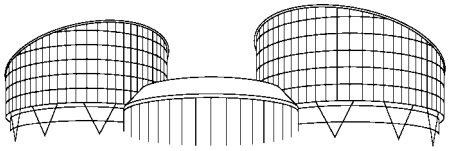

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF Z.J. v. LITHUANIA

(Application no. 60092/12)

JUDGMENT

STRASBOURG

29 April 2014

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 Z.J. v. Lithuania,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*
and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 60092/12) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Z.J. ("the applicant"), on 11 September 2012.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged in particular that court decisions refusing to grant him custody of two of his children had violated his right to respect for his family life under Article 8 of the Convention.

4. On 17 December 2012 the application was communicated to the Government. Pursuant to Rule 47 § 4 of the Rules of the Court, the Chamber decided of its own motion to grant anonymity to the applicant.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Šiauliai.

6. The applicant was married to V.J., with whom he had two boys – T.J., who was born in 1985, and Do.J., who was born in 1986.

7. In 1993 the applicant divorced his wife, but they remained living together and had one more boy – Ž.J., born in 1997.

8. On 18 May 2003 V.J. gave birth to twins – a boy, D.J., and a girl, K.J.

9. On 5 December 2003 the applicant's former wife and the mother of their five children died. Immediately afterwards, I.N., a cousin of the applicant's late wife, took the twins to her home to take care of them. As the applicant wrote in his application to the Court, he had agreed that I.N. would take care of the twins because she had experience in raising children – she had two children of her own. He also mentioned having started dating I.N. and having planned to marry her later. In the applicant's words, I.N. wanted to get married in church and not to disclose that fact to the State authorities so that it would be possible to keep receiving child benefits. The applicant wrote that then, "seeing such prospects for a bright future, [he] had agreed that I.N. would become official guardian of the twins and [he] had helped her to prepare paperwork for that purpose".

10. On 27 January 2004 the Šiauliai City Municipality's Children's Rights Protection Service (*Vaiko teisių apsaugos tarnyba*, hereinafter – "the Service") decided that I.N. could be the temporary guardian of the twins who, in turn, were to reside with her. The applicant took part in the hearing held at the Service's premises and agreed with the decision. He noted that he could barely take care of his three other children, who were schoolboys, and was thus unable to raise the babies. He stated that if he had to bring the babies back to his home, he would be forced to quit his job and this would ruin him financially. His job also included working at night. If I.N. had not agreed to take the twins, he would have given them to a foster home for infants. The applicant agreed to have his parental rights limited should I.N. be appointed as the twins' guardian. He also agreed to pay money towards the twins' upbringing.

I.N. stated that she did not have a job and agreed to raise the twins.

11. A few days later, on 3 February 2004, the Director of Administration of Šiauliai City Municipality decided that I.N. should be appointed as the temporary guardian of the twins.

12. Later on, the Service applied to the Šiauliai City District Court, asking it to appoint I.N. as the twins' permanent guardian (*nuolatinė globėja*) and manager of their property.

13. The applicant took part in the court hearing concerning that application and explained that even though he loved all of his children and had been raising the three older ones to the best of his abilities, he was not able to take care of the twins because of a lack of money and knowledge of how to take care of very young children. If he had to quit his job in order to bring up the twins, there would be no money to live on. Whilst noting that he was not giving the twins up, the applicant agreed that I.N. could be appointed as their guardian. He promised to help the twins financially to the best of his abilities.

14. On 29 April 2004 the Šiauliai City District Court granted the Service's application and granted permanent guardianship of the twins in

favour of I.N., who was also to be manager of their property. The court also made a custody order concerning the twins in I.N.'s favour. The applicant was ordered to pay 50 Lithuanian litai (LTL) (approximately 15 euros (EUR)) per month in financial support for each child, until the children came of age. The court noted that the applicant could not take care of the twins because of his lack of knowledge of how to take care of infants. Yet it observed that the applicant worked and took care of his three older children, did not exercise his parental rights improperly, and had no negative influence on the older children. The applicant was also ready to support the twins financially, visit them and communicate with them when they became older. The twins were to be removed from the applicant's care, although he would retain his parental rights, in accordance with Article 3.179 of the Civil Code (see paragraph 70 below).

15. The decision could be appealed against to a higher court. The applicant notes that he did not appeal against the decision.

16. According to doctors who examined the twins, during the first years of their lives their development of motor skills was slower than normal, and by the age of three they had specific mixed development disorder (*specialus mišrus raidos sutrikimas*), and their language development was delayed. They needed speech therapy, physiotherapy and an undemanding regimen (*tausojantis režimas*). On 7 November 2006, at I.N.'s request and on the basis of reports by psychologists and doctors, the twins received learning support at the Šiauliai Special Upbringing Centre. At the centre the twins received help from a speech therapist and special educational needs teachers (*specialieji pedagogai*), and benefited from such procedures as massages, medical exercise therapy and herbal baths. Upon the request of I.N., who stated that she was ill herself and had to take care of her elderly mother, from 7 November 2006 onwards the twins became weekly boarders (from Mondays to Fridays) at the Special Upbringing Centre. As the doctors later noted during court proceedings, they made no recommendation either in favour of or against the twins boarding there during the week. As I.N. later specified during court hearings, she had not felt it appropriate for the twins to go to a regular kindergarten, because there were twenty-two children in one class (*grupė*) there, whereas at the Šiauliai Special Upbringing Centre there were only eight children in a class. According to the Government, the children stayed at the Special Upbringing Centre until 31 May 2009. It also appears from the documents before the Court that in the event of illnesses and during holidays the children were taken home (for example, in accordance with a doctor's recommendation that the children stay at I.N.'s home from 23 December 2008 for four months).

17. As of 1 September 2009 the twins attended daily pre-school classes at the Šiauliai Special Upbringing Centre. On 7 December 2009 the director of the centre noted that the twins were always brought to and collected from the centre by I.N. on time, they were well-rested, properly dressed, and had

all the necessary materials for class with them. The applicant came to visit them at the centre twice. After his visits the children acted normally, although they were more interested in the presents he brought and did not communicate much. In May 2010 the institution noted that the applicant would come and see the twins at the centre two to three times a month, teachers were present at the meetings and the children' behaviour after the meetings was normal.

A. The civil proceedings concerning the return of the twins to the applicant's care

18. In autumn 2008 disputes arose between the applicant and I.N. In September 2008 I.N. complained to the Service that the applicant had withdrawn money from the twins' bank account, without her knowledge or permission, as the administrator of the twin's property. A criminal case for fraud was opened against the applicant. On 12 April 2010 the applicant was acquitted of that charge the court, having established that he had acted in good faith and in the interests of the twins.

19. On 9 December 2008 the applicant applied to the Šiauliai City District Court, asking that the twins be returned to him. He argued that the reasons for his two children being removed from his care had ceased to exist. The applicant lived in a three-room apartment and, above all, the twins were now older and he therefore felt able to raise them. Two of his older children, Do.J. and T.J., were now students. The applicant submitted that it would be in the best interests of all his children to grow up together. He also sought to have the twins summoned and questioned in court.

20. In response, on 15 December 2008 I.N. lodged an application with the same court, seeking to have the applicant's parental rights permanently limited (as for the outcome of this case, see paragraph 52 below).

21. By a ruling of 16 March 2009, at I.N.'s request, the Šiauliai City District Court suspended the examination of the case initiated by the applicant for the twins' custody until the civil case initiated by I.N. for termination of his parental rights was decided.

22. The applicant appealed against that ruling, arguing that a delay in the proceedings was harmful to his interests and, even more so, to those of his minor children. He emphasised that in 2004 he had been separated from his children not because of his fault but because of circumstances that were beyond his control – the death of his former wife and the particularly young age of the twins. The applicant also noted that it was he who had addressed the Šiauliai City District Court first; only afterwards had I.N. initiated another set of court proceedings against him. Taking into account that a case concerning termination of his parental rights could reach the appellate courts, such proceedings could last a very long time, in breach of the requirements of Article 6 § 1 of the Convention. The delay in court

proceedings could also push the twins away from their biological father and thus was detrimental to their interests.

23. By a decision of 21 April 2009 the Šiauliai Regional Court granted the applicant's appeal, on the ground that a delay in the proceedings would be in breach of the twins' best interests. The court also established that the applicant had been the first to open court proceedings concerning the twins' future residence.

24. In July 2009 the Šiauliai City District Court held a hearing in the case initiated by the applicant regarding the twins' return to him (see paragraph 19 above), at which the applicant, I.N., their lawyers and the Service's representative were present. The court considered that an expert report was necessary to establish whether the twins were ready to be returned to the applicant's home. The applicant's lawyer insisted that, apparently for reasons of impartiality, if experts were to be appointed, those experts should be from Vilnius, and not from Šiauliai. During another court hearing on 31 August 2009 the applicant testified that he had not had problems with I.N. until 2008 when he found out that the twins had attended weekly boarding.

25. On 7 December 2009 officials from the Service visited I.N.'s home and had a conversation with the twins, without I.N. being present. The two children called I.N. "mummy", and the applicant "daddy", and expressed negative feelings towards their father and about being with him in either his or I.N.'s apartments. The child care specialists admitted, however, that the phrases the twins had used did not always correspond to the language used by children of their age. The conversation with the children also clearly showed that there was a dispute between the applicant and I.N. The child care specialists thus recommended, in the interests of the children, that the applicant and I.N. improve their relationship and strive to ensure that the applicant was able to communicate with his children. The Service concluded that the twins were not yet ready to live with the applicant.

According to a further report, the child care specialists had also previously visited the applicant's apartment in Šiauliai and found that the conditions there were suitable for children.

26. In reply to a complaint by the applicant, on 4 March 2010 the Ombudsperson for the Protection of Children's Rights (*Vaiko teisių apsaugos kontrolierius*, hereinafter – "the Ombudsperson") issued a report about his case. The Service informed the Ombudsperson that if the applicant had agreed to raise the twins himself at the time the question of guardianship had been examined, he would have been eligible to receive a monthly payment of around LTL 400 (approximately EUR 116) from the State in support. However, at that time the applicant had refused to raise the twins, even though he had stated that he intended to do so "in the future", without indicating when, and had only applied to the Šiauliai City District Court for a residence order in respect of the twins on 9 December 2008.

27. The Ombudsperson noted that the Service had an obligation to establish which help, in particular, the applicant's family would have benefited from, including all the social services and other assistance available. However, in the Ombudsperson's view, that had not been done, and the authorities had not taken specific steps to enable the twins to be returned to their biological family.

28. That being so, the Ombudsperson also observed that since the 29 April 2004 court decision to establish permanent guardianship for the twins, the applicant had never contacted the Service regarding his communication with the twins until November 2008. Neither had he applied to have those two children returned to him. Similarly, until November 2008 the applicant had never claimed that I.N. was not taking care of the twins properly. Child care specialists had visited I.N.'s home during the intervening years and there was no evidence that the children had not been taken care of properly.

29. Whilst noting the conflict between the applicant and I.N. over when and how the applicant could see the twins, the Ombudsperson urged the two to act prudently so that their dispute did not affect the children. The Service was ordered to take steps towards the improvement of the relationship between the applicant and the twins, provided that this was in the children's best interests. It was necessary to find a proper balance between the interests of the children, namely, their health and development, and their communication with the applicant. That being so, the Service's finding of 7 December 2009 that the twins were not yet ready to return to their father's home was not unreasonable. It was pertinent that a sudden termination of the guardianship could cause distress, especially when the twins' guardianship had been established at a very early age. I.N. had become their guardian when they were infants and, according to the information collected, they were very attached to her. Moreover, they had negative feelings towards their father, which, to a certain extent had been caused by the dispute between I.N. and the applicant. A transitional period was therefore necessary.

30. As the dispute between the applicant and I.N. escalated, on 24 March 2010 the applicant lodged a civil claim with the Šiauliai City District Court seeking a formal decision setting up a contact schedule (*dėl bendravimo tvarkos nustatymo*) for him and the twins.

31. On 27 May 2010 the Šiauliai City District Court suspended the proceedings for a contact schedule until the civil case concerning the return of the children to reside with the applicant, wherein a psychological assessment of the children had been ordered by the court, had been concluded (see paragraphs 19–24 above).

32. The applicant also asked the court to issue interim protective measures (*laikinosios apsaugos priemonės*), so that he could regularly communicate with the twins. The applicant asked to spend twenty days in a

row with the twins during the summer, see them twice a week for no less than four hours each time every week, and for the twins to stay at his home overnight once a week. The applicant also sought to have his two children stay with him overnight during public holidays, every second year. I.N. partly agreed to the request, but asked that the children not be left with the applicant overnight, because they had health problems and were not used to spending the night in another home. When questioned, the twins stated that they wanted to have contact with the applicant, but did not want to stay at his place overnight or to go on holiday with him for more than one day. The Service noted that the twins had not lived with the applicant for a long time and considered that, in order to restore their relationship, an adaptation period was necessary. The Service left the details of the contact order to the court's discretion.

33. On the request of the Šiauliai City District Court (see paragraph 24 above), experts at the Vilnius city psychiatric institution (*Vaikų ir paauglių teismo psichiatrijos skyrius*) examined the twins. Questions were put to the experts by the court, the applicant and I.N.

In their report of 10 September 2010, the psychiatrists concluded that D.J. had a strong and positive emotional relationship with I.N., with whom he felt safe. The boy also had an emotionally positive relationship with his father, who was an important person for him, but their contact was insufficient. Such a lack of contact could be one of the reasons why the boy wanted to live with his father. On this last point the psychiatrists also noted that while the boy was able to freely express his wish to live with his father, he did so without being able to think critically and to foresee the consequences of his choice. The psychiatrists also noted:

> "it was not possible to state or to foresee how the change of living place would affect D.J.'s further development. However, taking into account the wish which D.J. had expressed to live with his father, it was unlikely that the change would affect the child negatively, or even cause him harm. [Nonetheless], taking into consideration that from his infancy to [the present] date I.N. had been raising him, it was not recommended to disrupt the relationship between the boy and I.N. completely".

The experts considered that it was for the court to decide how often the child should have contact with his father so that their emotional relationship could resume.

As regards the girl, K.J., the psychiatrists concluded that she had an emotionally strong relationship with her guardian, with whom she felt safe. Her relationship with her father was ambivalent, but it had not broken down entirely. Both the applicant and I.N. were important people in K.J.'s life. All things considered, it was not possible to state or to foresee how a change of living place would affect K.J. It was thus for the court to decide how often the child should have contact with her father so that their emotional relationship could resume. The experts also recommended that the applicant and I.N. should share the duties of taking care of the children, and I.N.

should actively cooperate by helping the twins to communicate with their father.

34. On 4 July 2011 the Šiauliai City District Court held that, in order to gradually restore the twins' emotional connection with their father, contact should be as follows: the applicant could collect the children from I.N.'s home every Wednesday and be with them for two-and-a-half hours; every Saturday he could spend nine-and-a-half hours with them. The court considered that it would only be appropriate for the twins to be with the applicant during school and public holidays once their bonds with him had become stronger. In the court's view, such a contact order corresponded to the best interests of the children. The court also noted that, should the circumstances change, the applicant or I.N. could ask the court to amend the contact order.

In August 2011 and upon I.N.'s request, the court amended the contact order to the effect that, should the applicant be unable to see the twins on Wednesday or Saturday due to their sickness or another justifiable reason, he could meet with them on Thursday or Sunday.

The applicant and his lawyer took part in both court hearings.

35. On 12 September 2011 the Šiauliai City District Court delivered its decision as to the applicant's application for a residence order. The applicant, I.N., their lawyers, and the Service took part in the hearings before the court. The twins also took part in the hearings, giving evidence without the applicant, I.N. or their lawyers being present.

36. The court noted that on 24 April 2004 the twins had been removed from the applicant's care by a court decision for a legitimate reason – namely, because he could not take care of them (Article 3.179 of the Civil Code, see paragraph 70 below). It was important to observe that their separation was in no way linked to fault on the part of the applicant. Moreover, the measure was temporary in that it could be lifted if the circumstances justifying the separation from the twins no longer existed. Accordingly, it was necessary to examine whether those circumstances still existed, and, if not, whether the children's being returned to live with the applicant would be in their best interests, which were the overriding consideration. The court noted that the best interests of the children, as the primary consideration, were indicated in Article 3 § 1 of the United Nations Convention on the Rights of the Child and in Article 3.3 of the Civil Code.

37. The Šiauliai City District Court agreed with the applicant's argument that the grounds for removal of the twins from his care in 2004 had ceased to exist, because the twins were now eight years old and had been taken from the applicant because he had not possessed the appropriate knowledge of how to take care of them when they were infants. That being so, the court nevertheless held that the twins had a strong emotional link with I.N. and their emotional link with the applicant was not sufficient, which situation had clearly been influenced by the fact that the twins had lived separately

from the applicant since June 2004. The court also observed that because of the dispute over money between the applicant and I.N. which had started in summer 2008, he had had limited opportunities to take part in educating his children and to communicate with them. It was only from July 2011, when the court had issued an interim order providing for the applicant's contact with the twins in accordance with a fixed schedule, that the applicant had started to have regular contact with the twins. Even so, the applicant had not taken all possible steps to participate in the upbringing of the twins on an equal basis with I.N. Namely, even though the twins had been removed from his care in June 2004, the applicant had never asked for the twins to be returned to live with him until the disagreement with I.N. arose in summer 2008, even though his two other sons were no longer minors as of December 2003 and December 2004 respectively. The court also noted the applicant's acknowledgement that until 2008 he had not encountered any obstacles to communicating with the twins. Yet, he had communicated with them only "episodically", with the result that the emotional connection between the twins and the applicant and his other children was less strong than that existing between the twins and I.N. and her children. As the twins had testified in court, they did not want to live with the father. They did not even want to stay at his home during the weekends, this being confirmed by the applicant's eldest child, Ž.J.

38. The Šiauliai City District Court also dismissed the applicant's argument that I.N. had not been taking care of the twins properly because they had been weekly boarders at the Šiauliai Special Upbringing Centre for three years. On the contrary, the court observed that according to the twins' doctor, the care centre was of great benefit to the family, because the twins received specialist help there. The court found that the applicant ought to have been more active in making inquiries about the twins' development and health. Lastly, the court noted the applicant's statement that he had been aware as early as 2006 that the twins were weekly boarders at the care centre.

39. The first-instance court concluded that because of the twins' negative feelings towards the applicant, he would not be able to perform his fatherly duties properly. The court also took the psychiatrists' report into account and held that the twins' connection with the applicant was not strong enough, whereas they had a strong emotional connection with I.N. It followed that the grounds for removing the twins, who had expressed their wish to live with I.N. in court, from the applicant's care persisted. Being returned to live with their father was not in the best interests of the children. Nonetheless, the applicant maintained his parental rights, including the right to have contact with his children, who would be well able to communicate with him whilst staying in a familiar environment, with I.N., where they felt safe. Should the circumstances change, that is to say, once the emotional relationship between the twins and the applicant became stronger, the

applicant could apply to the courts again and seek the revocation of I.N.'s guardianship of the twins. The court thus dismissed the applicant's request that the twins be returned to him.

40. The applicant appealed, submitting that the first-instance court had erred in establishing that the circumstances on the basis of which the twins had been removed from his care in 2004 were no longer valid, but then going on to examine whether there were other reasons why he would not be able to take care of his children properly. He maintained that he had visited his children and communicated with them regularly from the date of their separation. However, as of 2008 I.N. had started turning the children against him. The court had established that there was a lack of a strong emotional relationship between the applicant and the twins, but had not taken into consideration that I.N. had deliberately taken steps to ensure that the children would be hostile to their father.

41. The applicant also argued that the lower court had erred in establishing that I.N. had been taking care of the twins properly. He submitted that I.N. had without good reason sent the twins to be boarding pupils at the Šiauliai Special Upbringing Centre. Even though during the hearings at first instance the twins' family doctor and another doctor had confirmed that the twins' attendance at the centre had been recommended, those specialists had not recommended that the twins board at the centre. The applicant also submitted that until mid-2011 I.N. had not had a job and it was thus not unreasonable to conclude that her sole means of subsistence was child benefit payments, although domestic law required such monies to be used exclusively in the interests of children under guardianship.

42. The applicant also observed that the first-instance court had completely disregarded the Ombudsperson's report (see paragraphs 26-29 above). Likewise, the lower court had disregarded the psychiatrists' reports about the twins (see paragraph 33 above), which had clearly stated that the boy wanted to live with the applicant and that there was no reason to believe that the boy's well-being would suffer should he be returned to his biological father.

43. Neither could the applicant agree with the lower court's conclusion that he had not taken as much of a role in taking care of the twins as I.N. On this point he noted that his participation in the twins' life had only been restricted as of 2008, when I.N. had taken steps to limit his communication with them. It was also noteworthy that in 2008 the applicant had applied to the courts for an order establishing a schedule for him to have contact with the twins. Lastly, the applicant maintained that the Service had from the very beginning and up to the present date, and by unjustified means, sought to further I.N.'s interests and not those of the children.

44. By a ruling of 2 February 2012 the Šiauliai Regional Court upheld the lower court's decision, noting that as an appellate court it was free to interpret the evidence as it saw fit. The applicant and I.N. took part in the

appellate court's hearing. The court noted that the case had a public interest element, because it concerned children's rights. Accordingly, it examined supplementary evidence of its own motion and took notice of an earlier court decision to dismiss the applicant's claim that I.N. had been embezzling the twins' money (see paragraph 18 above). It therefore considered that the applicant's accusations of selfishness and property mismanagement against I.N. were unfounded.

45. The court considered that both the applicant and I.N. had not made enough effort to ensure that "the twins would return to the family". The dispute between the two had negatively influenced the twins' feelings towards their father, and had had a long term negative impact on the twins' emotional and psychological development. The court noted the experts' conclusion that so far the children had developed a firm, safe and positive emotional connection with I.N. Even so, the experts had also acknowledged that the twins' connection with the applicant still existed and it was emotionally positive. Accordingly, it was crucial to develop that connection, and both the applicant and I.N. had to contribute to that development. The assistance of the Service would also be particularly important.

46. The court also emphasised that it would necessarily take time for the children to be ready to be returned to their father: the latter and I.N. had to make an effort towards that goal. The children were to get used to the fact that they could see their father when they wanted, and not when I.N. sent them to visit him. On this point the court noted that children of the twins' age already understood and were affected by the fact that their guardian, I.N., was not enthusiastic about them being in contact with the applicant. Equally, as regards the applicant's attitude towards the situation, the court considered that the applicant blamed everybody else without seeing any fault on his own part. The panel of judges noted that the applicant was a very uncompromising individual who only accepted the validity of his own viewpoint and was not willing to have regard to the opinions of others. The panel concluded that so long as the applicant was not taking any steps to work on his issues, such as by seeking psychological assistance, the children could not be returned to an emotionally cold and harsh environment. A sudden removal of the children from the environment provided by I.N., which was safe and comforting for the children, would absolutely be a disproportionate and traumatic step which the court could not allow.

47. The appellate court also noted that from birth the twins had had serious health problems, which had never gone away. In 2008 D.J. had been diagnosed with a medium level of disability; in 2010 the disability's assessment had been changed to a mild level. K.J had a light level of disability, established in 2008. Both children were hyperactive, had numerous health problems and thus needed a greater level of attention. Accordingly, the applicant's argument that the twins could stay at home until he returned from work showed that it would not be possible for him,

and he was not ready, to take concrete steps to take care of the two children, who came home from school at noon. The applicant's other children were busy to the extent that they also could not stay with the twins all the time.

48. Lastly, the appellate court dismissed the applicant's argument that the children should be returned to him on the basis of Article 3.181 of the Civil Code (see paragraph 70 below), which, in the applicant's view, provided that a child should be returned to a parent once the grounds which necessitated their separation no longer existed. The court held that the best interests of the child were the priority. In the applicant's case the appellate court had not established the existence of any new circumstances. Nevertheless, this did not automatically mean that the twins had to be returned to the applicant's home immediately. A transitional period was necessary, which, in the court's view, might be six months. In arriving at that timeframe it took into particular account the fact that this period would include the summer holidays, when the twins could leave their familiar environment, I.N.'s apartment, and re-establish a close relationship with their father. If the twins could have contact with their father for a longer period than the current sporadic, twice-a-week arrangement, they would be able to see that their father was there for them and that they could resolve everyday problems with their father's assistance.

49. The applicant lodged an appeal on points of law, but on 13 April 2012 the Supreme Court refused to examine it on the basis that it raised questions of fact only.

B. The resumed civil proceedings concerning contact rights

50. On 22 February 2012 the applicant asked the Šiauliai City District Court to resume the suspended civil proceedings regarding his contact rights with the twins, noting that the other civil case concerning his application for the twins' return had already ended (see paragraph 31 above). Six days later the court resumed the examination of the civil case concerning his application for a contact order, and with the aim that the case be examined expeditiously, set an oral hearing in that case for 26 March 2012. In May of that year the court also decided to join the two civil cases pending in relation to the twins (the civil case concerning the application for a parental contact order initiated by the applicant on 24 March 2010 and the civil case concerning the application for termination of the applicant's parental rights initiated by I.N. on 15 December 2008; see, respectively, paragraphs 30 and 20 above).

51. During the hearing of the joined civil case on 27 June 2012 a psychologist was present, the children were questioned (the applicant and I.N. were asked to leave the courtroom, their lawyers were present) and the psychologist made the following comments:

> "... From the statements made by K.J. we understand that the relationship between I.N. and her father is difficult and that the child sees and understands this. The girl mentioned a wish to meet [go out] with both of them if their relationship was better. I did not note entirely negative feelings towards her father, however there is no close relationship, and the relationship between the girl and I.N. is very strong. I understood from both of the children that their father promises things which never come true [and] this fell short of their expectations. D.J. states that he is willing to have contact with his father but only when he [the boy] so wishes, hence the child should not be forced to contact his father. ... The girl has no emotional relationship with her father, because she has seen him disputing [things] and [experienced him making] promises which never came true. The boy wishes to have contact with his father but at the present date the latter cannot arrange that. <...>"

52. On 13 July 2012 the Šiauliai City District Court rejected I.N.'s civil claim for termination of the applicant's parental rights (see paragraph 20 above) and partly granted the applicant's civil claim for a contact order. The court noted that there was no basis for I.N.'s claims that the applicant had harmed the twins or had not taken care of them at all until autumn 2008. On the contrary, the evidence showed that he had been seeking contact with the children. The boy wanted to have contact with the applicant, and the girl would agree to have contact with him if he ceased his dispute with I.N. However, the twins' contact with the applicant could not be forced. Whilst observing that the child's best interests were paramount, the first-instance court also relied on the Court's case-law, noting that in matters of child custody, for example, the reason for considering the "child's best interests" may be twofold: firstly, to guarantee that the child develops in a sound environment and that a parent cannot take measures that would harm its health and development; secondly, to maintain its ties with its family, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots (the court referred to *Maumousseau and Washington v. France*, no. 39388/05, § 67, 6 December 2007). Lastly, the court rejected all the accusations by I.N. that the applicant had been antagonistic, because a criminal case initiated by her had been dismissed by the authorities (see paragraphs 18 and 44 above). The applicant thus had a right to have contact with the twins and an inherent duty to take part in educating them. He was also able to offer them appropriate living conditions.

53. The Šiauliai City District Court also noted that both parties to the dispute – the applicant and I.N. – had put their own ambitions and their subjective views as to what would be best for the children first. For that reason, the applicant had sometimes tried to have contact with his daughter when she did not want to spend time with him, although his son was prepared to meet him. As for I.N., she had not attempted to restore the twins' relations with their father and had showed no concern for the fact that the applicant's and his daughter's relationship was getting weaker and was close to breaking down. Accordingly, the parties' failure to take care of the children's best interests required that those interests be protected by the

courts. Moreover, considering that the biggest issue was the communication between the applicant and his daughter, the court saw it appropriate to set, on its own initiative, a further schedule for their communication during the transitional period, so that the girl's contact with the applicant be re-established. In particular, a psychologist or child care specialist was to assist the applicant and his daughter, during contact sessions which would take place in a neutral setting. Lastly, the court reiterated that the principle of the rights of the child having priority was relevant not only when setting a schedule for the contact between the applicant and the twins, but also when executing the court decision establishing that schedule. The applicant thus should not make use of his right to see the children, including taking them to his apartment, if this would breach the twins' rights, even though his right to see them had been established in the court's decision.

54. The order establishing a contact schedule between the applicant and his two children essentially specified that, until a psychologist determined the readiness of K.J. to have contact with her father without the presence of a psychologist or a social worker, the applicant should have contact with her once a week in the presence of either a psychologist or a social worker and at a place and time agreed upon in advance. In addition to that, if the twins so agreed, the applicant could see them two or three times a week, for up to four hours, during the working week. He could also have them over every second week from Friday evening to Sunday evening, and also during some of the State holidays and spend with them two weeks during his vacations.

55. I.N. appealed against the decision, seeking to have the applicant's application for a contact order rejected and her application to have his parental rights terminated granted. The applicant submitted a response to the appeal, submitting that the decision of the first-instance court had been reasoned and lawful and thus that there were no legal grounds for quashing or changing it. He also claimed that I.N. was influencing the children's testimony.

56. On 20 November 2012 the Šiauliai Regional Court fully upheld the lower court's decision to reject I.N.'s application to have the applicant's parental rights terminated. In any event, the applicant's parental rights could only be terminated if he failed to perform his fatherly duties, and there were no indications of this in his case. That being so, the appellate court also noted that at the time of the first-instance proceedings the twins had expressed a categorical and consistent wish not to stay at the applicant's apartment overnight. In addition, according to the most recent reports by the doctors, the twins had become more nervous and agitated, and their emotional and psychological state and behaviour had become worse. It was therefore considered better for them to reside at I.N.'s home. The psychologist had testified that the boy wanted to see his father, but on a schedule of his choosing. The girl avoided meeting with her father at all.

57. As concerns the issue of the parental contact order, the appellate court stated as follows:

> "... The panel of judges notes that it is impossible to raise a child without having contact with him/her. In Article 24 of the Law on the Fundamentals of Protection of Children Rights it is also established that if a child's mother or father does not live with him/her, [the child] must have the opportunity to spend time with [his or her] mother or father, save for the exceptions established by law, [in the event that] such contact could prove to be of detriment to the child. Minimum contact may be established only if permanent maximum contact would be harmful to the interests of the child, if frequently spending time with the [non-resident] parent would traumatise the child psychologically, if the contact and parenting (*auklėjimas*) [offered] by a parent does not satisfy the interests, wishes and views of the child at all, [or] if [there would be] a negative impact on the child's maturity and outlook [on life].
>
> The evidence in the [instant] case allows the panel of judges to hold that at present there are grounds for changing the maximum parental contact order established by the [lower] court to a minimum [contact order]. The court has had regard to the current categorical and consistent position of the children towards the opportunity to stay overnight with their father as envisaged in the [lower court's] parental contact order. The medical certificates included in the case file allow the court to state that the children's state of health, anxiety, and irritability strengthened, their emotional state and behaviour worsened, hence treatment at home is recommended for them. The medical documents recording the existence [of] weakness of the central nervous system, attention-deficit disorder, [delayed] language development, learning [difficulties], etc. were neither refuted during the examination of the case before the court of the first instance, nor during the examination on appeal. While commenting on the children's feelings towards their father the psychologist has noted that there is not currently a close relationship between the father and the children, the son [D.J.] states that he only wants to have contact with his father when he [D.J.] so wishes, the daughter [K.J.] is avoiding contact with her father. The twins [D.J.] and [K.J.] were examined in terms of their psychological state, heightened fear of separation from their guardian, and feelings of insecurity. While stating that the major problem is the daughter's [K.J.'s] communication with her father, the court of first instance correctly emphasised the need [for it] to establish additional conditions for contact between the girl and her father, hence it justly noted that the father's contact with his daughter was essential to restore a normal relationship with his daughter. A transitional period had to be established given that [it would take] a reasonable period of time for the child to become accustomed to [spending time] her father.
>
> Accordingly, the [lower] court's conclusion in the present case that it is not currently possible for the father to have maximum contact with his minor daughter [K.J.] is correct, because it is indisputably established in the case that any ties, including emotional ones, between father and daughter have almost broken down. The panel of judges also considers that contact with the [applicant's] son [D.J.] contrary to his wishes (involuntarily) would not satisfy the interests of the child. In view of the aim of reinstating the lost connection, forced (involuntary) contact [on the part of] the children with their father would be meaningless because forced contact [sessions] may even result in intense hostility towards their father. Hence, on the basis of the arguments presented the existing order should be changed by removing the possibility for the children to stay at their father's home overnight. Being active in such category of cases the court draws attention to the existing contact order [which provides for] contact sessions during the working week [for] up to four hours. The panel of judges considers that such frequent contact may unbalance the children's rest periods and in

the present case a transitional period is required for rebuilding of the relationship. Hence the panel of judges decides that voluntary contact between the children and [the applicant] on weekends and on holidays would contribute to a proper balancing of the father's and the children's interests. Thus the panel decides that the time for collecting and returning the children on weekends and on holidays, with the exception of the father's and daughter's contact sessions in the presence of the appointed specialist once a week, should be changed. The court considers that the children may be taken by their father on Saturdays from 12 p.m. until 7 p.m. because these particular hours are optimal - the children's rest periods during the week and on Sundays will not be disrupted. Accordingly, the [relevant] part of the [lower court's] decision on the contact order should be changed. Moreover, the panel considers that in view of the transitional period it has emphasised [will be necessary] for the building of relations with their father, the issue of the children spending their holidays with their father has been decided far too early, hence this part of the [lower court's] decision is to be quashed. The appeal court notes that the [legal] relations [established by] a contact order concerning a child and [by] raising a child are of a continuing nature, hence when the factual circumstances change the father of the children [the applicant] or the guardian [I.N.] have the right to apply to the court seeking a change to the existing order.

The panel of judges notes that having regard to the circumstances of the case it might be concluded that there are ongoing disputes between the father and the guardian of his children. The panel of judges emphasises that the parties to the case [have been putting] their own ambitions above those of the children and thus [have] failed to show due loyalty, respect, and tolerance towards each other. Accordingly, the [applicant's] contact with the children is marked by unnecessary conflict, the children experience and feel it, [the ongoing disputes] make them feel insecure, cause severe damage and have had an impact on [D.J.'s] and [K.J.'s] health and impeded the rebuilding of their relationship with their biological father.

In the panel's view restriction of contact between the father and the children would undoubtedly infringe both the non-resident (*skyrium gyvenantis*) parent's right to take part in educating the children and the children's best interests. [It] would impede the rebuilding, steadying and maintenance of the relationship between father and son, and especially [between father and] daughter. It should be explained to the parties that all issues relating to the raising of the children, as well as issues relating to their needs and interests not included in the order ... established by the procedural decision of the court, should be agreed upon between the parties with due regard to the principles of cooperation and safeguarding the children's rights and legitimate interests as a priority."

58. The amended contact order thus confirmed the transitional period for the applicant's and his daughter's communication in the presence of a psychologist and a social worker. Upon a determination by a psychologist of K.J.'s readiness to have contact with her father, the applicant also could see the twins (or one of them) on Saturdays from 12 p.m. until 7 p.m. if the children voluntarily so agreed and did not object. He could also see them on Father's Day and on his birthday, from 10 a.m. until 7 p.m. Lastly, the applicant could take them from their permanent place of residence and have contact from 10 a.m. until 7 p.m. on 24 December, from 10 a.m. until 7 p.m. on 26 December and from 10 a.m. until 7 p.m. on the first day of Easter in

even calendar years; and from 10 a.m. until 7 p.m. on 31 December and from 10 a.m. until 7 p.m. on the second day of Easter in odd calendar years.

59. The decision of the Šiauliai Regional Court became effective after neither of the parties to the proceedings lodged a further appeal.

60. According to the documents in the Court's possession, between December 2008 and 25 March 2013 specialists from the Service had frequent meetings and consultations with the applicant and I.N., and individual conversations with the twins (without the presence of their father and/or I.N.). The child care specialists urged the applicant and I.N. to get in touch with the psychologists involved in the case in order to arrange sessions individually and together with the twins concerning their communication problems.

61. In particular, on 27 February 2012 the applicant contacted the Service asking for assistance in arranging contact sessions with his daughter K.J., claiming that she had been turned against him by I.N. and hence did not want to have contact with him.

62. On 13 March 2012 child care specialists had a conversation with K.J. at the Service's premises. I.N. was not present during the conversation. The specialists sought to ascertain the girl's opinion concerning her contact with the applicant. The girl expressed negative feelings towards contact with her father and towards staying at his home, his visits to I.N.'s home and going out with her father to other places (such as the cinema, a café, or shopping centres). The girl stated that at that time she was not willing to have contact with her father under any circumstances. She also stressed that nobody was influencing her and that she was expressing her own opinion. The specialists concluded that given the need to safeguard the child's best interests as a priority and the recommendations of the Šiauliai Regional Court (in the decision of 2 February 2012, paragraphs 45-49 above) it was advisable that the applicant and I.N. did not resolve any disputes that might arise in the presence of the children. The specialists also advised that the applicant and I.N. improve their relationship and contact the psychologists to set up consultations and obtain recommendations.

63. Immediately after the Šiauliai Regional Court decision of 20 November 2012 (see paragraphs 56–59 above), the applicant contacted the Service asking for assistance in arranging contact sessions with his daughter K.J., which were to take place in the presence of a child care specialist and a psychologist. The authority responded the following day, and a session took place on 6 December 2012. The applicant and I.N. were both present. It was decided that individual sessions with the psychologist would be provided for K.J. It was also agreed that the applicant and the guardian would be invited to discussions giving a general summary of K.J.'s sessions with the psychologist. A specialist from the Service would also be invited to the discussions.

64. Five sessions with the psychologist were provided from 6 December 2012 until 14 February 2013. During the last session, earlier sessions were discussed and conclusions concerning K.J.'s readiness to have contact with her father were made. The applicant, I.N. and a child care specialist were present at the consultation. The psychologist emphasised that K.J. was not yet ready for contact with her father and refused to have that contact. The psychologist also drew attention to the fact that during individual sessions K.J. had become tired quickly, her anxiety and motor activity had increased, and she had sought to finish every session earlier. I.N. confirmed that K.J. was anxious and quickly became tired. The applicant considered that "in order to spare [his] daughter's emotional and psychological state individual sessions should be terminated".

65. On 25 March 2013 specialists from the Service visited the twins. The specialists concluded that the children enjoyed suitable living conditions that were conducive to their development, and noted that they were very affectionate towards I.N. They observed that K.J. enjoyed spending time with the guardian's daughter, whom she called "sister", but refused to have contact with her father. K.J. did not have contact with her older biological brothers.

66. The child care specialists noted that D.J. spoke of I.N. only positively. He also had contact with his father during the times set in the court order – they would go to the shopping mall, cinema, and his father's apartment. He would also spend time with his older biological brother, Ž.J. D.J. was willing to continue having contact with his father.

67. In their observations on the admissibility and merits sent to the Court on 11 April 2013 the Government noted that the Service next planned to visit the twins later that month.

II. RELEVANT DOMESTIC LAW

68. The Constitution provides:

Article 38

"1. The family shall be the basis of society and the State.

2. Family, motherhood, fatherhood and childhood shall be under the protection and care of the State.

...

6. The right and duty of parents is to bring up their children to be honest people and faithful citizens and to support them until they come of age.

7. The duty of children is to respect their parents, to take care of them in their old age, and to preserve their heritage. "

69. The Law on the Fundamentals of Protection of Children's Rights (*Vaiko teisių apsaugos pagrindų įstatymas*), insofar as relevant, reads as follows:

Article 4. General Provisions for the Protection of the Rights of the Child

"Parents, other legal representatives of a child, state, municipal government and public institutions and other natural and legal persons must abide by the following provisions and principles:

(1) the legal interests of the child must always and everywhere be given priority consideration;

...

(4) every child shall be given the possibility to be healthy and develop normally, [both] physically and mentally, prior to his or her birth as much as afterwards, and upon birth, a child must also be guaranteed the opportunity to develop morally and to participate in life within society;

...

(7) parents and other legal representatives of a child must first [and foremost] safeguard the rights of the child."

Article 8. The right of the child to good health shall be guaranteed by:

"1) measures allowing creation of a healthy and safe environment for the child;

2) health care for children and their mothers (fathers)..."

Article 11. Right of the child to living conditions

"The right of the child to living conditions is vital for his physical, intellectual, spiritual and moral development and shall be ensured by parents, other legal representatives of the child and municipal institutions."

Article 23. Right of the child to live with parents or persons representing them

"1. A child shall have the right to live with his parents or other legal representatives.

2. To separate a child from his parents or his other legal representatives against the will of the child, as well as that of his parents (legal representatives), shall be permitted only under extraordinary circumstances, provided for by laws and according to the established procedure, based upon a court decision (judgment) and when such a separation becomes necessary for the child (striving to avoid danger to the life and health of the child, and it becomes necessary to become concerned about his care and upbringing and to protect other important interests of the child)..."

Article 25. Care and Guardianship

"1. Care (guardianship) shall be established, according to procedure established by laws for a child left without parents or their care.

2. When establishing the care (guardianship), an attempt must be made to create conditions enabling him to live within a family, along with his brothers and sisters."

70. The Civil Code provides:

Article 3.3. Principles for the legal regulation of family relations

"1. In the Republic of Lithuania the legal regulation of family relations shall be based on the principles of monogamy, voluntary marriage, equality of spouses, the priority of protecting and safeguarding the rights and interests of children, raising of children in the family, the comprehensive protection of motherhood and [on the] general principles for the legal regulation of civil relations.

2. Family laws and their application must ensure the strengthening of the family and its significance in society, the mutual responsibility of family members for the preservation of the family and the education of children, the possibility for each member of the family to exercise his or her rights in an appropriate manner and to protect children of minor age from the undue influence of the other members of the family or other persons or any other such factor."

Article 3.155. Substance of paternal authority

"1. Until they attain majority or emancipation, children shall be cared for by their parents.

2. Parents shall have a right and a duty to properly educate and bring up their children, care for their health and, having regard to their physical and mental state, to create favourable conditions for their full and harmonious development so that the child should be ready for an independent life in society."

Article 3.170. The right of the separated parent to have contact with the child and be involved in the child's education

"1. The father or the mother who lives separately from the child shall have a right to have contact with the child and be involved in the child's education.

...

4. Where the parents cannot agree as to the involvement of the separated father or mother in the education of and association with the child, the procedure of the separated parent's association with the child and involvement in the child's education shall be determined by the court.

5. The separated father or mother shall have a right to receive information about the child from all the institutions and authorities concerned with the child's education, training, health care, protection of the child's rights, etc... "

Article 3.179. Separation of children and parents

"1. If [a child's] parent (the father or the mother) does not live together with the child for justifiable reasons (illness, etc.) and a court has to decide where the child is to live, the court may decide to separate the child from the parent's [care] (the father or the mother) ...

3. When a child is separated from a parent (the father or the mother), the parent loses the right to live together with the child or demand the return of the child from [the care of] other individuals. The parent may exercise other rights in so far as that is possible without living together with the child."

Article 3.180. Conditions, modes and consequences of the restriction of parental authority

"1. Where the parents (the father or the mother) fail in their duties to bring up their children or abuse their parental authority or treat their children cruelly or produce a harmful effect on their children by their immoral behaviour or do not care for their children, the court may make a judgement for a temporary or unlimited restriction of parental power...

2. The court shall make judgements for temporary or unlimited indefinite restriction of parental authority (that of the father or the mother) by having regard to the circumstances of the case that require a restriction of parental authority. Parental authority may be restricted unlimitedly only where the court makes the conclusion that the parents (the father or the mother) do very great harm to the development of the child or do not care for the child and no change in the situation is forthcoming.

3. Temporary or unlimited restriction of parental authority involves the suspension of the personal and property rights of the parents based on consanguinity and under the law. The parents, however, shall retain the right of visitation, except where that is contrary to the child's interests. Where parental authority is restricted unlimitedly, the child may be adopted without the consent of the parents..."

Article 3.181. Lifting of restrictions of parental authority or the replacement of one mode of restriction with another mode of restriction

"1. The separation of a child from a parent (the father or the mother) may be revoked after the cessation of the circumstances that led to the order for separation.

2. A temporary or unlimited restriction of parental authority may be revoked upon proof that the parent (the father or the mother) has changed his or her conduct and can bring up the child and if the revocation of the restriction is not contrary to the interests of the child.

3. Where the circumstances have changed, but the grounds for a complete cancellation of the unlimited restriction of parental authority are insufficient, the indefinite limitation of parental authority may be replaced with a temporary restriction of parental authority.

4. If it transpires that the circumstances why the child may not live together with the parents remain after the cancellation of the temporary or unlimited restriction of parental authority, the temporary or unlimited restriction of parental authority may be replaced with an order for the separation of the child from the parents.

5. Where the parents (the father or the mother) separated from their children exercise their parental authority contrary to the interests of the children, their parental authority may be subject to temporary or unlimited restriction.

6. Restriction of parental authority may be revoked only if the child has not been adopted."

Article 3.182. Persons entitled to seek restriction of parental authority or the revocation of a restriction of parental authority

"1. An application for the separation of a child from a parent (the father or the mother) may be filed by the child's parent or close relatives, a State institution for the protection of children's rights or a public prosecutor.

2. An action for a temporary or unlimited restriction of parental authority may be brought by one of the parents or close relatives or the State institution for the protection of the child's rights or a public prosecutor or the guardian/curator of the child.

3. An action for the cancellation of the restriction of parental authority may be brought by the parents (the father or the mother) to whose parental authority the restriction has been applied.

4. An application for the revocation of an order for the separation of a child from a parent (the father or the mother) may be filed by the parents or one of the parents, a guardian/curator or close relative of the child, a State institution for the protection of children's rights or a public prosecutor."

Article 3.183. Examination of an application for the restriction of parental authority

"1. Applications for the separation of children from the parents shall be examined in a simplified procedure. If it transpires that there is a ground for temporary or unlimited restriction of parental authority, the application shall be referred to the court to be adjudicated in contentious proceedings.

2. In examining actions for the restriction of parental authority or applications for the separation of a child from a parent referred to it for adjudication in contentious proceedings, a court shall not be bound by the subject matter of the action and shall pass judgement by taking account of the situation at hand and the interests of the child.

3. The court shall hear any child capable of expressing his or her views and take such views into account.

4. Having made a judgment to restrict parental authority, the court shall simultaneously place the child under guardianship (curatorship) and determine the residence of the child by the same judgment."

III. RELEVANT INTERNATIONAL LAW INSTRUMENTS

71. The United Nations Convention on the Rights of the Child, ratified by Lithuania on 3 July 1995, and published in the official gazette (*Valstybės žinios*) on 21 July 1995, provides as follows:

Article 3

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

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 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

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

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

72. On 25 January 1996 the Council of Europe adopted the Convention on the Exercise of Children's Rights. To date, the Convention has been signed by twenty eight Council of Europe Member States and ratified by seventeen. The Convention has not yet entered into force, nor has it been signed by Lithuania. As concerns the role of judicial authorities, the Convention reads as follows:

Article 6. Decision-making process

"In proceedings affecting a child, the judicial authority, before taking a decision, shall:

consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;

in a case where the child is considered by internal law as having sufficient understanding:

ensure that the child has received all relevant information;

consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;

allow the child to express his or her views;

give due weight to the views expressed by the child."

Article 7. Duty to act speedily

"In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable."

Article 8. Acting on own motion

"In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger."

73. On 17 November 2010 the Committee of Ministers of the Council of Europe adopted Guidelines on Child Friendly Justice. One of the fundamental principles is that all children have a right to be consulted and heard in proceedings involving or affecting them. The best interests of the children are a primary consideration for the Member States. The Guidelines also provide that children should be treated with care and sensitivity throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Judgments and court rulings affecting children should be duly reasoned. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law. In family law cases (for example, custody), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations. When necessary, judicial authorities should consider the possibility of taking provisional decisions. Once the judicial proceedings are over, national authorities should take all necessary steps to facilitate the execution of court decisions involving and affecting children without delay. Lastly, after judgments in highly conflictual proceedings, guidance and support should be offered to children and their families by specialised services (see points nos. 44-48, 50-54, 76 and 79).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

74. The applicant complained under Articles 6, 8, 14, 17 of the Convention that the State institutions had deprived him of the right to live with his children, D.J. and K.J.

75. The Court considers that the applicant's complaint falls to be examined under Article 8 of the Convention, which reads as follows:

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

76. The Government requested the Court to find no violation of this Article of the Convention.

A. Admissibility

1. The submissions of the parties

77. The applicant argued that because of the actions of I.N., the Service and the courts, with the passage of time his children's emotional connection with him had progressively weakened, which had further compounded his situation. The children were growing up in an environment hostile to the applicant; therefore it was likely that the current situation would never change.

78. In the view of the Government, the applicant's complaint was inadmissible due to non-exhaustion of domestic remedies. Firstly, there had not been a final domestic decision in his case concluding that the applicant had no right to have contact with the twins or that the children would never be returned to their biological father. Currently, having regard to the best interests of the children, namely, the protection of their psychological health, a transitional period of time for the rebuilding of the relationship between the applicant and the twins with a view to reuniting the biological family was envisaged. The situation was being monitored by the Service. Once the children were ready to be reunited with the applicant, he would be able to apply to the courts, which would assess those new circumstances.

79. The Government also noted, in the alternative, that if the applicant considered that the Service had failed to duly perform its duties, he could have either asked the courts to order the Service to take particular actions, or brought proceedings for damages.

2. The Court's assessment

80. The Court observes that the applicant's civil claim for the guardianship to be terminated and for the twins to be returned to him was dismissed by the Šiauliai City District Court, the Šiauliai Regional Court and left unexamined by the Supreme Court (see paragraphs 39, 46 and 49 above). Similarly, the Court does not see how proceedings for damages against the State authorities referred to by the Government (see preceding paragraph) could effectively contribute to the applicant's effective enjoyment of his parental rights. Accordingly, the Court does not consider that the application should be rejected for failure to exhaust domestic remedies. The Government's objection must therefore be dismissed.

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

B. Merits

1. The submissions of the parties

(a) The applicant

82. The applicant did not contest that after the twins' mother had passed away, he had agreed that his wife's cousin I.N. would raise the twins. At that time he had had a full-time job and three older children to raise and therefore had not been able to take care of the two infants. The applicant also stated that he had even planned to marry I.N. However, he had later realised that I.N. was a "selfish" person and had therefore lost interest in marrying her. Little did he know that I.N. would devise a plan to take revenge on him by taking away the twins.

83. The applicant also argued that in 2008 his financial situation had improved, and his three older children were grown up by that time, and therefore he had had a legitimate reason to seek the return of the twins. Even so, the Service had insisted that the twins were used to the familiar environment of I.N.'s home and thus were not ready to live with the applicant. The applicant submitted that I.N. had clearly not allowed the twins to prepare themselves to live with him. Most importantly, the State institutions had not cooperated in that matter either. This approach had been perfectly illustrated by the Ombudsperson's report of 4 March 2010 (see paragraph 27 above). The applicant thus insisted that the Service and the courts had neglected the best interests of the twins, an aspect of which was to grow up with their father and brothers and not among strangers. It was self-evident that no emotional connections would ever be established between the applicant and the twins as a result of the courts' refusal to

return the twins to their biological father and I.N.'s efforts to ensure that such connections would never develop.

84. The applicant was also dissatisfied with the way the Šiauliai City District Court (decision of 12 September 2011, see paragraph 37 above) and the Šiauliai Regional Court (decision of 2 February 2012, see paragraphs 45–48 above) had examined expert reports on the psychological state of the twins. In particular, the courts had disregarded the experts' finding that D.J. had expressed the wish to live with the applicant. Similarly, even though the experts had stated that K.J.'s relationship with her father had not broken down (*nenutrūkęs*), but was prejudiced by the fact that K.J. lived with her guardian, the courts had disregarded this fact and had not given the applicant a chance to live together with his daughter and to make their relationship stronger. The applicant considered that the court proceedings concerning his right to live together with the twins had been terminated by the Supreme Court on 13 April 2012, when the Supreme Court had refused to examine his appeal on points of law. It followed that because of the court decisions and inaction by the Service, the connection between the applicant and the twins was bound to progressively evaporate over time and the twins would never return to live with the applicant and their biological brothers.

85. In the light of the above, the applicant thus considered that because of erroneous court decisions he had been deprived of his parental right to live with his children.

(b) The Government

86. The Government noted at the outset that there were two different aspects to the applicant's complaint: his application for a residence order in respect of the two children and the right to have contact with them. The applicant had never been denied the latter right, whether before 2008 or afterwards, when he had brought proceedings before the national courts seeking to have the twins returned to live with him. The Government considered that this second aspect of the case was relevant when examining whether the State had observed its obligations under the Convention.

87. Turning to the matter of the conduct of the national authorities, the Government admitted that they were required to do their utmost to facilitate the reunion of a parent with a child who has lived elsewhere for some time. However, any obligation to apply coercion in this area had to be limited, since the rights and freedoms of all concerned had to be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention (the Government referred to *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A). In the applicant's case, while deciding on the application to have the children's guardianship terminated and a residence order granted, the national courts had ordered a psychological evaluation of the twins (pursuant to a court order of

10 August 2010 and the report of which was issued on 10 September 2010). Given that the applicant had objected to the evaluation and had mistrusted the experts in Šiauliai, the courts had ordered that the evaluation be conducted in Vilnius. On the basis of the experts' findings, the courts had concluded that the children's emotional ties with the applicant were insufficient and that time was needed to rebuild their relationship on the basis of voluntary contact sessions.

88. The Government emphasised that, in contrast to the facts in the case of *Görgülü v. Germany* (no. 74969/01, § 46, 26 February 2004), the national courts had considered all possible solutions and, having particular regard to the best interests of the children, had envisaged a transitional period in which the relationship between the applicant and the twins could be strengthened with a view to the ultimate aim – reuniting the biological family. Moreover, the courts had not denied the applicant's right to have contact with his children. On the contrary, they had encouraged such contact and had urged the applicant and I.N. to act in the best interests of the children with a view to rebuilding the relationship between father and children. The State authorities responsible for child care had provided all appropriate assistance in that regard.

89. The Government also noted that when balancing the interests of a child and those of a parent, those of the former could override those of the latter (referring to *Dolhamre v. Sweden*, no. 67/04, § 111, 8 June 2010). In the instant case, the twins had been raised by I.N. for a relatively long period of time – five years – from infancy until the age of five years, at which point their biological father had decided that he wished to have them returned to his care after financial disputes with I.N. arose. The twins had therefore had an obvious interest in growing up in a safe and healthy environment, and in being loved and cared for by both I.N., whom they referred to as "mum", and by their biological father. The current existing guardianship of the children was thus consistent with the aim of reuniting the biological family. The twins felt safe living with their current family, but at the same time the applicant's parental rights had not been terminated and he was able to have contact with his children so that he could develop a closer relationship with both of them. An important factor was that the twins had special needs due to their state of health. However, as had been observed by the national courts, the applicant was not sufficiently supportive towards his children's health needs, taking into account their special needs, the specific care and the amount of attention they needed.

90. The Government further underlined that, in contrast to the facts in *Görgülü* (cited above), in the instant case the applicant had voluntarily entrusted his two minor children to the care of I.N. The twins had been taken to live with her at the age of six months, right after the death of their biological mother in December 2003. The national courts had taken this into particular account, especially in view of the fact that from that time until the

summer of 2008 the applicant's contact with the twins had been merely sporadic (referring to the findings of the Šiauliai City District Court set out in its decision of 12 September 2011, see paragraph 37 above). The Government also maintained that the applicant had never complained to the national courts that he was encountering difficulty having contact with the twins. Neither had he sought the establishment of a contact order in their respect until 24 March 2010, when he had applied to the courts for a parental contact order. Hence, having regard to this fact and to the applicant's statements before the Šiauliai City District Court during the hearing of 31 August 2009, where he had testified that he had not had problems with I.N. until 2008 (see paragraph 24 above), it was evident that the applicant had not faced difficulties in seeking to have contact with his children.

That being so, having regard to the long period during which the children and the applicant had lived apart, and the weak relationship resulting therefrom, the national courts had drawn attention to the need for regular contact between the applicant and the twins with a view to rebuilding their relationship. Even so, the courts had observed that although the applicant's right to contact with his children had never been restricted, he had only begun having regular contact with the twins as from July 2011, when the interim contact order had been issued by the court during the proceedings concerning the application for a residence order. Hence, it was the applicant who was largely responsible for his broken relationship with the twins which had resulted from his sporadic contact with them from 2004 to 2011.

91. The Government lastly noted that on 20 November 2012 the national court had issued a parental contact order. The applicant had had contact with his son D.J. on a regular basis, even more frequently than had been envisaged in the court's decision. As for K.J., although the problem of communication between her and her father persisted, the Service was of the opinion that I.N. had not created obstacles to them having contact with each other. While the Service was ready to provide all necessary assistance in this regard, neither it nor any psychologist could force the girl to feel differently towards her biological father. A reasonable period of time was necessary for father and daughter to rebuild their relationship on a voluntary basis.

2. The Court's assessment

(a) Whether there was an interference

92. The Court recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; furthermore, the natural family relationship is not terminated by reason of the fact that the child is taken into care (see, *mutatis mutandis*, *Olsson v. Sweden (no. 1)*, 24 March 1988, § 59, Series A no. 130). It follows – and

this was not contested by the Government – that the court's decisions refusing to return two of the applicant's children to his home amounted to an interference with his right to respect for his family life, as guaranteed by Article 8.

93. Such an interference entails a violation of Article 8 unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 § 2 and was "necessary in a democratic society" for the aforesaid aim or aims (see *W. v. the United Kingdom*, 8 July 1987, § 60, Series A no. 121).

(b) "In accordance with the law"

94. The Court observes that the interference had a basis in national law, namely Article 4 (1) of the Law on the Fundamentals of Protection of Children's Rights and Articles 3.3 and 3.179 of the Civil Code (see paragraph 36 above).

(c) Legitimate aim

95. In the Court's view, the relevant legal acts are clearly designed to protect children and there is nothing to suggest that they were applied in the present case for any other purpose. The interference in question – intended as it was to safeguard the health and development of D.J. and K.J. – therefore had, for the purposes of paragraph 2 of Article 8, the legitimate aims attributed to them by the Government (see also *Görgülü*, cited above, § 37).

It therefore remains to be examined whether the refusal to make a residence order in the applicant's favour can be considered "necessary in a democratic society".

(d) "Necessary in a democratic society"

i. General principles

96. In determining whether the refusal of custody and access was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld*

v. Germany [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts), and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V (extracts)).

97. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. In particular when deciding on custody, the Court has recognised that the authorities enjoy a wide margin of appreciation. However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between the parents and a young child are effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I; *Sahin* and *Sommerfeld*, both cited above, §§ 65 and 63 respectively).

98. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (*Scozzari and Giunta* v. Italy [GC], nos. 39221/98 and 41963/98, § 169, ECHR 2000-VIII, and *P., C. and S. v. the United Kingdom*, no. 56547/00, § 117, ECHR 2002-VI; *Sahin* and *Sommerfeld*, both cited above, §§ 66 and 64 respectively).

99. The Court has previously held that although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life. Thus, where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited (see *Margareta and Roger Andersson v. Sweden*, 25 February 1992, § 91, Series A no. 226-A; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Gnahoré v. France*, no. 40031/98, § 51, ECHR 2000-IX). However, neither the right of the parents nor its counterpart, the obligation of the national authorities, is absolute, since the reunion of natural parents with children who have lived for some time in a foster family needs preparation. The nature and extent of such preparation may depend on the circumstances of each case, but it always requires the active and understanding co-operation of all concerned. Whilst national authorities must do their utmost to bring about such co-operation, their possibilities of applying coercion in this respect are limited since the interests as well as the rights and freedoms of all concerned must be taken

into account, notably the children's interests and their rights under Article 8 of the Convention (see *Olsson v. Sweden (no. 2)*, 27 November 1992, § 90, Series A no. 250).

100. The Court observes that, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see *W. v. the United Kingdom*, cited above, § 64; *Buscemi v. Italy*, no. 29569/95, § 58, ECHR 1999-VI; and *Elsholz*, cited above, § 52). Lastly, the Court recalls that effective respect for family life requires that future relations between parent and child not be determined by the mere passage of time (see, *mutatis mutandis*, *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 69, 24 April 2003, and *W. v. the United Kingdom*, cited above, § 65).

ii. Application to the present case

101. The Court notes that after the twins' mother died in December 2003, the applicant himself came up with a plan and then agreed that I.N. be appointed the children's guardian (see paragraph 9 above). At the court hearing concerning the matter the applicant submitted that he had three other children to take care of, and that, if I.N. did not take the twins to live with her, he would be forced to give them to a foster home (see paragraph 15 above). Accordingly, this case must be distinguished from those where children were taken away from the applicants against their will (see, by way of example, *Olsson v. Sweden (no. 1)*, cited above, § 12; *K.A. v. Finland*, no. 27751/95, §§ 14 and 15, 14 January 2003; and *Kutzner v. Germany*, cited above, § 80).

102. The Court also takes cognisance of the domestic court's finding that the applicant never claimed that he had been unable to have contact with the twins because of the State authorities' actions or failure to act. On the contrary, he did not deny before the domestic courts that until 2008 he had been able to see his two children when he so wished (see paragraphs 24 and 44 above). Furthermore, when the disputes between the applicant and I.N. started in 2008, and, in particular after they escalated in 2010, the year when the applicant had applied to the domestic courts for a contact order in respect of the twins, the court acted without delay and made an interim order designed to increase and facilitate contact between the applicant and the twins so that the twins' relationship with their biological father could be preserved (see paragraphs 32, 34 and 50 above). Indeed, in view of the aim of reinstating the lost connection, the Šiauliai City District Court, of its own

initiative, ordered that the applicant be able to see his daughter K.J. in the presence of a psychologist, a measure the court deemed to be important so that the applicant's and his daughter's relationship could be rebuilt (see paragraphs 53 and 57 above). Given that the applicant did not appeal against the Šiauliai City District Court's and Šiauliai Regional Court's decisions as to his contact rights (see paragraphs 55 and 59 above), it may be assumed that contact of such frequency was to the applicant's satisfaction. Similarly, on the basis of the documents submitted by the parties, the Court considers that the Service acted sufficiently proactively in monitoring the situation. The Service's child care specialists paid numerous visits to I.N.'s home, discussed the situation with the children without I.N. being present, and urged the applicant and I.N. to seek psychological help and to put the children's interests first (see paragraphs 25, 60–65 above).

Against this background the Court considers that the State authorities, whose possibilities of applying coercion to the twins in order for them to communicate with their father are limited (see *Olsson v. Sweden (no. 2)*, cited above, § 90), may not be reproached for having obstructed the applicant's right to have contact with his children, that right being inextricably linked to his wish to have his children returned to his home, the issue which the Court will examine next.

103. When assessing the necessity for the interference with the applicant's right to live with his children, the Court must look into whether the national courts acted reasonably. In this context, of great significance for the Court is the fact that the Lithuanian courts, while acknowledging the applicant's right to live with his children but temporarily refusing his request, placed the children's best interests first, as it is required by Article 8 of the Convention (see paragraph 98 above), as well as by the national law and international instruments (see paragraphs 69-73 above). Indeed, the consideration of children's best interests is ingrained in each and every domestic court's decision (see paragraphs 23, 34, 36, 39, 48, 52, 53 and 57 above), to which the Court has given its utmost consideration. By the time the applicant instituted the proceedings for custody rights in December 2008, the twins were five-and-a-half years old and had been living with I.N. for nearly all of their lives. Given the children's frail health and special needs, as attested by experts and doctors, the first-instance and appellate courts held that to remove the children from their familiar environment would jeopardise the children's physical and psychological welfare (see paragraphs 39, 46, 47, 48, 56 and 57 above). The national courts equally established that the applicant, being the biological father of the twins, had not shown interest in their development and their health during the period in which they had been living apart from him (see paragraph 38 above). Furthermore, according to the Šiauliai Regional Court, the applicant was not sufficiently supportive towards his children's health and special needs (see paragraph 47 above). The considerations in favour of

keeping the twins with I.N. thus appear to have been sufficiently sound and weighty (see paragraph 73 above). On this last point, the Court also reiterates that a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (see *Johansen v. Norway*, cited above, § 78; also see *Olsson v. Sweden (no. 2)*, cited above, § 90). Accordingly, the Court finds that the Lithuanian courts may not be reproached for having neglected their duties under Article 8 of the Convention.

104. In weighing the different factors involved in and aspects of the applicant's case, the Court next turns to the decision-making process. It notes that the applicant was present during the hearing when the matter of the twins' custody was discussed at the Service (see paragraph 10 above). Afterwards, alone or assisted by his lawyer, he had the opportunity to submit evidence, and present his arguments and comment on the submissions of the other party before the courts, both in writing and orally, and he also had the right to appeal (see paragraphs 13, 22, 24, 32, 34, 40-44, 51 above). He was also able to put questions to court-appointed experts (see paragraph 33 above), who, as he wished, were from Vilnius where the examination was conducted – thus guaranteeing their impartiality (see paragraphs 24 and 33 above). That being so, the Court cannot but conclude that the applicant was thus placed in a position enabling him to put forward all arguments in favour of his being granted custody of the twins and he also had access to all relevant information which was relied on by the courts. The applicant has not argued that there were omissions which could have prevented the domestic courts from fully establishing the facts. In addition, the children themselves were heard by the judges (see paragraphs 32, 35, 37, 51 and 56 above, and, in contrast, *Kutzner*, cited above, § 77). Furthermore, as an example of the courts' ability to react to a changing situation and be proactive in their facilitation role, the Court draws attention to the Šiauliai Regional Court's decision of 20 November 2012, when, on the basis of the most recent medical evidence to the effect that the twin's emotional and psychological states and behaviour had become worse, it decided not to allow the applicant to take the twins for overnight visits, because that no longer corresponded to the children's best interests (see paragraphs 56 and 57 above). Similarly, the domestic courts' understanding that the urgency principle should be applied in child custody cases, this being in line with the Guidelines on Child Friendly Justice, is perfectly well illustrated by the Šiauliai Regional Court's decision of 21 April 2009 not to suspend the proceedings and the Šiauliai City District Court's decision 28 February 2012 to promptly set a date for a hearing (see paragraphs 23, 50 and 73 above). In these circumstances, and bearing in mind that as a general rule it is for the national courts to assess the evidence before them (see *Sahin* and *Sommerfeld*, cited above, § 73 and § 71 respectively), the Court is satisfied that the procedural requirements implicit in Article 8 of the

Convention were complied with and that the applicant was involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests.

105. In sum, as the Court finds on the facts before it, the hindrance to the applicant's exercise of his paternal rights, that is to say his inability to have the guardianship of the twins revoked and to have them returned to live with him, may not be attributed to the State authorities' failure to act with sufficient diligence or, even less so, to the neglect of the State's positive obligations pertaining to the return of the children to their father. At this juncture the Court takes cognisance of the assessment by the domestic courts and other authorities that I.N. cannot be reproached for having neglected her duties as a guardian (see paragraphs 17, 28 and 38 above), even though she is not able to fully overcome her uncooperative attitude (see paragraphs 53 and 57 above) towards the applicant so that the children could be emotionally prepared for their return to him (see paragraphs 25, 29, 45, 46, 53 and 57 above). For the Court, when two persons have lost affection for each other (which, according to the applicant's description of events, has happened in this case: see paragraphs 9 and 82 above), it cannot realistically be expected from the State to make one of these persons adopt a positive attitude towards the other. Certainly, if the children become hostage of the situation (see paragraph 45 above) and after judgments in highly conflictual proceedings, guidance and support should be offered to children and their families by specialised services (see paragraph 73 *in fine*). At the date of the Government's last communication with the Court on this issue, this responsibility on the part of the State authorities appears to have been fulfilled (see paragraphs 60–67 above). The mere fact that the children are not yet emotionally prepared to move in with their father is insufficient to conclude that the State has neglected its positive obligations pertaining to the return of the children to the applicant (see paragraph 99 above). Finally, the Court observes that the Lithuanian courts never concluded that the applicant was permanently barred from living with the twins. On the contrary, they consistently emphasised that, should the relationship between the applicant and the twins improve and the children be ready to move in with him, the applicant could exercise his right to live with his children unhindered (see paragraphs 36, 39 and 57 above).

106. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 29 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Guido Raimondi
Deputy Registrar	President