care for him. Since birth, he had been frequently hospitalised and had therefore required special care in view of his health condition. Following a court decision on the parents' disinterest, the child was placed in the substitute family care system (*náhradní rodinná péče*), which includes adoption (*adopce*), fostering (*pěstounství*) and guardianship (*poručnictví*). It appears, on the basis of the parties' submissions, that the third applicant lost all contact with his mother and never had contact with his biological father. He also apparently has a sister, but the extent of their relationship remains unclear. In April 2004, at the age of six, he was placed, on the basis of an administrative decision, in the pre-foster care (so-called "*předpěstounská péče*") of the first and second applicants. In September 2005 the foster care was confirmed by the Klatovy District Court (*okresní soud*) (see paragraph 11 below). The local social welfare authority (*orgán sociálně právní ochrany dětí*) informed the District Court each year of the situation in the foster family, both before and after its approval of the third applicant's foster care. The third applicant remained with his foster parents until December 2011, at the age of 13.

6. A report of the counselling centre dated 30 June 2004, following the placement of the third applicant in the pre-foster care of the first and second applicants, stated, in particular, as follows:

"Under our [preparation course curriculum], in some cases a part of the preparation [takes the form of] a consultation at the moment when the child is taken over by the family. Because during the preparation of [the first and second applicants], reasonable doubts arose as to the actual implementation of substitute parental care (parental inexperience, unrealistic expectations regarding education, problematic role models in their own childhoods, the personality traits of the [first applicant]), it was agreed that a consultation would be held with the clients at the time of their taking the child into the family. Given that [the first and second applicants]' interest in taking care of a little girl – calm, of mild [temperament], around the age of three (a preference [also noted in] the conclusion of the expert assessment of the Ministry of Labour and Social Affairs of 29 January 2003) seemed to be the only optimal one, they were much encouraged. Nevertheless, at the beginning of April of this year, [the first and second applicants] [temporarily] took care of a six-year-old hyperactive boy. The [first and second applicants] did not engage in the agreed consultation at the counselling centre. Only [the second applicant] later came to the counselling centre (without the first applicant's knowledge), when ... he was seriously considering returning the child."

7. On 27 August 2004 the local social welfare authority expressed certain concerns regarding the provision of foster care by the first and second applicants:

"[W]e cannot fail to draw the court's attention to the fact that the entrusting [to the first and second applicants of the care] of a minor with [diagnosed mild brain dysfunction] is in direct conflict with the psychological assessment of the [first and

second applicants] set out by the Ministry of Labour and Social Affairs. Moreover, it appears from the report of the Liberec counselling centre (*Poradna pro rodinu a mezilidské vztahy*) [drawn up on 29 January 2003] that there are certain doubts about the implementation of [substitute parental care]. For these reasons, we recommend that the court order an expert report.”

8. The social welfare authority noted in its report of 14 January 2005:

“As to the discrepancies in the [matching] of the child to suitable foster parents, we have already pointed this out to the court in a previous report. From our point of view, the conditions for the minor are good and the current stay, according to the facts ascertained so far, is benefitting the child.”

9. In its report drawn up on 17 June 2005, the social welfare authority wrote that:

“Regarding the current ... situation, ... from [our] point of view, there are no reservations about the [the first and second applicants]’ care of the [third applicant].

...

Upon the [the third applicant]’s admission to the family, there ... were problems; the foster parents managed [to care for him] only with great effort. ... Today, the situation is completely different, the [first and second applicants] ... cooperate with [the third applicant], they know his specific needs [and] there have been established mutual emotional ties.

...

[The third applicant] has been living within the family for more than a year and their care of him is good. It is therefore in his best interests for him to be entrusted to [the first and second applicants].”

10. The social welfare authority noted in its report of 26 September 2005, shortly before the approval of the foster care by the court:

“[The first and second applicants] demonstrated, during their pre-foster care [that is, before they officially assumed foster care duties], that they were able to take care of [the third applicant]. Entrustment to their joint foster care is entirely in the best interests of [the third applicant], [and] that is why we recommend it.”

11. On 29 September 2005 the District Court decided to entrust the third applicant to the foster care of the first and second applicants (see also paragraph 5 above). As it has already been mentioned above, the social welfare authority continued reporting the situation within the foster family to the court. While its assessment in February 2007 was that the first and second applicants’ provision of foster care was “without problems”, the reports drawn up in July 2008, September 2009 and October 2010 indicated some deficiencies in the foster care provided.

The social welfare authority noted on 2 February 2007 that it had assessed the first and second applicants’ current care of the third applicant as unproblematic.

A report, drawn up by the social welfare authority on 7 July 2008, contained the following assessment:

“[The paediatrician stated that] the education [of the third applicant] is more complex in the light of his health problems. He is difficult to manage. She has no serious reservations in respect of the care [provided by] the foster parents.

[The first and second applicants’ provision of] foster care, from our point of view, by no means give rise to no reservations. However, the shortcomings are not yet serious enough to call for its being terminated.”

On 15 September 2009 the social welfare authority noted as follows:

“From our point of view, the [the first and second applicants’ provision of] foster care by no means gives rise to no reservations. The foster parents often appear clueless in their upbringing [of the child]. During a home visit in March 2009, they even admitted that caring for [the third applicant] was very demanding and exhausting. On the other hand, the foster parents obtain, according to their abilities and possibilities, the necessary professional care for the minor during his free time. The shortcomings in the foster care are therefore not so serious as to call for the termination of the foster care.”

A report of the social welfare authority dated 8 October 2010 contained similar conclusions.

12. On 15 April 2011 a psychologist, having examined the first and second applicants in connection with their request that they be able to provide foster care to another child in addition to the third applicant, did not recommend them as suitable candidates for foster care. She nevertheless noted the following:

“Given the fact that the [first and second applicants] already have one child in their care, and it is clear that they do their best for the boy (sometimes with all their might) I recommend that social workers and experts in the Liberec region be helpful [towards the first and second applicants], [who] are indeed in need of guidance and assistance.”

13. On 3 November 2011 the third applicant had to be hospitalised owing to his behavioural and emotional disorders. During his hospitalisation, he underwent a psychological examination, the result of which was summarised as follows:

“Adaptation disorder in a boy [aged 13 years and nine months] living in a foster family from the age of six. ... [A] boy with specific learning disabilities without significant attention deficit disorder. Hospitalisation was preceded by affective attacks [*afektivní záchvaty*] marked by aggression, especially towards the [first applicant]. [The third applicant] interprets them as being the result of his being bullied at [his] school owing to [his] poverty and poor material resources. He is clearly worried about staying in the current family; he is suspicious, spontaneously says how much he likes his foster parents; he emphasises their exemplary care and approach towards him; he invents [accounts of] what he has at home and what leisure activities he engages in ... In reality, he is considerably socially ... depressed and [deprived of stimulation], infantilised by the environment; his development is unbalanced. The family has failed to switch him to an education appropriate to his age; an overprotective approach [combined] with [the exertion of] maximum control persists – he does not have keys to the flat, he does not attend children’ clubs ... In the hospital, he has adapted well, being able to join a narrower group of peers and take part in regular activities [appropriate to] his age. ... The visits paid to him by the foster parents reveal a certain conflict on their part regarding the institutions [involved in his care] and a lack of understanding regarding the needs of an adolescent boy.

Recommendation: Ensuring an educational and stimulating environment with adequate social standards enabling adequate development.”

14. On 8 December 2011 the Liberec District Court adopted an interim measure ordering the third applicant’s placement in a children’s diagnostic institution (*dětský diagnostický ústav*). As can be seen from the reasoning of the placement order, the court held that during his hospitalisation the third applicant’s problematic behaviour had been found to be largely caused by the care provided by the foster parents. It was noted that the third applicant had suffered from considerable social deprivation and lack of stimulation, had been infantilised by his environment and by how he had been treated, and his development had been unbalanced. The foster parents had favoured overprotectiveness combined with maximum degree of control. At the age of 13 the third applicant had not had his own keys to the flat, had had no access to a computer, had not been allowed to go out alone and had not been able to spend time with peers. He had lacked basic skills, such as telling the time. The court also referred to the first applicant’s psychological problems, which had had an adverse impact on the third applicant. It noted that the child’s life or health had not been at risk while he had been placed with the foster parents but that there was a risk of his psychological problems developing more in the future; however, the foster parents did not know how to deal with his problems or refused to do so.

15. On the basis of all the material in the case file, it appears that after December 2011 the third applicant no longer lived with the first and second applicants, who were not, however, affected by these measures in respect of their legal status as foster parents (see also paragraph 21 below).

16. On 5 March 2012 the Ústí nad Labem Regional Court (Liberec branch) (*Krajský soud – pobočka*) upheld the interim measure ordered by the District Court. It stated, *inter alia*, that the District Court would initiate proceedings in which it would decide to whose care the third applicant would be entrusted.

17. In the meantime, on 21 February 2012, the third applicant had been placed in a children’s home (*dětský domov*).

Three weeks later, on 15 March 2012, the Liberec District Court initiated proceedings on the placement of the third applicant in institutional care.

18. As regards contact during the period between February 2012 and January 2013, as it can be seen from the documents in the case file, the foster parents and the children’s home had agreed that the third applicant would spend time with the foster parents twice a week, every Wednesday from 2pm to 6pm and Saturday from 10am to 6pm. In January 2013 the visits were reduced to once every other week because the third applicant’s mental state and behaviour had worsened after the foster parents’ visits (as had his performance at school) and also because the educational recommendations (*výchovné postupy*) were not respected by the foster parents.

B. Placement in institutional care and events regarding the prohibition on contact between the applicants

19. By an interim measure of 21 March 2013, under Article 102 § 1 of the Code of Civil Procedure, as then in force, the Liberec District Court, upon a request lodged by the children's home on 19 March 2013, prohibited contact between the third applicant and his foster parents. The court stated, *inter alia*, the following:

“The foster parents have the [third applicant] penned in; he himself says that he must lie to them because he does not want to ‘hurt’ them. The foster parents do not follow the rules; they call [the third applicant] several times a day on his private mobile telephone ..., they keep telling him what he should do, who he should be friends with, who he should not talk to, ... the foster parents took the boy away from a hobby club, etc. ... The [third applicant] feels great remorse because of the foster parents ...

The court is convinced that this situation has a very negative influence on the [third applicant]'s development, and that this has been the case for a long time, ever since the [third applicant] started to behave aggressively, although repeated examinations by a psychologist showed that the child is not conflictual ... The foster parents keep him in a position of childish dependence, they do not allow him to gradually grow up on his own. That is apparent from the foster parents' endeavours to turn the [third applicant] into a disabled person by applying for a second degree disability although in fact he does not need anything of the sort, ... and from the fact that, disregarding the expert report and the pending proceedings, the foster parents have not refrained from further influencing the [third applicant] contrary to his interests when they are complicating the [children's home's] activities by both instructing the boy what to do and cancelling activities in which he has been enrolled, and taking advantage of the boy's dependence on them. The [third applicant] is again getting into a situation in which he responds aggressively and resorts to lies because there is obviously a conflict between his feelings and the foster parent's wishes and he feels that he is ‘hurting’ them, for that is how it is presented to him by the foster parents. This conflict has a negative impact on his mind ... While on the one hand the foster parents display how they care about the [third applicant], on the other hand they are obvious to the worsening of his mental state and do not try to help to calm the situation together with the [children's home]; on the contrary, they boycott any activities of the [children's home] aimed at helping the [third applicant], while taking advantage of the [third applicant's] dependence.”

20. On 17 April 2013 the District Court, upon a request lodged by the social welfare authority, decided to place the third applicant in institutional care. The court's judgment effectively replaced the previous interim measure of 8 December 2011. The third applicant's interests were represented by the Liberec Municipality (*Magistrát Města Liberce*). On 10 December 2013 the Regional Court, following an appeal by the first and second applicants, quashed the first-instance judgment of 17 April 2013 and remitted the case to the District Court.

21. In the meantime, on 15 August 2013, the Regional Court, following an appeal lodged by the first and second applicants, upheld the interim measure of 21 March 2013 prohibiting contact. The interests of the third applicant, who had been heard by the court on 9 April 2013, were represented

by the Liberec Municipality, which considered that the prohibition on contact was in his interests and thus recommended that the preliminary measure be upheld. The court, after considering the content of the first and second applicants' appeal, noted the following facts:

"The foster parents and the minor are not in personal contact following the preliminary measure of the District Court of 8 December 2011 by which the minor was transferred to the care of the children's diagnostic institution in Liberec and then to the care of the children's home in Česká Lípa. The placement of the minor in the institution was preceded by the foster carers' proposal that the minor be hospitalised for his behavioural disorders. The foster parents started working with a psychologist from the Counselling Centre for the Family and Interpersonal Relationships in Česká Lípa, with whom the foster parents continuously worked to address the educational and health problems of the minor. The psychologist confirmed the growing aggression of the minor in 2011. All the [aggression] and mental problems of the minor disappeared after he had been placed ... in the children's diagnostic institution. The minor began acting independently, established relationships with other persons, engaged in hobbies and gained in self-confidence.

The aggressive behaviour of [the minor] resumed after January 2013. Reports from his school, the children's home and psychologists cooperating with the children's home indicate that when a minor is under the influence of foster parents, his behaviour is different than when there is no contact with them. After meeting the foster parents, the minor feels remorse and thinks that his behaviour hurts the foster parents. Afterwards he is aggressive or has psychosomatic problems. The [third applicant's] foster parents sought to contact the minor, even in violation of the children's home's instructions [that they not do so], were unable to solve problems together and sometimes many times a day tried to contact the minor and call him countless times. While the minor is in institutional care, contact with the foster parents evokes ... feelings of guilt [in him], he lies and cannot cope with the situation.

It can be seen from the file of the District Court that since the prohibition on contact under the preliminary measure of 21 March 2013, the mental health of the minor has been improving again. According to a report by the clinical psychologist dated 8 April 2013, the restriction of contact with the foster parents is clearly beneficial for the minor ... The minor is happy, he joins in with the group in the children's home, he has interests corresponding to his age, ... [and] the restriction of contact has had a positive effect in all areas of his life.

A report by the director of the children's home of 14 April 2013 demonstrates that following the prohibition on contact with the foster parents, the minor has calmed down and he does not try to contact them.

A report by the [social welfare authority] drawn up on 15 April 2013 shows that following the restriction of contact with the foster parents, the minor no longer has somatic problems, joins in the activities in the children's home and is happy."

The court concluded that it was necessary to order a temporary prohibition on all contact because the third applicant's interest in his own sound mental development was directly threatened. It did not contest the existence of family life between the foster parents and the third applicant but, according to the court, it was necessary to create the conditions for remedying the disturbed family relations. It was in the third applicant's best interests for contact between him and the foster parents to be prohibited, as that had a negative

influence on him and was directly threatening his health. Concurrently, the court noted that both the courts and the social welfare authority would monitor the situation to see whether the reasons for the prohibition on contact were still present and whether over time a change in circumstances would not render the prohibition on contact a disproportionate measure leading to its withdrawal.

22. On 14 January 2014 the District Court ordered a psychiatric examination of the applicants for the purposes of the proceedings on his continued placement in institutional care.

23. An expert opinion drawn up on 14 March 2014 stated that in 2009 the first applicant had experienced a short psychotic episode. She had not taken her prescribed medicines and had not undergone the outpatient psychiatric treatment that had been recommended to her. For a long time, she had been suffering from mixed personality disorder; she was emotionally immature, with a tendency towards anxiety, uncertainty and helplessness. In situations of emotional stress, her need to have things under control increased, and her impulsive behaviour and tendency to impose her opinions on others became more intense. According to the expert, her emotional processing of situations had begun to outweigh (including during the period of her caring for the third applicant) her rational assessment thereof. Moreover, the second applicant had a deeply set way of life, had trouble introducing new elements into his life and did not accept modern advances such as computers, television or mobile telephones. According to the expert, he gave the impression of being an ascetic type who was upset by modern lifestyle trends in society, and protected himself against them by escaping into his “proven stereotypes” (*únik do osvědčených stereotypů*). The third applicant did not have a mental illness in the proper meaning of the term and did not suffer from autism spectrum disorder, but did have a neurodevelopmental activity- and attention-related disorder and a specific academic learning disorder. He was emotional in an immature and unstable way, and he had a reduced tolerance for emotional stress, weakened volitional characteristics, and a lack of social skills. The expert opinion also stated:

“Owing to their own and the [third applicant]’s state of health, [the foster parents] are currently unable to personally take care of the [third applicant] in a manner that ensures his sound mental development, even if they were to be assisted by NGOs and associations ...

The expert is convinced that the foster parents really did not understand and still have not understood the reservations ... of the State organisations. ... [T]hey both are fixated to the maximum extent on the minor. They have developed chronic feelings of bitterness, injustice, and misunderstanding and they have started a fight [to advance both] their own view and the position of the assisting organisations and specialists that the [third applicant] should be in their foster care and not in institutional care ...

The expert is ... convinced that the foster parents did not have the strength to act otherwise in their efforts to [raise the third applicant] ... The expert is concerned that they are still unable to act otherwise ...

She recommends, however, that the foster parents be allowed to have contact one afternoon per week ... On the other hand, the expert does not recommend that the [third applicant] have contact with NGOs and other specialists; she does not recommend bringing in any new specialists to deal with the [third applicant's] mental state. If the time that he shares with the foster parents does not disturb the boy's psychological development and if his behaviour does not deteriorate, after about three months contact could be extended to include the entire Saturday, rather than just [Saturday] afternoon, but without any sleepovers."

24. On 7 April 2014 the Ombudsman (*veřejný ochránce práv*) drew up a report on an investigation into the situation regarding the foster family initiated by the first and second applicants on 1 February 2012. The report stated, *inter alia*:

"The [Municipal] office erred when giving the family, in respect of which it could and should have anticipated an increased need for help and guidance, only the most necessary attention at the beginning of the cooperation (e.g. a visit to the household once every six months) ...

In 2008, 2009, 2010 and 2011 the authority concerned repeatedly stated in its reports that the applicants' care was not unproblematic, but that the deficiencies were not yet so serious that the Office would request its discontinuation. ... When working with the family, I [noted] to a significant degree] the absence of any preventive and advisory activities on the part of the authority concerned, which took over only an oversight function and regularly reported to the court information from those who came into contact with the family.

...

There is no doubt that during the long-term upbringing provided by a substitute family ... relationships similar to those found in a biological family – especially strong emotional ties – develop between foster parents and children entrusted to them. In the present case, as there were no other relatives; ... the foster parents were the relatives to whom the minor was primarily attached, despite the foster parents' educational deficiencies and the court decisions placing the minor in another educational environment ... He stated many times that his wish was to be in contact with the foster parents more often than was allowed by the children's home. Given a situation in which the director of the children's home considered that the contact between the applicants and the minor was adversely affecting [his] successful development, she turned to the court.

...

Against the aforesaid background, I am of the opinion that the absolute detachment of the minor from the [foster parents] could be traumatising for him.

...

In addition, I believe that the minor was not sufficiently informed of all the proceedings and matters that were essential for his future. I consider that the fact that [he] at the age of sixteen [did not have the opportunity to] verbally express himself regarding the intended measures (especially where they concerned further restrictions on his personal contact with the foster parents, when his attention was distracted only by his unfavourable somatic manifestations) constituted a failure in the social and legal protection of the ... minor."

25. On 30 April 2014 the District Court held a hearing in the proceedings on the third applicant's placement in institutional care. The representative of the foster parents submitted, for the court's information, the report drawn up by the Ombudsman. The court heard the expert who had drawn up the expert report (see paragraph 23 above). She considered, *inter alia*, that the contact between the foster parents and the child should take place within the framework of systematic therapy under the supervision of a therapist.

In a judgment adopted the same day, the District Court decided to place the third applicant in institutional care, to be exercised in the children's home. It first admitted that his placement in foster care had not taken place in a standard way, the capabilities and requirements of the foster parents not having been sufficiently considered. The authorities had also not had sufficient regard to the psychological state of and possible educational complications for the child, who had already been educationally demanding at the time of the decision on foster care. The court next noted the deterioration of the third applicant's health and his psychosomatic problems (including trouble with sleeping and abdominal pain) when being cared for by the foster parents. It took into consideration the expert opinion of 14 March 2014, which noted that when they had been feeling in need of help, the foster parents had contacted non-governmental organisations but that they had later limited the extent of their cooperation with those organisations.

The court further noted that the foster parents did not respect the prohibition on contact that had been ordered, and also took into account the fact that the first applicant persistently disregarded psychiatrists' recommendation that she undergo outpatient treatment. The court only briefly addressed the Ombudsman's report, stating that the Ombudsman had found some shortcomings in the social welfare authority's approach, namely insufficient social work with the family, failure to protect sibling relationships and failure to provide information to the child.

The judgment did not address the issue regarding contact between the foster parents and the third applicant. The foster parents did not appeal against this judgment, which thus became final.

26. On 21 June 2014, the interim measure of 21 March 2013 prohibiting contact (see paragraph 19 above) was automatically lifted as consequence of the legal force of the judgment of 30 April 2014. The reasons for this decision have not been indicated by the parties. Accordingly, the prohibition on contact was suspended between 21 June 2014 and 15 December 2014, the date on which the District Court's second interim measure of 9 October 2014 prohibiting all contact became final (see paragraph 31 below).

27. On 18 September 2014 a working meeting was held in order to establish the rules for contact between the third applicant and his foster parents. The meeting was attended by fifteen people, including the foster parents and their legal representative, a clinical psychologist, a representative of the children's diagnostic institution, representatives of the children's

home, representatives of the social welfare authority and representatives of two non-governmental organisations, K. and R. At the end of the meeting, it was decided to hold a new meeting at which the third applicant would also be present. It was agreed that the foster parents would attend the meeting with the representative of the NGO R. Moreover, representatives of the social welfare authority, the children's diagnostic institution, and representatives and the director of the children's home would also join the meeting.

28. The planned second meeting took place on 29 September 2014. Three reports on the course of the meeting, were drawn up respectively by the children's diagnostic institution, the social welfare authority and the NGOs.

According to the report drawn up by the children's diagnostic institution, its representative asked the third applicant whether he wanted to call the foster parents back into the room. The third applicant refused and said that "he no longer wished to talk to the [foster parents]". The foster parents and the representatives of the NGOs refused to step out of the way of the third applicant as he tried to leave, shouting at him that he was being abused and that he had changed. Upon returning to the children's home the third applicant was visibly distressed and tense and quite clearly said that he no longer wished to see the foster parents.

The report prepared by the social welfare authority gives a similar account of the course of the meeting as that contained in the report by the children's diagnostic institution.

The NGOs R. and K., with which the foster parents cooperated and whose representatives attended the meeting, submitted a report that criticised the behaviour of the employees of the social welfare authority and of the children's home towards the foster parents, the representatives of the NGOs and the third applicant himself.

29. In their submissions to the Court, the applicants described the events of 29 September 2014 as follows:

"The meeting took place on 29 September 2014 in Česká Lípa and ended up in a complete fiasco. The first and second applicants and their companions were exposed from the beginning to patronising and arrogant behaviour, and their companions (a social worker [from the NGO R.] and [Mr and Mrs K. – the managers of the NGO K.]) were denied [entry]. The third applicant was on the spot forced to react negatively, in that the whole team gathered around him and demanded that he confirm that he did not wish for the presence at the meeting of [Mr and Mrs K.] in particular. The third applicant was reluctant to react so explicitly; in the end, with his head bowed, he expressed his disagreement with one word; it clearly did not constitute a free expression [of his will]. Given those circumstances, the first applicant refused to attend the meeting, so personal contact between the applicants was not achieved."

30. On 3 October 2014 the District Court instituted proceedings seeking a prohibition on contact between the applicants, and it appointed the Liberec Municipality (*Magistrát Města Liberce*) as guardian *ad litem* for that purpose in order to protect the interests of the third applicant, who was still a minor.

31. By a new interim measure of 9 October 2014, which became final on 15 December 2014, the District Court, on a proposal submitted by the social welfare authority on the same day, prohibited any contact between the foster parents and the third applicant, including in writing, in person and via mobile telephone or social media. At the same time, the court instituted proceedings seeking the termination of foster care. It held, *inter alia*:

“The court is satisfied that once the [third applicant] had been placed in institutional care, the foster parents had an opportunity to rebuild a serene, pleasant and mutually beneficial relationship with [him], ... but they did not use it. It can be seen from the [third applicant’s] statements that during contact with him, ... they do not respect his current life situation [and] they ask him to choose between respecting [the wishes of] either them or the children’s home ..., which doubtless causes [him] psychological problems, distress, and anxiety, as in the past ... The child even avoids meeting the foster parents. The foster parents and the NGOs that assist them do not even respect the conclusions of the expert report to the effect that the [third applicant] should not be encountering [personnel from the] NGOs. ... The expert gave a positive assessment of the minor’s development in institutional care, which could not be said of his past development, which had led to mental problems and aggressive spells, and at the hearing she even voiced her opinion that contact should only take place within systematic therapy ..., but the foster parents did not accept this option. [T]he court concluded that it was in the interest of the minor ... for the interim measure to be granted and the foster parents be ordered to refrain from any contact with the minor, since the previous limitations on contact had not led to the foster parents reassessing their behaviour towards the minor and they had continued [behaving in the same manner]. It needs to be established, on the basis of further evidence, whether contact between the foster parents and the minor should be prohibited or whether the foster parents will accept the advice of the expert, ... and try to repair relations through systematic therapy – provided, however, that [the third applicant] wishes to maintain contact.”

The court had at its disposal written observations on the matter submitted by the foster parents, but they remained disregarded in the court’s considerations that led to its decision.

32. In respect of these events, in a handwritten text dated 14 October 2014, the third applicant wrote that his foster parents had observed him when on his way to ice hockey training; he had been approached by a certain Ms Š (apparently an acquaintance of the first and second applicants). He wrote similar statements on 15 and 16 October 2014. It appears from the first two statements that the third applicant was upset by having encountered Ms Š.

In their observations submitted to the Court, the three applicants denied that the third applicant had been upset by the meeting with Ms Š. He had had nothing against her and had had no reason to overact in such a manner. In fact, the third applicant had only written the description at the request of the children’s home staff. The facts regarding this matter had not been ascertained, as the domestic courts had refused to hear Ms Š. as a witness.

Moreover, the applicants maintained that the greetings and postcards that they had sent had been enclosed in envelopes addressed to the children’s home, not to the third applicant. They had left it to the discretion of the management of the children’s home to decide whether to hand them over to

the third applicant or not. The text on the postcards had contained only neutral greetings.

33. On 1 December 2014 the Regional Court, following an appeal lodged by the first and second applicants, upheld the interim measure ordered by the District Court deeming it proven that the third applicant had developed serious mental problems while in foster care. The foster parents submitted their extensive written comments on the matter, which were, however, not reflected in the court's considerations that led to its decision. The Regional Court stated, in particular:

“During the foster care, [the third applicant] developed serious mental health problems, as a result of which he was repeatedly hospitalised ... in 2009 and 2011. ... [His] mental state ... was flagged as highly risky, and these health problems repeatedly appear after contact with his foster parents, who call him several times a day [and] tell him constantly what he has to do; they do not give him [his own] room in which to become independent, keeping him in a state of childhood dependence. Although [the third applicant] likes his foster parents, this manipulative tendency of the foster parents deepens his dependence and devastates his mental state.

The submitted documents certify that the above-mentioned manipulative behaviour on the part of the foster parents towards the minor did not change, even after [the third applicant had been placed in institutional care on the basis of] the decision of the Liberec District Court of 30 April 2014, which became final on 21 June 2014. [These documents are] the record [made by] the social worker ... and psychologist ... of the course of [the third applicant]'s meeting with the foster parents on 29 September 2014[, and] the reports by his class teacher and the children's home dated 8 October 2014. At the beginning of the meeting ..., the [third applicant] was calm until the arrival of the foster parents, who came with three employees of the NGO ..., who did not want to respect the fact that they had not been invited to the meeting. They caused a stressful situation for the minor [by asking him to tell them face-to-face] ... whether he wished to talk to them, which he eventually refused to do. The foster mother reacted aggressively by throwing grapes and letters onto the table in front of the [third applicant] and saying that if he did not wish [to talk to them,] then they would not talk to him either, and exited to the hallway. After that, the [third applicant] refused to talk to the foster parents. They, together with the staff from the [NGO], refused to clear a path for the [third applicant] so that he could leave and ... [indicated that they] wanted to discuss something with the psychologist ...

The report of the class teacher also indicates that the next day the [third applicant] went to school late and under stress, because the foster parents followed him on his way to the school, and he escaped them only in the city park, because he did not want to meet them ...

The above-mentioned documents at least demonstrate that the foster parents continue to place the minor in psychologically distressing situations, as a result of which, in the past, he has always found himself in medically unmanageable conditions, for which he has even had to be admitted to the psychiatric wards of hospitals and to communal educational institutions, where his state of health has always stabilised and he has been able to pursue a normal life again.”

34. On 18 June 2015 the Constitutional Court (*Ústavní soud*) dismissed as manifestly ill-founded (No. III. ÚS 308/15) the foster parents' constitutional complaint lodged against the interim measure ordered on

9 October 2014 and upheld on 1 December 2014 (see paragraphs 21 and 33 above). The Constitutional Court stated the following as regards the nature of foster care:

“[although it is the case] that during foster care, as a special form of temporary substitute for family care facilitated and supervised by the State, a specific individual legal relationship emerges between the foster parent and the child (such a relationship being in part similar to the family-law relationship between a parent and a child), it cannot be ignored that foster care is also a public-law concept that has its own characteristic features, such as the arrangement thereof, provisions for basic needs, and – which is significant in this case – supervision. With regard to the aim of foster care, which is to provide a minor child with a healthy and stable family environment, the State’s role becomes more prominent, because the State continuously monitors and supervises the foster care on the basis of the exceptional importance of the minor child’s interest, as noted above (Article 3 of the Convention on the Rights of the Child).”

35. On the facts of the applicants’ case, the Constitutional Court stated, *inter alia*, that the ordinary courts had correctly assessed the need to order an interim arrangement regarding the legal situation of the third applicant and the foster parents in a manner that was flawless in terms of procedure. They added that the perspective of family law, relationships between foster parents and a foster child were somewhat like those of biological parents and their child, that it should not be ignored that fostering was also a public-law concept facilitated and supervised by the State. Hence, the State monitored and supervises, on an ongoing basis, whether the foster care provided a healthy and stable family environment for the child; in the present case, the ordinary courts had followed the child’s best interests and had sufficiently established the relevant facts and had given sufficient reasons for their conclusions. Having found the constitutional complaint manifestly ill-founded, the Constitutional Court did not deal with the question of whether the first and second applicants could also act before it in the third applicant’s name, referring to its judgment (*nález*) No. II. ÚS 2224/14 of 9 December 2014 (see also paragraph 62 below).

36. On 26 August 2015 the social welfare authority applied for an extension of the third applicant’s placement in institutional care, noting that it had been discussed several times with the third applicant the possibility of his staying in the children’s home after reaching the age of majority. The reasons for allowing the third applicant to remain in the children’s home after he reached his majority were explained to him and he decided to stay there.

37. On 19 October 2015 the District Court held a hearing regarding the termination of the foster care and the prohibition on contact. It heard the representative of the social welfare authority and the applicants. Their respective statements were recorded as follows:

“[The court hears the first applicant], ... who states:

... I do not believe that [the third applicant] is upset after the meetings with us; this is opinion of the children’s home and of the social welfare authority. ... I insist on the fact that on 30 September 2014, we were at home and we were not in the city.

[The court hears the second applicant], ... who says:

I have never seen a person as aggressive as [the representative of the diagnostic institution]. [The representative of the social welfare authority] was slamming the door. It was a theatre. [The third applicant] was kept there [as if he were] in captivity. [The representative of the diagnostic institution] yelled at us and threw [a piece of] jade at us. Others then had to intervene to keep the calm. It was a piece of well-coordinated theatre. [The psychologist of the NGO (named R. and C.)] did not come because no one invited her.

[The representative of the social welfare authority] states that contact has not taken place because, under the agreement, it has to be attended by [the psychologist of the NGO R. and C.]; however, three other persons have attended in her stead.

...

[The third applicant said before the court:] ... It is a long time since I have seen my foster parents. It bothered me that they were looking for me, I do not want it anymore. ... I do not want any contact with my foster parents. If they were looking for me, I would say I did not want to, and if I was 18, I would say that I have my own rights. ... I will agree to a possible extension of institutional care, so that I can finish my apprenticeship.

... Upon a request of the foster parents, ... [the court read] the report from 29 September [2014] drawn up by [the therapist]. [The court read] the report of 29 September drawn up by [the representatives of the NGOs] ...

The legal representative of the foster parents insists on the hearing of witness [Š.] who knows [the third applicant] from the previous period, and also [the representatives of the NGOs] in connection with the course of events on 29 September.

The parties to the proceedings say that they consider indisputable that [the first and second applicants] participated in the conference held in Prague on 12.9.

...

[The court] rejects the proposal to supplement the material in evidence.”

38. By a judgment of 26 October 2015 the District Court terminated the foster care and prohibited any contact between the foster parents and the third applicant until his majority, pursuant to Article 891 § 2 of the Civil Code relying on reports by the social welfare authority and the children’s home on the unwarranted contact of the foster parents with the third applicant. Before the summer holidays of 2014, the second applicant had contacted the third applicant, who had reacted negatively. Further contact, which did not go well, had taken place on 5 and 12 September 2014 and on 13 September 2015 in a manner contrary to the recommendation of the expert in her opinion of 14 March 2014 that any contact should be supervised by a therapist (see paragraph 23 above).

39. As to the alleged contact of 12 September 2014, the court referred to documentary evidence from which it appeared that on that day the third applicant’s class teacher had notified the children’s home that the third applicant was upset after having been contacted by the second applicant in the morning; this was confirmed later on by the third applicant himself, who stated that the second applicant had asked him “How has it been in the

children's home? They don't stuff anything into your head?'. The court did not consider it important whether the applicants had met up with each other on 12 September 2014, because if the first and second applicants had participated in the conference that started at 9am, it was not impossible that they could have managed to travel to Prague from Česká Lípa in one hour.

40. The court also took into account the statement that the third applicant had given to it during the proceedings on placement in institutional care (see paragraph 37 above).

41. The court noted two different descriptions of the meeting held on 29 September 2014 – on the one hand, the aggressive conduct of the representatives of the children's home, social welfare authority and the psychologist of the children diagnostic institution (described by the first and second applicants) and, on the other hand, the improper behaviour of the first and second applicants and the presence of the persons who were not welcome by the third applicant who, as a consequence, refused to communicate. However, it does not appear that the court would tackle the course of the events described by the first and second applicants.

42. The court also referred to the statement given to it by the third applicant on 19 October 2015 saying that he preferred to stay in the children's home and agreed to the extension of institutional care. In this regard, the court noted that the third applicant's mental state had progressed since his last hearing before the court (see paragraph 18 above). The court emphasised that the foster parents had had the opportunity, after the child's placement in institutional care, to listen to the experts' advice and try to correct what had failed or had been neglected. Nevertheless, they had continued exerting inappropriate influence on the child and causing him persistent psychological distress. In this context, the court referred to the expert's opinion that the child's attitude towards contact with his foster parents had not been the result of manipulation, but rather of his own convictions. The court further noted that the foster parents conceived the situation not as cooperation with and assistance to the child, but as a fight against the institutions. Having compared the child's condition in 2013 and two years later, when the prohibition on contact had been in place for a longer period of time, the court found that the institutional care, when the child was not under pressure and stress, had had a positive effect on him.

The District Court concluded:

“While there are only three months left until [the third applicant] reaches the age of majority, and then he will be able to decide on his own whether or not he will contact his former foster parents, the court considers desirable to decide in accordance with article 891 § 2 of the Civil Code on the prohibition of contact until he reaches the age of majority.”

43. On 20 January 2016 the District Court, at the request of the social welfare authority, extended the third applicant's placement in institutional care until he reached the age of 19, under Article 972 § 1 of the Civil Code.

The third applicant's interests were represented by a guardian *ad litem* appointed on 12 November 2015. The third applicant continued to live in the children's home.

In the reasoning of its judgment, the District Court noted, *inter alia*:

“According to the report drawn up by the guardian ad litem, the minor wishes to have the placement in institutional care extended; he wishes to complete his apprenticeship, he feels comfortable in the home, he has repeatedly stated that he consents to the extension of institutional care, and currently there is no other option for securing housing and studies for the boy; the guardian recommended extending the placement in institutional care.

The minor was heard by the court during the proceedings on the prohibition on contact with the foster parents and he stated that he wished to complete his studies to become a plumber and to live in the children's home, where he was happy.

According to the [social welfare authority], [the third applicant] expresses his wish to continue living in the children's home and is ready to sign an agreement on his continued stay at the children's home in the event that a decision extending his placement in institutional care is not handed down before he reaches majority.

...”

44. On 4 February 2016, on the eve of the third applicant's eighteenth birthday, the foster parents applied for a termination of the interim measure on prohibition on contact ordered by the District Court on 9 October 2014 (see paragraph 31 above) and upheld by the Regional Court on 1 December 2014 (see paragraph 33 above), on the grounds that the third applicant had reached his majority.

45. Also on 4 February 2016, the third applicant concluded with the children's home a contract on voluntary stay (*smlouva o dobrovolném pobytu*), effective from 5 February 2016 until the termination of his apprenticeship.

46. On 26 April 2016 the District Court rejected the foster parents' application, holding that the reasons for maintaining the interim measure on prohibition on contact persisted, as the foster parents were disobeying the advice of professionals and not respecting the third applicant's wish to stop contacting him. The court further noted that having reached his majority, the third applicant could decide for himself whether or not he would spend time with his foster parents.

47. The court decision was served on the third applicant on 23 May 2016. The acknowledgment of receipt is signed “Bláha” (the third applicant's family name) and bears the stamp of the children's home. The third applicant did not appeal.

48. Following an appeal by the first and second applicants, the first-instance decision was upheld by the Regional Court on 22 August 2016. The court stated, *inter alia*, that:

“[Article 891 § 2 of the Civil Code] expressly refers to a child, so a minor, but the term of extension of institutional care until the age of 19 years serves in particular as a

protection of the interests of the formerly minor child, so all his rights and obligations should be preserved to the current extent. This also includes the right not to meet persons who had been prohibited to contact him during his childhood.”

According to the Government, a copy of the court decision was delivered to the children’s home’s letter box on 26 August 2016 owing to the absence of the third applicant at the time of the serving of the decision (see also paragraph 52 below).

49. On 24 November 2016 the Ústí nad Labem Regional Court held a hearing on the foster parents’ appeal against the judgment of the District Court of 26 October 2015 as far as it concerned the prohibition on contact between the foster parents and the third applicant (see paragraph 38 above). Having reached his majority on 5 February 2016, the third applicant attended the hearing but did not comment on the matter. The relevant parts of the minutes of the hearing read as follows:

“The court read out the statements of the guardian ad litem ... and Ms Š.

The representative of the former foster parents insists on the examination of testimony that they already previously submitted to the District Court for consideration– namely, the interrogation of witnesses who would attest to the presence of [the former foster parents] in Prague [on 12 September 2014], then a hearing of Ms [Š.], and then a hearing of the persons present at the monitored meeting with the then minor.

...

Decision

Further evidence will not be accepted.”

50. On the same day, the Regional Court upheld the District Court’s judgment. It stated, in particular:

“Article 891 § 2 of the Civil Code provides that if [it is] necessary [and] in the best interests of a child, a court shall limit the right of a parent to have personal contact with the child, or even prohibit such contact.

... However, [this] provision must be applied to the [third applicant], who has reached his majority already, within the context of the extension of his placement in institutional care by one year under Article 974 of the Civil Code, which the ... judgment [of the District Court] did. As [this constitutes] a restriction of an individual on the basis of law and for reasons set out by that law, the procedure complies with the Constitution without amending the substance of institutional care. Both parties (the State and the restricted individual) therefore continue to have the same rights and obligations as would a minor child [if that minor child] were subject to institutional care. All contact with such an [adult] may thus also be prohibited because all his rights and obligations should be maintained within the current extent – i.e. including the right not to interact with persons who were not allowed to contact him while he was [still] a minor.

Although Article 891 § 2 of [the Civil Code] expressly provides for prohibition on contact between a child and a parent, the court may not disregard the fact that Article 927 of the Civil Code also grants the right to contact with a child to persons socially close to that child, among whom [foster parents] must certainly be included ... (even if the placement in foster care has already been terminated by a court). Thus,

discontinuing the proceedings for those reasons (after the prior quashing of the impugned judgment) is ruled out.

On 5 February 2016 [the third applicant] became fully independent upon reaching the age of eighteen, so only from that moment he is legally competent to act [on his own behalf]. The Regional Court is also of the opinion that there are reasons provided for by law for prohibiting contact between the former foster parents and [the third applicant] [if such a prohibition] is in his interests. It is clear that in the past, the foster parents did their best to ensure the education of the minor. However, as can be seen from the expert [psychological] opinion drawn up [on 14 March 2014] ..., they did not manage this owing to their state of health. ... It is true that the expert recommended that they have contact with the minor in the form of visits [to him], but not in the presence of NGOs or other specialists that those [responsible for ensuring] his proper development in the collective institution. It is necessary to consider as important [the psychologist's] conclusion that both of them are not able to proceed otherwise also at present; they are not able to understand and accept the positive influence of institutional care on the psychological development of [the minor].

It is true that during the short periods of contact with him on 30 June 2014, 1 September 2014 and 5 September 2014 no negative consequences for the minor arose, but it is clear that on 29 September 2014, when their meeting with him in the children's home in Liberec was to take place, they again did not follow the expert's recommendation. ... The devastation of [the third applicant's] psychic health continued with the publication of the case on the Internet, which caused the minor (as transpired during his interrogation at the District Court) to become aware of an anonymous discussion [regarding his case], which was unpleasant for him. That [the first applicant] is unable to act rationally is evident from the fact that she made her assertions during the hearing by shouting. Undoubtedly, it is in the minor's best interests to complete a field of study that he enjoys and is provided with during his current stay in the children's home, where he is happy; his health has been completely stabilised and he does not manifest any problems. On the other hand, contact with his former foster parents, who are unable to deal with their current life situation adequately owing to their state of health, could cause a psychological collapse in him. Given that situation, it is unnecessary to consider evidence regarding in what specific way and what who said or did not say what about the attempted meeting on 29 September 2014 by questioning members of NGOs ... and from persons testifying that the [first and second applicants] were on 12 September 2014 in Prague and could not meet [the third applicant]. Similarly, it is futile to hear a witness [Š.] with whom the minor was in problem-free contact in the past, because the essential obstacle to his having contact with [the first and second applicants] is their unfavourable health (psychological) condition, which gives rise to serious mental problems in him."

51. The appellate court further noted that at the meeting of 29 September 2014 with the social welfare authority, the children's home and the children's diagnostic institution, the foster parents had brought along representatives of the NGOs, even though this had not been recommended by the expert (see paragraph 23 above). The publicising of the case on the Internet had also had an adverse impact. The court therefore concluded that the reasons for prohibiting contact – that is to say the unfavourable mental condition of the foster parents, which had caused the third applicant to suffer from serious mental problems – still applied.

52. According to the Government's observations submitted to the Court, the third applicant was notified of the appellate judgment on 12 December 2016 by it being left in the letter box of the children's home owing to the absence of the third applicant at the moment of delivery, despite the requirement indicated on the envelope that it be delivered into third applicant's own hands (*doručenka do vlastních rukou*).

53. On 15 December 2016 the judgment of the Regional Court was delivered to the representative of the first and second applicants and, thereby became final.

54. On 5 February 2017 the applicant reached the age of 19.

55. On 28 February 2017 the Constitutional Court (No. III. ÚS 3544/16) dismissed a constitutional complaint lodged by the foster parents against the decisions by which the foster parents' application for the termination of the prohibition on contact had been rejected (see paragraphs 44 and 46 above); in that complaint they argued that a prohibition on contact between adult individuals was inadmissible, regardless of any change in situation. The third applicant took part in the proceedings as a joined party (*vedlejší účastník*). The Constitutional Court concurred with the Regional Court's remark that the foster parents did not argue that the situation or the reasons for prohibiting contact had changed. It noted, in particular:

"14. Article 891 § 2 of the Civil Code provides that, if necessary, in the best interests of a child, a court shall limit the right of a parent to have personal contact with the child, or even prohibit such contact. It follows from this provision that it provides for prohibition on contact with a minor. However, the provision must also be applied to an intervening third party who has reached his majority already, within the context of the extension of his placement in institutional care by one year under Article 974 of the Civil Code.

15. Although Article 891 § 2 of the Civil Code only expressly provides for prohibition on contact between a child and a parent, a court may not disregard the fact that Article 927 of the Civil Code also grants the right to contact with a child in respect of persons socially close to the child, among whom [foster parents] must be included.

16. Having regard to the above, in the case at hand this court must concur with the Regional Court's conclusion that under Article 927 of the Civil Code the right to contact with a child is also vested in persons who are socially close to the child. [Such persons] must doubtless also include [foster parents], (even if foster care placement has been terminated or has ended by the operation of law). Although Article 927 of the Civil Code expressly refers to a child (i.e. a minor), but where institutional care is extended until the age of nineteen, especially in order to safeguard the interests of a child who was previously a minor, all rights and obligations of the child (until then a minor) should be maintained to the existing extent, including the right not to be in contact with persons who were not allowed to see the child while he or she was still a minor. In this regard the Regional Court was right to reiterate that in their appeal, the appellants had not asserted nor proved that the underlying reasons for which their contact with the third party had been prohibited in the first place had changed; in other words, they had not claimed that they would refrain from behaving in a manner that would again place him in situations that were medically unmanageable for him and owing to which he had

ended up in hospital psychiatric wards and had been placed in a collective educational facility.”

In conclusion, the Constitutional Court emphasised that in ordering the interim measure, the ordinary courts had followed the child’s interests, which had been the paramount factor in assessing the need to order a temporary measure governing relations between the parties.

56. On 14 March 2017 the Constitutional Court dismissed a further constitutional complaint lodged by the foster parents’ (No. III. ÚS 601/17), which had (i) challenged the court decisions by which their contact with the third applicant had been prohibited (see paragraphs 31 and 44 above), (ii) argued that the courts’ decisions had been arbitrary, and (iii) argued that the Regional Court had disregarded several arguments presented in the foster parents’ appeal, refused to examine certain evidence (on the grounds that it was superfluous (*nadbytečné*) and had erred in its assessment of that evidence which it had heard.

The Constitutional Court – referring, among other things, to its decision of 28 February 2017 (No. III. ÚS 3544/16 – see paragraph 55 above) – held, *inter alia*, that:

“15. ... [t]he course of action followed by the Regional Court and its conclusions ... were duly reasoned and its decision-making is consistent with the established facts and events; in the reasoning ... the Regional Court sufficiently and convincingly dealt with the foster parents’ objections and the evidence that they presented. The Constitutional Court considers that the Regional Court’s arguments ... are constitutional and understandable, and it does not find its considerations to be inadequate or extreme in any manner.”

57. On 17 September 2018 the children’s home informed the District Court that the stay of the third applicant there had been terminated on 3 September 2018.

58. After leaving the children’ home, the third applicant moved to the home of the first and second applicants, his former foster parents.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CIVIL CODE (ACT NO. 89/2012)

Article 30

“1. A person becomes an adult upon reaching the age of majority. He or she reaches the age of majority at the age of eighteen.

...”

Article 31

“A minor who has not acquired full autonomy shall be deemed to be fit to perform legal acts of a nature commensurate with the intellectual and free maturity [*volní vyspělosti*] of minors of his or her age.”

Article 891 § 2

“If it is necessary [and] in the best interests of a child, a court shall limit the right of a parent to have personal contact with that child, or even prohibit such contact.”

Article 927

“Persons having a close or distant family relationship to a child, as well as persons socially close to the child, have the right to contact with the child if the child has an emotional relationship with them that is not temporary [and] if it is clear that a lack of contact with those persons would cause harm to the child. The child also has the right to contact with such persons if they consent to [such] contact.”

Article 972 § 1

“Institutional care may be ordered for a maximum of three years. Institutional care may be extended within three years of the date on which it was ordered if the reasons for institutionalisation still exist. The duration of institutional care may be extended repeatedly – each time for a maximum period of three years. Before the court decides on cancelling or extending institutional care, the child shall remain in institutional care, even in the event that the period previously determined by a court has expired.”

Article 974

“For important reasons, a court may extend institutional care by up to one year after [the minor in question] has reached the age of majority.”

59. According to the commentary on the Civil Code institutional care shall, in principle, end upon the minor in question reaching the age of majority. Where there are important reasons for doing so, a court may extend institutional care until the person in question reaches the age of 19. Those important reasons might include: to allow the development of the child’s personality, to allow him to complete his preparation for a future profession, and to enable the strengthening of the child’s working habits. The court must deliver a final decision on such an extension before the child reaches the age of majority; otherwise institutional care shall be terminated *ex lege*. In the event of a court decision extending institutional care, no agreement has to be concluded between the institution and the adult. The institution is obliged to provide for the adult’s basic needs, and that provision cannot be terminated (unlike under a contract on the provision of basic needs). Even after the termination of institutional care, dependent adults may stay in institutional care on the basis of an agreement. A facility may provide, upon request, full and direct provisions for basic needs to an adult dependent person preparing for a future profession, even after the termination of institutional placement and protective care; however, that arrangement may last, at a maximum, only until the person reaches the age of 26.

II. THE CODE OF CIVIL PROCEDURE (ACT NO. 99/1963), AS IN FORCE AT THE RELEVANT TIME

Article 74 § 1

“Before the initiation of proceedings the presiding judge may order an interim measure if it is temporarily necessary in order to provide for the parties’ situation or if there are concerns that the execution of a court decision would be jeopardised.”

Article 76 § 1 (e)

“In respect of an interim measure, an obligation can be imposed on a party, in particular,

...

(e) to do something, to refrain from something, or to tolerate something.”

Article 102 § 1

“The court may order an interim measure if it is necessary, after the initiation of proceedings, in order to temporarily adjust the parties’ situation or if there are, after the initiation of proceedings, concerns that the execution of a court decision ... delivered during the proceedings could be jeopardised.”

III. ACT ON SOCIAL AND LEGAL PROTECTION OF CHILDREN (LAW NO. 359/1999)

60. Rights and obligations of foster carers are described in section 47a(2). A foster carer is, on the one hand, entitled, in particular, (i) to receive permanent or temporary assistance in the provision of personal care for the child entrusted to him or her, (ii) to assistance with the provision of full-time care for a child or children entrusted to him or her, which is appropriate to the age of the child, for at least 14 calendar days per calendar year, if the child entrusted to him or her has reached at least two years of age, (iii) to receive psychological, therapeutic or other professional assistance at least once every six months, and (iv) to be given free opportunities to improve his or her knowledge and skills necessary for foster carers. On the other hand, the foster carer is obliged (i) to improve his or her knowledge and skills in the field of child rearing, (ii) to facilitate the monitoring of the implementation of the foster care agreement and to cooperate with persons responsible for monitoring the development of children, (iii) to maintain, develop and deepen a child’s relationship with persons close to the child, in particular with his or her parents, and to allow contact between the parents and the child in foster care, unless the court decides otherwise. Foster care is based on contracts concluded with foster carers as provided for in sections 47b and 47c. Sections 47i, 47j and 47t regulate the manner in which foster parents are financially rewarded for their foster care.

IV. HOUSE RULES OF THE CHILDREN'S HOME, AS IN FORCE FROM 1 JANUARY 2016 TO 26 MAY 2017

Part 5 (e) (3)

“All letters and packages addressed to children shall be handed over to them unopened by wardens, social workers or the director.

...

Correspondence sent by the children from the facility shall not be checked; postage is paid from the budget of the children's home.”

Part 5 (g)

“If an adult ... person stays in the facility: ...

2. he or she enjoys all the rights of an adult citizen of the Czech Republic; as regards his or her stay in the facility he or she may, in particular:

...

(b) organise all of his or her free time.”

V. THE CONSTITUTIONAL COURT'S CASE-LAW ON A CHILD'S CONTACT WITH PERSONS OTHER THAN HIS PARENTS

61. In its decision of 18 September 2018, under No. II. ÚS 2831/18, the Constitutional Court addressed the possibility of prohibiting a child from having contact with other relatives and other persons. It approved the ordinary courts' decision to prohibit contact between the minor and the minor's grandparents, thereby indirectly allowing for the possibility in other cases to prohibit contact with a child within the meaning of Article 891 § 2 of the Civil Code not only in respect of that child's parents but also in respect of other relatives and other persons enjoying the right to contact with the child under Article 927 of the Civil Code.

62. In its judgment of 9 December 2014, under No. II. ÚS 2224/14, the Constitutional Court held, *inter alia*, as follows:

“13. ... In a situation where, as in the present case, a constitutional complaint was lodged by minor complainants 2) and 3) themselves and where the legal regulation of the procedure governing a constitutional complaint ... precludes the lodging of the constitutional complaint on behalf of or for the benefit of another person (an *actio popularis*) – i.e. that the complainant 1) [the mother] lodges a constitutional complaint on behalf of, for the benefit of or for the purpose of protecting the rights and interests of [minor] complainants 2) and 3), ... even if they are her own minor children, ... [the constitutional complaint lodged by] complainants 2) and 3) pursuant to the provisions of section 43 para. c) of the Act on the Constitutional Court [has to be rejected] as a complaint lodged by a manifestly unauthorised person (see also judgments of the Constitutional Court of 3 August 2004, no. I. ÚS 77/04, or of 8 December 2011, no. III ÚS 2634/11).”

VI. INTERNATIONAL LEGAL INSTRUMENTS

A. Convention on the Rights of the Child

Article 1

“For the purposes of this Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

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.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 20

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

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

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

B. The United Nations Committee on the Rights of the Child: General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013

63. Under the headings “Balancing the elements in the best-interests assessment” and “Procedural safeguards to guarantee the implementation of the child’s best interests”, the Committee stated as follows:

“...

84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or

adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

...

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure ...

...

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children."

**C. The United Nations Committee on the Rights of the Child:
Concluding observations on the combined fifth and sixth periodic
reports of Czechia, 22 October 2021**

64. The Committee stated, *inter alia*, as follows:

"31. Recalling the Guidelines for the Alternative Care of Children and its previous recommendations to the State party, the Committee recommends that the State party:

(a) Unify the childcare system under one structure to enable its effective direction and the allocation of public funds to prioritize non-residential forms of support for children in situations of vulnerability, including children with disabilities, and their families;

(b) Develop and adopt a comprehensive national policy and strategy and a specific and time-bound action plan to phase out institutionalization, in support of community-based and family-based options, giving particular attention to children with disabilities, Roma children and very young children;

(c) Expedite the adoption of the draft act on support to families, alternative family care and the system to protect children's rights;

(d) Ensure the implementation of the new legislation aimed at putting an end to the institutionalization of children under 3 years of age and ensure that such children are exclusively cared for in a family environment;

(e) Ensure that children are only separated from their family if it is in their best interests and after a comprehensive assessment of their situation and that poverty, housing situation, disability or ethnic origin are never the sole justification for family separation and abandon the practice of placement for 'behavioural difficulties';

(f) Promote, support and facilitate family-based care and, only when necessary and appropriate, care in small residential facilities, for children who cannot stay with their families, giving particular attention to children with disabilities and Roma children;

(g) Further strengthen the capacity of foster care, including by conducting a national recruitment campaign for foster parents and providing regular and adequate training for

them before and during the placement of children, especially on fostering children with special needs;

(h) Ensure the regular, periodic and substantive review of placements and monitor the quality of care;

(i) Provide opportunities for all children in care to maintain direct contact with their parents;

(j) Ensure adequate support for children leaving care and develop community-based services to help them to start independent lives.”

D. The European Committee of Social Rights: Decision in the case of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic - Complaint No. 157/2017

65. The Committee held that the placement of a child in an institution should only be adapted to the need of the child and should be subject to periodic review with regard to the child’s best interest (§ 143 *in fine*).

E. The United Nations Committee on the Rights of Persons with Disabilities: Concluding Recommendations to the Initial Report of the Czech Republic of 25 March - 17 April 2015

66. The Committee recommended that the State party take all measures necessary to ensure that policy processes for deinstitutionalisation had a clear timeline and concrete benchmarks for implementation that were monitored effectively at regular intervals (§ 40).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The three applicants complained that the first and second applicants (the former foster parents of the third applicant) had been prohibited from having contact with him during the period from 9 October 2014 until 5 February 2017 (the third applicant’s nineteenth birthday – see also paragraphs 30, 38, 44 and 54 above) in breach of their Article 8 rights. They argued that the interference had not been necessary in a democratic society, for they believed that the reasons given for that interference were not relevant and sufficient, especially given the third applicant’s age during that period.

Moreover, as regards the period from 5 February 2016 until 5 February 2017 – that is to say when the third applicant had already been an adult but had remained in institutional care (see paragraphs 39-54 above) – the applicants argued that (i) the interference had been incompatible with the law because there had been no legal basis for it, and (ii) the “quality of law”

requirement had not been complied with – in particular concerning its foreseeability and the existence of safeguards against arbitrariness.

68. Article 8 of the Convention reads:

“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. *Applicability of Article 8: whether there was a family life between the applicants*

69. The Court reiterates that the existence or non-existence of “family life” for the purposes of Article 8 is essentially a question of fact that depends on the real existence in practice of close personal ties (see *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 140, ECHR 2017). Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally, other factors may also serve to demonstrate that a relationship has sufficient constancy as to create *de facto* “family ties”. In cases concerning foster parents and a child entrusted to them at a young age and having lived with them for periods of nineteen months or longer, the Court found that the resulting relationship amounted to family life, having regard to the existence of a close interpersonal bond, of a genuine concern on the foster parents’ part for the child’s well-being, and an emotional link between them (see *Moretti and Benedetti v. Italy*, no. 16318/07, §§ 51-52, 27 April 2010; *Kopf and Liberda v. Austria*, no. 1598/06, §§ 35 and 37, 17 January 2012, with further references; see also *V.D. and Others v. Russia*, no. 72931/10, §§ 90-93, 9 April 2019). Family ties that may emerge in the context of foster care involve a specificity stemming from the fact that foster parents undertake to provide care in the best interest of the child.

70. In the present case, the Government did not dispute that the close ties between the foster parents and children entrusted to them fell within the notion of family life within the meaning of Article 8 § 1 of the Convention. The national authorities approached the case in the same way (see paragraphs 9 and 24 above). The applicants maintained that the existence of family life in their case was not linked to the notion of foster care, but to the fact that they had lived together as a family for seven and a half years and that strong emotional ties had evolved. The third applicant perceived the first and second applicants as his parents, and as late as February 2014, when he had undergone the above-mentioned psychiatric examination, he had named his

foster parents as belonging among those people whom he most loved and who he would “breathe for”.

71. The Court notes in this regard that the applicants lived together from April 2004, when the third applicant had been six years old, until December 2011 (when he had been 13 years old) (see paragraph 5 above). The Court also observes that the first and second applicants did not lose their legal status as his foster parents until 15 December 2016, when the judgment of the Regional Court of 24 November 2016 became final (see paragraph 53 above) and that, apparently, at least until October 2014 they had contact with the third applicant (see paragraph 26 above).

72. The Court further notes that in the report on the situation regarding the applicants’ foster family drawn up by the Ombudsman on 7 April 2014, when the third applicant had already been placed in the children’s home, the existence of solid emotional ties between the foster parents and the third applicant was noted and the third applicant’s wish “to be in contact with the foster parents more often than was allowed by the children’ home” was also noted (see paragraph 24 above).

73. The Court lastly notes the Government’s argument that the first and second applicants had not objected to the third applicant’s placement in institutional care and to the termination of the foster care. However, the Court cannot attach decisive weight to this argument. It is undisputed that strong emotional ties persisted between the applicants. Furthermore, the Court considers, on the basis of the material in the file and the parties’ submissions, that the first and second applicant’s failure to object to the measures in question was not in any way an expression of an intention to abandon ties with the third applicant. The Court observes in this regard that during the whole of the relevant period the first and second applicants continued actively to seek contact with the third applicant and that the latter’s return to the foster parents’ home remained an open possibility. Moreover, the third applicant returned to live there after leaving the children’s home at the age of nineteen.

74. In the light of all the circumstances noted above, the Court considers that family ties existed between the applicants during the whole period of the prohibition on contact complained of. It follows that Article 8 is applicable.

2. Preliminary objection raised by the Government

(a) The Government’s submissions

75. The Government considered that the application was inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of all domestic remedies in respect of the part of the application concerning the period after 5 February 2016, when the applicant had reached his majority. That was so because the third applicant had not appealed against the relevant decisions.

76. The Government acknowledged that the third applicant, who had been living in a children's home at the time in question, was a vulnerable person to a certain extent. They maintained, however, that once a person reaches the age of majority, he is deemed to be fully competent to make all legal acts and to act on his own judgment. Although the third applicant had remained in the children's home when he had reached majority, there was no evidence to suggest that anyone in the children's home had prevented him from pursuing remedies. Moreover, the third applicant had been in contact with other people outside the children's home.

77. The Government further noted that, before reaching his majority, the third applicant had had a guardian *ad litem*, and that the social welfare authority had also promoted his best interests. After reaching his majority, he had failed to exhaust all the available remedies. In particular, during the proceedings on the termination of the prohibition on contact, he had participated, as an adult, in the hearings before the appellate court but had not made any statement.

78. The Government emphasised that the third applicant had repeatedly agreed to the extension of institutional care up until he reached the age of 19, and that the relevant documents had been addressed directly to him after he had reached his majority. He had confirmed, by appending to it his signature, that he had received the decision of 26 April 2016 rejecting the foster parents' application for the prohibition on contact to be terminated. Owing to his absence at the time of their delivery, other documents – including the Regional Court's judgment of 24 November 2016 – had been delivered to the third applicant via the letter box of the children's home. In respect of those documents that had been delivered to the children's home's letterbox, the Government had been unable to verify the applicants' assertion that the documents had not been served on the third applicant. In the Government's opinion the third applicant, who had undoubtedly been aware that court proceedings had been conducted, had failed to prove that he had been prevented from lodging appeals.

(b) The applicants' observations

79. The applicants acknowledged that the third applicant had not availed himself of any remedies, even after reaching his majority. According to him, in the situation in which he had found himself (even after his attaining adulthood, when the continuation of the institutional care had been ordered by the court) he had not been in a position to avail himself of the relevant remedies. His statements to the courts and other public bodies could not be considered to have been made freely. He had been motivated to obey and encouraged to write unsolicited texts, and in cases where his opinion had been required, he had always been accompanied by the staff of the children's home, who had instructed him on what to say. He had been under the constant

control of those he had perceived as authorities and who had treated him as authorities.

80. In reply to the Government's objection regarding the period after 5 February 2016, the applicants maintained that the third applicant had not lodged appeals after reaching his majority because the authorities had influenced him, insisting that his foster parents had threatened his private life.

81. In reply to the Government's assertions that they had been unable to verify whether the court mail delivered to the children's home's mailbox had been handed over to the third applicant, the applicants stated that the burden of proof was on the Government to show that that had been the case. The third applicant believed that the majority of the mail had not been delivered to him. In this respect, they submitted a letter from the Ministry of Education, Youth and Sport that included a statement that the director of the children's home had conceded having mishandled mail delivery over a certain period of time.

(c) The Court's assessment

82. The Court reiterates that the purpose of the rule of non-exhaustion is to afford the national authorities, primarily the courts, the opportunity to prevent or put right alleged violations of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Andrášik and Others v Slovakia* (dec.), nos. 57984/00 and 6 others, ECHR 2002-IX). The rule must, however, be applied with some degree of flexibility (compare, for example, *Gherghina v. Romania* (dec.), no. 42219/07, § 87, 9 July 2015), bearing in mind the actual availability and effectiveness of the domestic remedy in question and the fact that it is being applied in the context of a mechanism for the protection of fundamental rights. According to the Court's case-law, it suffices that the applicant's grievances are raised before the domestic authorities in substance – that is to say that the domestic authorities become aware of the alleged breaches and have the chance to redress them (see *Karapanagiotou and Others v. Greece*, no. 1571/08, § 29, 28 October 2010).

83. The Court notes at the outset that the applicants' complaint concerns the period starting on 9 October 2014 (see paragraph 67 above). It also notes that the Government do not appear to raise admissibility objections regarding the complaints of the first and the second applicants but do so regarding the complaint of the third applicant.

84. In so far as the Government may be understood as alleging that the third applicant had failed to exhaust domestic remedies during the period from 9 October 2014 to 5 February 2016, when he was still a minor, the Court observes that they have not pointed to concrete procedural steps that he should have undertaken, alone or through the social welfare authorities who apparently acted as his guardian *ad litem*, during the concrete period in question.

85. As to the Government's objection that the third applicant had not exhausted the available domestic remedies after he had reached his majority, the Court notes that the third applicant did not appeal against the decision of 26 April 2016 by which the District Court had rejected the first and second applicants' application for the termination of the prohibition on contact (see paragraphs 46-47 above).

86. However, assuming that the third applicant had standing to file such an appeal, the Court observes that those judgments did not impose any prohibition on the third applicant, the measures complained of having been addressed to the first and second applicants only. The Court will examine below the questions whether there has been an interference with the third applicant's right to respect for his family life on account of the measures addressed to his former foster parents. For purposes of the Government's non-exhaustion objection, the Court is of the opinion that the fact that the third applicant did not file any appeal and did not participate actively in the proceedings instituted by the first and second applicants should not be seen as decisive in the specific circumstances of the present case.

87. The Court has found, including in the context of Article 8 rights, that in certain specific circumstances, where some family members have appealed against the relevant domestic decisions and others have not, the complaints of the latter should not be rejected for failure to exhaust domestic remedies where the appeal by the other family members had resulted in the essence of the dispute having been brought to the highest judicial authority (see *Hasanali Aliyev and Others v. Azerbaijan*, no. 42858/11, § 30, 9 June 2022).

88. In the present case, all alleged violations were examined by the Constitutional Court, although raised by the first and second applicants, with the third applicant participating in the proceedings before it (see paragraphs 55 and 56 above). Under Czech law, the last instance at which it is possible to complain of a violation of fundamental rights or freedoms recognised in a constitutional law or in an international treaty, committed by an "organ of public authorities", is in principle the Constitutional Court (see *Heglas v. the Czech Republic*, no. 5935/02, §§ 46, 1 March 2007).

89. It is true that, by filing their appeals the first and second applicants sought to put forward their point of view and that it is conceivable that their interests did not coincide with the best interest of the third applicant, already an adult, who did not file an appeal. However, seeing that the issues in the proceedings before the Constitutional Court were limited to the constitutionality of the prohibition imposed on the first and second applicants, not on the third applicant, the Court considers that the situation is similar to that which obtained in the above-mentioned *Hasanali Aliyev and Others* judgment, in that the Government have not convincingly shown how the submission of appeals to the Constitutional Court by the third applicant – if at all possible – could have led to a different outcome (*ibid*, § 30).

90. Accordingly, the Court dismisses the Government's preliminary objection regarding the exhaustion of domestic remedies.

3. *Conclusion as to admissibility*

91. The Court further notes that the complaint under Article 8 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The applicants' submissions*

92. According to the applicants, the strong ties between them had not ceased to enjoy the protection afforded to "family life" simply because the members of the family had been unable to live together for the reason that, for example, institutional care had been imposed or formal ties had been terminated. Even after those steps had been taken, they had continued to merit protection under Article 8 of the Convention. The applicants concluded, therefore, that the prohibition on contact in the case at issue had therefore constituted an interference with their family life.

93. As to the lawfulness of the interference, the applicants maintained that where a resident of a children's home retained the rights and obligations of a minor child in the event that, *inter alia*, his stay in a facility ordered by a court was enforced and could not be terminated voluntarily by him, then he was *de facto* limited in his legal capacity and his personal freedom.

94. The applicants did not deny that the courts could prohibit contact between a minor child and persons who were not his parents. However, according to the applicants, if contact between parents and their child could be limited only until the child reached majority, then the same had to apply by analogy to their situation. The applicants were therefore of the opinion that the prohibition on contact once the third applicant had become an adult had not been in accordance with the law. Moreover, the extension of institutional care after a child reached his majority was extremely problematic as such. Indeed, as the third applicant had remained at the relevant time in institutional care after reaching his majority, the decision prohibiting contact had impeded him from contacting his former foster parents.

95. The applicants further maintained that from October 2014 onwards, the domestic courts had lacked any grounds for prohibiting contact. They noted that the first prohibition on contact had expired on 21 June 2014, when the judgment imposing institutional care had become enforceable. Since that date, any new measure should therefore have been based on new facts. However, there had been no such new facts: the national authorities had tried to allege that the first and second applicants had been breaching the

prohibition on contact with the third applicant since 12 September 2014, but when the first and second applicants had challenged those allegations on the basis of an evaluation of the relevant evidence, the domestic courts had refused to test that challenge, deeming the evidence in question to be irrelevant.

96. The same applied to the disturbance caused to the supervised contact of 29 September 2014. The first and second applicants gave a different account of that incident to that submitted by the authorities, and submitted evidence in support of their account. The Regional Court, however, concluded that it was not important “who said what to whom” on that day. By refusing to evaluate circumstances during the period of time between 12 and 30 September 2014 and to assess the evidence, the domestic courts had had no other possibility left but to fall back on an assessment of the circumstances prior to 21 June 2014. Such an attitude, however, had violated the principle that a new decision in a childcare case should be taken only if the circumstances had changed in the meantime.

97. The applicants added that the circumstances prior to 21 June 2014 had offered no grounds for the prohibition on contact from 4 October 2014 owing to the fact that (i) numerous meetings between the applicants had occurred between 21 June and 12 September 2014 without any difficulties; (ii) the supervised contact on 29 September 2014 had not been necessary at all; (iii) the expert psychiatric report of March 2014 had concluded that the third applicant wished to meet his foster parents regularly, and recommended that such meetings take place on a weekly basis, fully arranged by the applicants; (iv) the expert psychiatrist had not concluded that contact should occur only within the framework of systematic therapy, concluding that the meetings should be fully arranged by the applicants themselves and noting that if the first and second applicants could not overcome their personal trauma they should undergo therapy; and (v) the first and second applicants had not breached the recommendation not to involve the NGOs in their contact with the third applicant. Moreover, the psychiatrist had recommended that no more specialists should be involved and that the meetings between the applicants should be left to arrange their meetings by themselves.

98. The applicants considered, therefore, that in October 2014 there had been no circumstances exceptional enough to justify a total prohibition on contact between them.

2. The Government’s observations

99. As to the existence of the interference, the Government noted that the issue at stake was limited to the prohibition on contact during a period of two years and four months, from 9 October 2014 to 5 February 2017. Noting that foster care is a form of substitute family care in which the foster parent and the child are not in the same relationship as that between a parent and a child or an adoptive parent and an adoptive child, the Government believed that it

was at least disputable to what extent the relationship between foster parents and a child could be placed on an footing equal to that of the relationship between parents and a child and thus automatically be included in the Court's case-law concerning relationships between parents and minors.

100. In the event that the Court were to consider that the prohibition on contact between the foster parents and the third applicant constituted an interference with their family life, the Government would note that this interference was carried out under the conditions set out in Article 8 § 2 of the Convention.

101. In particular, the interference after the third applicant had reached his majority had been based on law that was foreseeable. The relevant provisions of the Civil Code had not been applied arbitrarily but on the basis of established facts, in the best interests of the third applicant and on the basis of his wishes. The Government pointed out that the prohibition on contact had continued after the third applicant had reached his majority as a consequence of the extension of institutional care by one year until the third applicant reached the age of 19. The national courts had agreed that it was also possible to apply Article 891 § 2 of the Civil Code on the prohibition on contact to the situation of the third applicant (who had by then reached his majority) in connection with the extension of institutional care under Article 974 of the Civil Code.

102. The Government maintained in this connection that (i) given the specific circumstances of the present case (namely that the third applicant had repeatedly confirmed that he wished to stay in the children's home and to complete his education), and (ii) taking into account what would be in his best interests, when the extension of institutional care beyond his eighteenth birthday was decided on before he reached his majority, the prohibition on contact had been a foreseeable consequence of the extension of institutional care. Moreover, the third applicant had also had a different option – namely, that of staying in institutional care voluntarily (that is to say without a court order) on the basis of an agreement under section 2(6) of Law no. 109/2002 on institutional care in educational facilities and on preventive educational care in educational facilities. The third applicant had actually noted that he would make use of that option were his institutional care not to be extended before he reached his majority.

103. While the applicants did not argue that the prohibition on contact had not pursued a legitimate aim, the Government noted, for the sake of completeness, that the interference had been aimed at protecting the third applicant's health, and in particular at improving his mental health.

104. In respect of the necessity of the interference and a fair balance between the interests at stake, the Government argued that as regards the prohibition on contact prior to the third applicant reaching his majority, the prohibition had been a consequence of past problems that had led to the institutional care order. After the placement of the third applicant in the

diagnostic institution on 13 December 2011 and then in the children's home on 21 February 2012, contact had taken place twice a week until January 2013, after which the frequency of contact had been decreased owing to the unfavourable impact on the third applicant of contact with the foster parents. The third applicant's mental state had progressively deteriorated after over the period when he had had regular contact with the foster parents and the situation had required the adoption of an interim measure prohibiting contact, on the additional basis of the foster parents failing to respect the set rules. The foster parents had not been able to take care of the third applicant in a manner appropriate to his age: initially there had been a positive relationship between them, but they had abused it in order to increase the third applicant's dependence on their care; the third applicant had suffered from feelings of guilt, which had been manifested by his aggression and psychosomatic problems.

105. The Government noted that the foster parents' personalities and nature had played a key role in prompting the decision to prohibit contact. In particular, the foster parents had been unable to change their attitudes and parenting strategies. It could be seen from the expert opinion of 14 March 2014 that because of the foster parents' rigid attitudes, their non-standard personalities and the character of their everyday lifestyle, they had not been strong enough to accept the positive influence of institutional care on the third applicant. The inappropriate upbringing provided by the foster parents had led to institutional care being ordered; this had then had a serious impact on the relationship between the applicants, leading to the prohibition on contact.

106. The Government further argued that as early as the third applicant's hospitalisation in 2011 it had been found that owing to his overprotective upbringing by the foster parents he was isolated from his peers, the foster parents still treated him as an infant, and his development was unbalanced. The foster parents had continued to follow inappropriate parenting strategies, even during the third applicant's stay in the children's home – both before and after the ordering of the prohibition on contact. The third applicant's aggressiveness had been a defensive reaction to the foster parents' behaviour. During his stay in the children's home the third applicant's aggressive spells had continued as a consequence of his meetings with the foster parents.

107. The Government did not dispute the foster parents' affection and love for the third applicant. However, they considered that throughout the proceedings the foster parents had proved that they were unable to cope with and rise above the justified and constructive criticism of their parenting strategies and actions, and had been unable to approach the third applicant with empathy and to offer him the understanding and support that every young person needed, especially during puberty.

108. According to the Government, the most important reason for prohibiting contact had been to protect the third applicant's best interests – in particular with regard to his and the foster parents' mental condition, as

documented by the expert opinion, and the foster parents' persistent problematic parenting strategies and attitudes leading to a deterioration in the third applicant's mental and physical condition. During the domestic proceedings the third applicant had expressed his opinion, and at the conclusion of the proceedings he had rejected the possibility of contact with the foster parents.

109. As regards the prohibition on contact as a consequence of the extension of institutional care, the Government emphasised that the third applicant had expressed his wish to stay in the children's home and have no contact with the foster parents. Moreover, the extension of the prohibition on contact after the third applicant had reached his majority had been reviewed twice by the Constitutional Court, which had concluded that the ordinary courts' decisions had not been arbitrary and that by extending institutional care the above-mentioned rights and obligations had been maintained – including the prohibition on contact.

110. The Government concluded that the measures adopted in the present case had been lawful, had pursued a legitimate aim and had been necessary, given the circumstances. In reaching the decision to prohibit contact the domestic authorities had taken into consideration the child's best interests and had carefully balanced the competing interests of the individuals involved.

3. The Court's assessment

(a) Whether there was an interference with the applicants' family life

111. The Court has already found that family life existed between the applicants (see paragraphs 69-73 above).

112. While it is true that the family ties established in the context of foster care are primarily intended to serve the best interests of the child and not to satisfy the needs of the foster parents or former foster parents (see also paragraph 25 above), in the Court's view there is little doubt that in the present case the domestic courts' decisions imposing on the first and second applicants a prohibition on contacting the third applicant during the period complained of, between 9 October 2014 and 5 February 2017 (see paragraph 67 above), interfered with the right to respect for the family life of all the applicants. As regards the third applicant, the Court observes that he was also affected by these decisions in that his former foster parents were prevented from contacting him and, as a result, he could not have contact with them given, in particular, his situation of a minor placed in institutional care. Admittedly, the third applicant was formally free to contact his former foster parents after having reached his majority, as noted by the District Court in its judgment of 26 April 2016 (see paragraph 46 above). The Court points out, however, that the interim measure ordered on 9 October 2014 was not cancelled once the third applicant had reached his majority (see paragraph 46 above) but continued to be valid until the courts decided on the merits of this

matter, so until 15 December 2016, when the judgment of the Regional Court of 24 November 2016 became final (see paragraphs 49-51 and 53 above).

113. The Court finds, therefore, that the impugned decisions constituted an interference with the three applicants' right to respect for their family life.

114. Such interference constitutes a violation of that provision unless it is "in accordance with the law", pursues one of the legitimate aims under Article 8 § 2 and can be regarded as necessary in democratic society (see *V.D. and Others v. Russia*, cited above, § 110, with further references).

(b) Whether the interference was lawful

115. The Court reiterates that in order to be lawful, the interference must have some basis in domestic law, and that that law must be adequately accessible and be formulated with sufficient precision as to enable a citizen to regulate his or her conduct, he or she being able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail (see *Pojatina v. Croatia*, no. 18568/12, § 65, 4 October 2018, with further references).

116. Moreover, the Court has always understood the term "law" in its "substantive" sense, not its "formal" one; it has included both "written law", encompassing enactments of lower ranking statutes. In sum, the "law" is the provision in force as the competent courts have interpreted it (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI, with further references). The term "law" thus implies that there must be a measure of protection in domestic law against arbitrary interference by public authorities with the rights safeguarded by paragraph 1 of Article 8 (see *Valenzuela Contreras v. Spain*, no. 2671/95, § 46, 30 July 1998).

117. The Court observes that the prohibition on contact was based on Article 891 § 2 of the Civil Code, and was ordered initially in the form of a preliminary measure under Article 102 § 1 of the Code of Civil Procedure, as worded at the time in question, and subsequently confirmed by a substantive judgment (see paragraphs 31, 33, 38 and 49 above). Admittedly, Article 891 § 2 of the Civil Code, using the term "child", provides for prohibition on contact with a minor. However, the domestic courts have interpreted this provision, read in conjunction with Article 974 of the Civil Code, as also being applicable to contact with a child who has reached his majority but has continued to be placed in institutional care for one additional year, as provided for under Article 974 of the Civil Code (see paragraphs 50 and 55 above). There is no reason to question this interpretation and its foreseeability.

118. Accordingly, the prohibition on contact between the applicants had a legal basis in domestic law.

(c) Whether the interference pursued a legitimate aim

119. The Court does not doubt that the reasons for the interference with the applicants' rights were aimed at the protection of the child's mental health and wellbeing.

(d) Whether the interference was necessary and proportionate

(i) The applicable principles

120. The Court reiterates that when addressing the question of proportionality of the impugned measure, it has to consider whether, in the light of the case as a whole, the reasons given to justify it were "relevant and sufficient" for the purposes of Article 8 § 2 of the Convention. It cannot satisfactorily assess this latter element without at the same time determining whether the decision-making process, seen as a whole, was fair and provided the applicants with the requisite protection of their interests safeguarded by Article 8 (see *V.D. and Others v. Russia*, cited above, § 112).

121. The Court has also held that, in view of the great variety of family situations possibly concerned, a fair balancing of the rights of all individuals involved necessitates an examination of the particular circumstances of each case. Accordingly, Article 8 of the Convention can be interpreted as imposing on member States an obligation to examine on a case-by-case basis whether it is in the child's best interests to maintain contact with a person, whether biologically related or not, who has taken care of him or her for a sufficiently long period of time (see *V.D. and Others v. Russia*, cited above, § 126 with further references).

122. The Court recalls that the national authorities have the benefit of direct contact with all the individuals concerned. 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 *V.D. and Others v. Russia*, cited above, § 113, with further references).

(ii) Application of the above approach and principles

123. The Court notes at the outset that in the present case, the applicants' complaint does not relate to the third applicant's placement in institutional care, which was ordered in December 2011, but rather to the prohibition on their mutual contact during the period from 9 October 2014 to 5 February 2017, which was ordered by the national courts even though they had previously lived together for seven and a half years.

124. Recalling the background to the present case, the Court notes that the third applicant, who did not have ties with his biological parents because his father had not been named in his birth certificate and his mother had been unable to take care of him (see paragraph 5 above), was placed in the

pre-foster care of the first and second applicants at the age of six, after spending five years in institutional care, in which he had been since the age of one (see paragraphs 5 and 11 above). In this context, it should not be disregarded that, as noted by the domestic courts, the placement in foster care of the third applicant took place despite misgivings regarding the suitability of the foster parents to cope with possible educational complications for the child, who had already been educationally demanding at the time of the decision on foster care (see paragraph 25 above). The child remained in their care until the age of 13, when he was placed in the children's diagnostic institution and then in the children's home, owing to problematic behaviour that his foster parents had been unable to correct, according to the conclusions of the domestic courts. He was subsequently placed in institutional care (see paragraph 17 above).

125. The Court further observes that the prohibition on contact challenged by the applicants was preceded by a first interim measure, initiated by the children's home, by which the courts had prohibited contact already in March 2013, having relied in particular on the failure of the foster parents to respect the children's home's instructions and their inappropriate behaviour towards the third applicant, which had a negative impact on his conduct and reactions and deteriorated his mental health. The courts did not contest the existence of family ties between the foster parents and the child but they considered necessary to order the temporary prohibition on contact because the child's interests so required and the disturbed family relations needed to be rebuilt (see paragraphs 19 and 21 above).

126. The prohibition on contact ordered on 9 October 2014 was mainly motivated by the foster parents' continuing manipulative behaviour towards the child, which had already been noticed in the past, their disrespect of the child's current life in institutional care, putting him in uncomfortable and psychologically distressing situations. In this respect, the courts relied, in particular, on reports by social workers, a psychologist, a class teacher and the children's home. Moreover, since the foster parents had not followed the expert's opinion that contact with the child should take place only within systemic therapy, the courts stated that the previous prohibition on contact had not led the foster parents to modify their behaviour towards the child. The Court observes, therefore, that the authorities were careful to provide opportunities to the foster parents to try to rebuild the relationship within the framework of systemic therapy (see paragraphs 31 and 33 above) but that was unsuccessful.

127. The two first applicants were finally prohibited to maintain any contact with the third applicant until his majority by the District Court's judgment of 26 October 2015, confirmed on appeal by the Regional Court in November 2016 (see paragraphs 38 and 49-51 above).

128. Admittedly, the task of the national authorities was difficult. While at the relevant time the third applicant was an adolescent child placed in

institutional care without any ties to his biological family and, therefore, in a situation where his continued relations with his former foster parents, the only family-type relations he had, could in principle be in his best interests, there were weighty reasons not only to limit but to sever contacts between the third applicant and his former foster parents, whose attitude was considered causing distress and being detrimental to the child. It appears that the former foster parents, emotionally attached to the child, failed to adapt to the evolving living and educational needs appropriate to the third applicant's teenage age and mental development and persisted in their wish to continue bringing him up in the way they were convinced was appropriate.

129. Under the national law (see paragraph 60 above) foster care, especially when provided by unrelated persons, like the first and second applicants, is a form of semi-professional care for a child outside his or her original family, based on a contract and is financially remunerated. Foster parents are required, in the interests of the child entrusted to them, to display a caring attitude and provide full emotional support. On the other hand, they are supposed not to overstep their role and should act within its limits, in the best interests of the child. As a consequence, under the relevant domestic legal regime foster parents and, indeed, former foster parents, must be open to accepting to modify their relationship with the child when necessary, in dialogue with the competent authority (see also paragraph 35 above).

130. The domestic courts involved in this sensitive matter were therefore called upon to assess and weigh all the relevant circumstances of the case, based on all evidence, including expert opinions, and the positions of the parties to the proceedings, in order to establish whether a new prohibition on contact between the foster parents and the adolescent child, as proposed by the social welfare authority (see paragraph 31 above) would be in the latter's best interests. Their task was difficult also because the third applicant was vulnerable and undisputedly had special psychological and educational needs.

131. The Court observes that the domestic courts collected evidence, repeatedly heard the parties and assessed the particular circumstances of the case before them taking into consideration the positive relationship that had existed between the foster parents and the child prior to the latter's placement in institutional care, but also the fact that the foster parents' behaviour towards the child - once he had been placed in institutional care - had negatively affected his conduct and psychological condition (see paragraphs 31, 33, 38 and 50 above). The courts duly evaluated whether maintaining contact between the foster parents and the child might or might not be in the child's interests, with due regard to his health and special needs, also considering other, less invasive measures advised by the expert, aiming to rebuild a normal relationship between them. The courts considered that the foster parents, contrary to their role of foster carers and to the requirements imposed on them in that role (see paragraph 126 above), had not understood

and accepted the experts' advice and had failed to modify their attitude (see paragraphs 31, 38, 39, 42 and 50 above). The courts' reasoning was detailed and developed and does not appear disbalanced.

132. In the light of the foregoing considerations, the Court concludes that the domestic courts' decision prohibiting contact between the first and second applicants and the child during the relevant period of approximately two years and four months corresponded to the child's best interests, was taken within their margin of appreciation and was based on relevant and sufficient reasons.

133. There has accordingly been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

134. Lastly, the first and second applicants alleged a violation of their right to a fair trial in that they had not had a reasonable possibility to submit their claims concerning the events of 12 and 29 September 2014 (see paragraphs 28-29, 39, 41 and 49-50 above).

135. In the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

136. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 13 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Georges Ravarani
President

JÍROVÁ AND OTHERS v. THE CZECH REPUBLIC JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judge Mourou-Vikström and Judge Šimáčková is annexed to this judgment.

G.R.
V.S.

JOINT DISSENTING OPINION OF JUDGES MOUROU- VIKSTRÖM AND ŠIMÁČKOVÁ

1. We cannot agree with the majority that there has been no violation of Article 8 of the Convention in respect of all three applicants. In our opinion, there are two issues where the majority's conclusions (but also the conclusions of the national authorities) do not stand up to scrutiny, namely the question of the lawfulness of prohibiting contact between the applicants after the third applicant had reached the age of majority and the lack of consideration of the best interests of the child, i.e. the third applicant, in the national authorities' procedure.

I. LAWFULNESS OF PROHIBITION OF CONTACT ONCE THIRD APPLICANT REACHED AGE OF MAJORITY

2. In our view, in the period from 5 February 2016 to 5 February 2017 (when the third applicant was still detained in a public institution), the prohibition of contact between the first two applicants and the third applicant was justified by the national courts on the basis of an impermissible analogy. We do not find sustainable the Government's argument that the prohibition of contact continued after the third applicant had reached the age of majority due to the extension of institutional care until he turned 19. The national courts agreed that the prohibition of contact, based on Article 891 § 2 of the Civil Code, could continue after the third applicant's majority in connection with the extension of the institutional care under Article 974 of the Civil Code.

3. We consider however, that once the third applicant reached the age of 18 (maturity), the prohibition of contact with his former foster parents was no longer based on any applicable legal provision of national law, as the mere consensus of the national courts involved in the matter, to which the Government referred, cannot be substituted for the valid national law, unless it is the courts' interpretation based on settled case-law.

4. In the light of these considerations, we find that the prohibition of contact after the third applicant had reached maturity did not have any legal basis under national law. We are therefore persuaded that, at least during this period, the interference with the right of the three applicants to respect for their private and family life was unlawful.

II. INSUFFICIENT CONSIDERATION OF CHILD'S BEST INTERESTS

5. The whole story of the third applicant clearly indicates that he was not provided with the care that was in his best interests. In his application, the third applicant himself pointed out that after having left the children's home,

he had moved to the home of the first and second applicants, his former foster parents (see paragraph 57 of the judgment).

6. It follows from the relevant legal framework and practice that the Czech Republic has faced criticism on grounds of over-institutionalising care for children without families (see paragraphs 64 to 66 of the judgment). Moreover, it cannot be overlooked that the third applicant spent his early childhood in institutionalised care and that he was placed in foster care (at the age of six), having lost all contact with his biological mother at the age of one and not having had any contact with his biological father.

7. It was clear from the very beginning that the State had not chosen the most suitable foster parents for the child, thus generating ongoing conflicts and problems (see paragraphs 6, 7, 13 and 23 of the judgment). The competent authorities did not provide the foster parents, who were not prepared to raise an older boy with health and educational problems and who was difficult to manage, with the sufficient support which was necessary in view of the well-known problems in foster care. Caring for a child with specific characteristics was very demanding and exhausting for the foster parents, who received no guidance or assistance from the State authorities. It follows that the State had already failed by selecting unsuitable foster carers and not providing sufficient support to them for the child. This, incidentally, was criticised by the Ombudsman in the course of the national court proceedings (see paragraph 24 of the judgment). That situation culminated in the placement of the child in institutional care, a fact which is not disputed by the applicants, who focused on the complete prohibition of contact between them.

8. In deciding whether to preserve at least some contact between the third applicant and his former foster parents, who were the only people in his life with whom he had personal ties similar to family ties, the third applicant was heavily influenced by an institution (children's home) that was not sympathetic towards the foster parents because of their complicated behaviour. Thus the third applicant's statements to the courts and other public bodies could not be considered to have been made freely. He had been motivated to obey and encouraged to write unsolicited texts, and in cases where his opinion was required, he was always accompanied by the staff of the children's home.

9. The national authorities opted for a solution that was easier for the children's home – banning all contact – rather than providing proper support and trying, for example, to straighten out the relationship between the child and the former foster parents through assisted contact. Moreover, they did not take a nuanced approach to assess the situation, did not review the measure over time, and did not properly explain why such a measure had been adopted.

10. We are convinced that when addressing the question of proportionality of the impugned measure, it must be considered whether, in the light of the case as a whole, the reasons given to justify it were “relevant

and sufficient” for the purposes of Article 8 § 2 of the Convention. The latter element cannot be satisfactorily assessed without determining, at the same time, whether the decision-making process, seen as a whole, was fair and provided the applicants with the requisite protection of their interests safeguarded by Article 8 (see *V.D. and Others v. Russia*, no. 72931/10, § 112, 9 April 2019).

11. While the Court has already dealt with cases concerning contact between former foster parents and a child who used to be entrusted to their care (see for example *V.D. and Others v. Russia*), it has not dealt with a situation where the child had no ties to its biological family and where the only adults with whom the child had formed close family ties were foster parents. In such a situation the importance of maintaining contact with the former foster parents – already recognised even in cases of return of the child to his or her biological family – is particularly significant and, therefore, the child’s contact with his or her former foster parents in the absence of any ties with the biological family must be respected and, in principle, encouraged, if it is in the child’s best interests. This is even more important where the child is placed in institutional care after having been removed from the foster parents. In our view, in the light of these considerations, the guiding principles set out in Court’s case-law regarding the relationships between a child taken into public care and his or her biological parents (see, in particular, *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 204-08, 10 September 2019) also apply, in principle, to contact between a child in institutional care (children’s home) and his or her former foster parents in a situation where the (former) foster parents are the only family that the child has known and has developed ties with.

12. In cases involving the care of children and contact restrictions, the child’s interests must come before all other considerations. Furthermore, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards to protect the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child: General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paragraphs 85 and 87) and to examine on a case-by-case basis if it is in a child’s best interests to maintain contact with a person, whether biologically related or not, who has taken care of him or her for a sufficiently long period of time (see *V.D. and Others v. Russia*, cited above, §§ 125-26, with further references).

13. Domestic courts should provide more stringent procedural protection to a child who is placed in long-term institutional care, without any ties with members of his or her family, and who may tend to appropriate the views of the institution and instinctively substitute them for his or her own. It is thus the task of the courts to assess in an in-depth manner the opinions expressed by the child in the court proceedings, the outcome of which directly affects him or her, and to determine whether they are his or her own opinions.

Institutional care entails structural neglect: children growing up in children's homes are at risk in various areas of functioning, including their physical, socio-emotional, and cognitive development, including the risk that any will or wish expressed by them could be influenced by the institution in which they have been placed (*ibid.*, § 126, with further references). The margin of appreciation to be afforded to the competent national authorities in cases where it has not been established that the situation seriously endangers the child's health or development is limited, and the national authorities in question should always try to take less drastic measures (see *Strand Lobben*, cited above, § 211).

14. Where foster parents are the only persons with whom the child has formed close family ties, as in the present case, contact must be protected and encouraged, unless found to be explicitly dangerous to the child. This is even more important if the child is placed in institutional care. In this sense, the State has, in our view, significant procedural obligations in the court proceedings to explain whether and how it has taken the protection of these family ties into account and whether it has chosen the least drastic measure.

15. The wording of the national court decisions, when ordering the prohibition on contact, suggests that the courts did not consider the fact that the third applicant had spent most of his life in institutional care, which meant that he was inevitably under the influence of public institutions and, at the same time, subject to the influence of his foster parents, who were his only family. Referring to the third applicant's submissions refusing contact with them, the courts did not seem to assess carefully whether he was repeating what he had heard or learnt in the children's home or whether he was speaking for himself.

16. We are of the opinion that in the present case, the national authorities, having been fully aware of the history of the foster family and having monitored the situation of the family over the years, opted for the most drastic measure consisting of a complete prohibition on contact, which radically interfered with the relationships between the applicants, without considering whether an alternative less invasive measure aimed at regulating contact between them would have achieved the aim they were pursuing and without giving adequate reasons for their decision. Moreover, professional assistance by competent independent experts (i.e., for example, a psychologist or a social worker not linked in any way to the children's home or its provider) in the normal course of the third applicant's contacts with his former foster parents would have enabled the third applicant to enter adult life better prepared.

III. CONCLUSION

17. In conclusion, we find that there has been a violation of Article 8 of the Convention in respect of all the applicants, partly because of the

unlawfulness of the prohibition of contact when the third applicant was already an adult. We more specifically find an even more serious violation of the third applicant's rights under Article 8 of the Convention, namely in the excessive and probably ill-considered and unjustified absolute prohibition of contact between him and his former foster parents, who were the only persons with whom he had formed individualised family ties throughout his life.

APPENDIX

List of applicants

Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location
66015/17 Jírová and Others v. the Czech Republic 02/09/2017	Věra JÍROVÁ 1958 Hodkovice nad Mohelkou Czech Milan JÍRA 1958 Hodkovice nad Mohelkou Czech Vladimir BLÁHA 1998 Hodkovice nad Mohelkou Czech	David STRUPEK Prague