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

FIFTH SECTION

CASE OF SAVINY v. UKRAINE

(Application no. 39948/06)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Saviny v. Ukraine**,**
The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Rait Maruste, *President,*
Karel Jungwiert,
Volodymyr Butkevych,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
and Claudia Westerdiek, *Section Registrar,*
Having deliberated in private on 25 November 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 39948/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Sergiy Leonidovych Savin and Mrs Valentyna Oleksandrivna Savina ("the applicants"), on 20 September 2006.

2. The applicants, who had been granted legal aid, were represented by Mr D.D. Menko, a lawyer practising in Romny. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. The applicants alleged, in particular, that the placement in public care of their three minor children infringed their rights guaranteed by Articles 6 § 1, 8 and 14 of the Convention.

4. On 16 May 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3) and to give priority to the case under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, husband and wife, were born in 1957 and 1956 respectively and live in Romny.

A. The applicants' family circumstances and living conditions

6. Both applicants have been blind since childhood.

7. From 1990 to 2006 the first applicant was officially employed by an enterprise run by the Ukrainian Society of the Blind ("the USB"; *Українське товариство сліпих*), a public organisation subsidised by the State to provide assistance to blind people. However, as appears from his employer's statement that between 2001 and 2006 the first applicant actually worked at most a few days a year. In 2006 the first applicant reached retirement age and was dismissed on redundancy. The second applicant stopped working in the early nineties.

8. Since 1997 the family have officially occupied two two-bedroom flats owned by the State, although the applicants claim that they have used only one of them. The flats were supplied with oven heating, but have no drains or hot running water.

9. The applicants have given birth to seven children: O.S. born in 1991, M.S. born in 1992, Y.S. born in 1993, P.S. born in 1995, S.S. born in 1997, K.S. born in 1998 and T.S. born in 2001.

10. In February 1998 four of the children (M.S.,Y.S., P.S. and S.S.) were taken into public care on account of the applicants' inability to provide them with adequate care and upbringing. The children were initially placed in various institutions; however, it appears that currently all of them, except P.S., who has been adopted with the applicants' consent, reside in the Romny Boarding School (*Роменська загальноосвітня школа-інтернат I-III ступенів для дітей-сиріт і дітей, позбавлених батьківського піклування ім. О.А. Деревської*).

11. In 1997 O.S., the eldest son, who remained in the applicants' care, was also admitted to the Romny Boarding School. The parents took him home for weekends and vacations. On several occasions the school administration complained to the municipal authorities that O.S. habitually ran away from school, wandering, collecting empty bottles and begging. No specific details or incidents were given.

12. Between 1998 and 2004 representatives of the Municipal Juvenile Service (*Служба у справах неповнолітніх*) and the Tutelage Board (*Орган опіки та піклування*), in cooperation with several other municipal authorities, visited the applicants' flat on some ten occasions and drafted reports concerning the suitability of the living conditions for the upbringing of the children who remained in their care. According to these reports, the conditions were grossly unsatisfactory. In particular, the premises badly needed renovation; they were cold, dirty, full of cob-webs and smelled of human excrement. Clothes and rags were scattered around the floor and on the beds. Dishes were not washed. Bedding, if present, was very dirty. The baby's mattress had rotted in the middle because of large quantities of urine. The baby's cot was unusable. No food was found in the kitchen. The

children were dirty and dressed unseasonably. One report also noted that T.S., the smallest child, had a skin rash. According to another report "the children were sick", although no symptoms were noted. On one occasion the children would not let the inspectors in as the parents had gone out to buy milk and the children were alone with the oldest child, O.S.

13. On several unspecified dates between 1998 and 2004 the USB provided the applicants with various assistance of unrecorded amounts, including firewood, clothing, shoes and alimentary products (such as sugar, potatoes, grain and flour). In 1998 the USB also arranged for local student volunteers to do some renovations on the flat: in particular, to whitewash the walls and to paint the floor and windows.

14. On an unspecified date the applicants requested the municipal authorities to equip their household with natural gas in order to improve their heating, ability to cook and access to hot water. On 10 January 2000 they were informed that their neighbours had strongly objected to this, finding it dangerous in view of the applicants' blindness and the presence of small children. Moreover, it was technically unfeasible.

15. On 22 February 2000 the applicants requested the Chief of the Municipal Department for Social Assistance to assist them in finding a suitable job for the first applicant. There is no information as to the ensuing response.

16. On 22 February 2000 the Juvenile Service requested the Head of the Municipal Women's Committee to provide humanitarian assistance to the applicants' family. There is no information as to the ensuing response.

17. On 16 February 2001 K.S. was examined by a doctor, who recorded that his speech development was delayed and he appeared to be suffering from first-stage anaemia. The doctor further noted that the child's stomach was soft and not bloated; he had a normal temperature, displayed no signs of malnutrition or skin rash, no enlargement of the lymph nodes or the liver, no redness in the throat and no abnormalities in urination or defecation.

18. On 27 February 2001 the applicants received 150 Ukrainian hryvnyas (UAH)[1] in financial assistance to pay for electricity.

19. On 8 July 2003 the Municipal Committee for Social Protection and Prevention of Juvenile Delinquency warned the applicants that they needed to improve the conditions in which their children were being brought up.

20. On an unidentified date the administration of the kindergarten attended by K.S. since 2003 issued a report on his development, stating that K.S. had attended the establishment regularly and that the parents brought him to school and took him home on time. The second applicant was reported to be actively interested in K.S.'s affairs and generally responsive to remarks by teaching and medical staff. The child was reported to be somewhat stubborn and inactive during classes, but eager to communicate

[1] About 20 euros.

with other children. On the other hand, K.S.'s classmates were reported to have been at times appalled by his untidy looks and dirty clothes.

21. In December 2003 the Romny Children's Health Centre certified that O.S. and K.S. had been fed at school and that they had also been provided with vouchers for summer camps, as they had been recorded as having first-stage anaemia.

22. On an unspecified date the first applicant instituted court proceedings against his employer, seeking to collect salary arrears and various compensatory payments, including compensation for idle time, for an unspecified period ending on 31 November 2004. On 3 November 2004 the Romny Court discontinued the proceedings in view of a friendly settlement between the parties, pursuant to which the first applicant was to be paid UAH 1,500[1]. On 5 January 2006 the Romny Court further awarded the first applicant UAH 1,110[2] in various compensatory payments in respect of the subsequent idle period.

B. Court proceedings for placement of O.S., K.S. and T.S. in public care

23. On 5 January 2004 the Romny Prosecutor initiated, at the request of the Juvenile Service, court proceedings for the placement of O.S., K.S. and T.S. in public care.

24. On 2 December 2004 the court, having heard the applicants, the Juvenile Service and the Tutelage Board, allowed the prosecutor's claim. The relevant part of the judgment stated as follows:

> " The defendants [the applicants] do not take care of or bring the children up properly. The children are dirty, hungry, and often stay at home alone...
>
> The representatives of the Juvenile Service and the Tutelage Board supported the claim and described the horrible (*жахливі*) living conditions of the defendants' family, dirt, insufficient sanitary arrangements (*антисанітарія*), very poor financial state....
>
> ... According to a note from the children's hospital of 16 December 2003, K.S. and O.S. are registered with the health centre due to first-stage anaemia...
>
> The court established that the living conditions of the children O.S., K.S. and T.S. are dangerous for their lives and health and moral upbringing, in particular the children are dirty, hungry, dressed unseasonably, are registered with the health centre; O.S. wanders, picks up empty bottles and begs, thus the children should be removed from the defendants and transferred to the Tutelage Board..."

25. The applicants appealed against this decision. They stated that the Family Code of Ukraine contained limited grounds for removal of children

[1] About 300 euros.
[2] About 220 euros.

from their parents – evasion of child maintenance, cruelty, chronic alcoholism or drug addiction of parents, exploitation of children, involving them in begging and vagrancy. They insisted that they had never done any such things and that there was no proof that the conditions of their children's upbringing, albeit basic, were in fact dangerous. The applicants further explained that the fact that they could not provide the children with better conditions was only due to their blindness. They claimed that as people with a disability they were discriminated against and underlined that the State authorities should provide their family with the necessary support instead of removing their children. The applicants also referred to Article 8 of the Convention.

26. On 14 February 2005 the Sumy Regional Court of Appeal dismissed their appeal. It repeated the conclusions of the first-instance court that leaving the children with the applicants would endanger the children's life, health and moral upbringing. It stated, *inter alia:*

> "The fact that the defendants were visually handicapped had no impact on the court's conclusions. The applicants did not prove that the State authorities created disadvantageous conditions for their life. Quite the opposite, as it follows from the case file, the State authorities acted within their power to help them.
>
> According to Article 8 of the European Convention of Human Rights, the State can interfere with private and family life for the protection of health or morals, or for the protection of the rights and freedoms of others. Bearing this in mind and considering the facts of the case, the court comes to the conclusion that there was no violation of Article 8 of the Convention."

27. The applicants appealed in cassation, raising essentially the same arguments as in their previous appeal. On 22 March 2006 the Supreme Court of Ukraine dismissed the appeal in cassation. The applicants' children were not heard at any stage of the proceedings.

28. The judgment was enforced on 23 June 2006. Eventually, K.S. was placed in a school in Romny, while O.S. and T.S. were placed in a school in Sumy (some one hundred kilometres from Romny). According to submissions by an educational social worker (*соціальний педагог*) retained by O.S.'s new school dated June 2007, O.S. continued to run away from school, wandered, and often needed to be searched for.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

29. The relevant provisions of the Constitution of Ukraine read as follows:

Article 32

"No one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine..."

Article 51

"...The family, childhood, motherhood and fatherhood are under the protection of the State."

B. Family Code of Ukraine of 10 January 2002

30. The relevant provisions of the Family Code of Ukraine read as follows:

Article 170. Removal of the Child from the Parents without Depriving them of Parental Rights

"1. The court may decide to remove the child from both parents or one of them without depriving them of parental rights, in cases referred to in Article 164, paragraph 1, subparagraphs 2 -5, as well as in other situations if leaving the child with them is dangerous to his or her life, health and moral education.

In such a case, the child shall be given to the other parent, grandmother, grandfather, other relatives upon their request or to the Tutelage Board.

2. In exceptional situations, when the child's life or health is seriously endangered, the Tutelage Board or the prosecutor may order the immediate removal of the child from his or her parents.

In such a case, the Tutelage Board shall inform the prosecutor without delay and within seven days of the date of the decision shall lodge a claim with a court for deprivation of the parental rights of one or both parents or for removal of the child from his or her mother or father without depriving them of parental rights.

The same claim can be lodged by the prosecutor.

3. Whenever the circumstances which have hampered the proper upbringing of the child by his or her parents disappear, the court, upon the parents' request, may order the return of the child"

C. Law of Ukraine "On Protection of Childhood" of 26 April 2001

31. The relevant provisions of the Law read as follows:

Section 11. A child and a family

"(...) Each child has the right to live in a family together with parents or in a family of one of the parents and in their care"

Section 12. Rights, obligations and responsibility of parents with respect to bringing up and development of a child

"to be brought up in a family is a fundamental principle for development of a child"

The State shall provide parents... with support in fulfilment of their obligations on bringing up children.., shall protect rights of a family"

Section 14. Separation of a child and family

"Children and parents shall not be separated against their will, except for cases when such a separation is necessary in the best interests of a child and is provided for by a legally valid court judgment"

D. Ukrainian Parliament Commissioner for Human Rights (Ombudsman)

32. In her First Annual Report the Commissioner for Human Rights (2002) mentioned as follows:

(...) The average social pension for a disabled person... is 41 Ukrainian hryvnas (UAH)[1], which is one-fifteenth of the amount allocated for a child who attends boarding school (UAH 400-700 per month)"

III. RELEVANT INTERNATIONAL INSTRUMENTS

A. The United Nations Convention on the Rights of the Child

33. In the Preamble to the Convention it is mentioned that a child, for the full and harmonious development of his or her personality, should grow up in a family environment. According to Article 9 of the Convention, 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 a separation is necessary in 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. In such a case all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

[1] This sum is subject to review every year; in 2007 the social pension for a disabled person was UAH 181.5 (around 27 euros)

B. Committee on the Rights of the Child

34. In its Concluding Observations, adopted on 9 October 2002 upon consideration of the second periodic report of Ukraine, the Committee mentioned as follows:

> "(...) the Committee remains concerned about the low level of resources in general for social services, health and education having a negative impact on the quality and accessibility of services, especially affecting families with children living in poverty;
>
> (...) The Committee is concerned that the principles of ... the right to have his/ her best interest as a primary consideration ... (is) not fully reflected in the State party's legislation, policies and programmes at national and local levels.
>
> (...) The Committee expresses its serious concern at the high increase in number of children left without parental care and regrets that its previous recommendations, to the State party, to develop a comprehensive strategy to assist vulnerable families, has not been followed".

C. Council of Europe

35. The basic principles, listed in the annex to **Recommendation Rec (2005)5 of the Committee of Ministers on the rights of children living in residential institutions, adopted on 16 March 2005,** include, among others:

> « (...) The family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child;
>
> – preventive measures of support for children and families in accordance with their special needs should be provided as far as possible;
>
> – the placement of a child should remain the exception and have as the primary objective the best interests of the child (...) ;
>
> – the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of ... disability ...or any other status of ... his or her parents (...).»

36. According to the Recommendation Rec(2006)19 on policy to support positive parenting, adopted on 13 December 2006, policies and measures in the field of support for parenting should take into account the importance of a sufficient standard of living to engage in positive parenting. Governments should also ensure that children and parents have access to an appropriate level and diversity of resources (material, psychological, social and cultural). In the best interests of the child, the rights of parents, such as entitlement to appropriate support from public authorities in fulfilling their parental functions, must also be given prominence. Particular attention

should be paid to difficult social and economic circumstances, which require more specific support. It is also essential to supplement general policies with a more targeted approach.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicants complained that the court's judgment of 2 December 2004 infringed their right to respect for their family life as provided in Article 8 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. Parties' submissions

a. The applicants

39. The applicants accepted that their living conditions were very basic. They did not, however, consider that the conditions were so bad as to endanger the children's life or health and render necessary their removal from home. In particular, there was no evidence that the children suffered from any diseases associated with malnutrition or dirtiness. As concerns O.S.'s and K.S.'s registration at the health centre, that registration was pursued by the applicants upon the doctors' advice as the best opportunity for the children to get free vouchers in summer camps.

40. The applicants did not deny that they received some financial and other support from the State, but submitted that it was grossly insufficient to improve their situation. Furthermore, their requests to the authorities for a gas supply to their flat, which would enable them to have gas heating and hot water and therefore to create normal sanitary conditions, remained to no avail. In their opinion the authorities concentrated only on drafting documents concerning the inadequacy of their conditions, instead of providing them with the necessary counselling as to possible solutions to their situation. The applicants further accepted that it might have been beneficial for the children to be placed in boarding schools, but submitted that this could be done by means other than their removal from the parents' care, which made it practically impossible for the applicants to spend time with the children outside the institutions, especially regard being had to the placement of children in various institutions. In their opinion, there was no danger in allowing the children to visit their parents at home for short periods of time.

41. The applicants also noted that in so far as O.S.'s wandering was concerned, they should not have been blamed for it, as they had attempted to discipline their son. However, it was often from school that he had run away, while being under supervision of the teachers.

42. In sum, the applicants alleged that the national authorities could have taken a less severe measure than taking their children away from them, and that the State could help them to raise their children themselves by providing them with adequate conditions. They also underlined that the children's opinion had not been taken into account during the trial.

b. The Government

43. The Government accepted that there had been interference with the applicants' right to respect for their family life as guaranteed by Article 8 § 1 of the Convention. Nevertheless, they maintained that it was in accordance with the law, namely Article 170 of the Family Code; pursued a legitimate aim of protection of the children's interests; and was not disproportionate.

44. Having underlined that the applicants had not been deprived of their parental rights, the Government stated that the applicants had seldom visited the children after their placement in residential institutions and had failed to improve their living conditions, thereby demonstrating that they were not interested in reuniting their family.

45. In addition, the Government informed the Court that the applicants had received state allowances as well as help from the state-supported USB, which had proved not to be of assistance, as the applicants were immature and irresponsible. In contrast, the children now lived under public care in spacious rooms with two to three room-mates, could attend museums and theatres and go to summer camps.

46. In conclusion, in the Government's opinion, the interference complained of did not constitute a violation of Article 8 of the Convention.

2. The Court's assessment

a. General principles

47. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the rights protected by Article 8 (see, *inter alia*, *McMichael v. the United Kingdom*, 24 February 1995, § 86, Series A no. 307-B). Such interference constitutes a violation of this provision unless it is "in accordance with the law", pursues one of the legitimate aims enumerated in Article 8 § 2 and can be regarded as "necessary in a democratic society" (see *McMichael*, cited above, § 87).

48. In determining whether a particular interference was "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify it were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention and whether the requisite decision-making process was fair and such as to afford due respect to the interests safeguarded by Article 8 (see, for example, *Kutzner v. Germany*, no. 46544/99, § 65, ECHR 2002-I, and *Sommerfeld v. Germany* [GC], no. 31871/96, § 66, ECHR 2003-VIII).

49. The Court further reiterates that, notwithstanding a margin of appreciation enjoyed by the domestic authorities in deciding on placing a child into public care, severing family ties means cutting a child off from its roots, which can only be justified in very exceptional circumstances (see, for example, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX). A relevant decision must therefore be supported by sufficiently sound and weighty considerations in the interests of the child, and it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child has been made (see, for example, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII).

50. In particular, where the decision is explained in terms of a need to protect the child from danger, the existence of such a danger should be actually established (see, mutatis mutandis, *Haase v. Germany*, no. 11057/02, § 99, ECHR 2004-III (extracts)). In taking a decision on removal of a child, a variety of factors may be pertinent, such as whether by virtue of remaining in the care of its parents the child would suffer abuse or neglect, educational deficiencies and lack of emotional support, or whether the child's placement in public care is necessitated by the state of its physical or mental health (see *Wallová and Walla v. the Czech Republic*, no. 23848/04, § 72, 26 October 2006 and *Havelka and Others v. the Czech*

Republic, no. 23499/06, § 57, 21 June 2007). On the other hand, the mere fact that a child could be placed in a more beneficial environment for his or her upbringing does not on its own justify a compulsory measure of removal (see, for example, *K.A. v. Finland*, no.27751/95, § 92 ECHR 2003-I). Neither can this measure be justified by a mere reference to the parents' precarious situation, which can be addressed by less radical means than the splitting of the family, such as targeted financial assistance and social counselling (see, for example, *Moser v. Austria*, no. 12643/02, § 68, 21 September 2006; *Wallová and Walla*, cited above, §§ 73-76; and *Havelka and others, cited above,* § 61).

51. Further, in assessing the quality of a decision-making process leading to splitting up the family, the Court will see, in particular, whether the conclusions of the domestic authorities were based on sufficient evidentiary basis (including, as appropriate, statements by witnesses, reports by competent authorities, psychological and other expert assessments and medical notes) and whether the interested parties, in particular the parents, had sufficient opportunity to participate in the procedure in question (see, *mutatis mutandis, Schultz v. Poland* (dec.), no. 50510/99, 8 January 2002; *Remmo and Uzunkaya v. Germany* (dec.), no. 5496/04, 20 March 2007; and *Polášek v. Czech Republic* (dec.), no. 31885/05 , 8 January 2007). The Court will also have regard to whether, where appropriate, the children themselves were able to express their views (see, for example, *Havelka and Others*, cited above, § 62, and *Haase*, cited above, § 97).

52. In any event, taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit. It cannot, therefore, be justified without prior consideration of the possible alternatives (see *K. and T.*, cited above, § 166; *Kutzner*, cited above, § 67; and *Moser*, cited above, § 70) and should be viewed in the context of the State's positive obligation to make serious and sustained efforts to facilitate the reuniting of children with their natural parents and until then enable regular contact between them, including, where possible, by keeping the siblings together (see, mutatis mutandis, *Kutzner*, cited above, §§ 76-77 and *K. and T. v. Finland* [GC], cited above, § 179).

b. Application of these principles in the present case

53. It is common ground that the decision to place O.S., K.S. and T.S. in public care constituted interference with the applicants' rights guaranteed by Article 8; that this interference was carried out in accordance with the law and pursued a legitimate aim of protecting the interests of the children. It remains to be examined whether this interference was "necessary in a democratic society".

54. In this regard the Court first notes that the applicants have generally agreed with the Government that it might have been beneficial for their children in material terms to be placed in special educational

establishments, such as boarding schools, in light of the limited resources available to them to meet their daily needs. They disagreed, however, as to whether it was necessary to do so by way of imposition of a removal order, which restricted their ability to take children home outside school hours, such as for vacations and weekends.

55. The Court notes that the domestic authorities based their decision on a finding that the applicants, by virtue of insufficient financial means and personal qualities, were unable to provide their children with proper nutrition, clothing, sanitary environment and health care, as well as to ensure their social and educational adaptation, thereby endangering the children's life, health and moral upbringing. The Court finds that these reasons were undoubtedly relevant to the taking of the requisite decision.

56. In assessing, however, whether they were also sufficient, the Court doubts the adequacy of the requisite evidentiary basis for the finding that the children's living conditions were in fact dangerous to their life and health. It notes, in particular, that the custody proceedings instituted in January 2004 had not resulted in the children's removal from home until 23 June 2006, no interim measure having been sought and no actual harm to the children during this period having been recorded. Further, a number of specific conclusions (such as that the children lacked proper nutrition, were dressed inappropriately and were often left home alone) were based solely on the submissions by the municipal authorities, drawn from their occasional inspections of the applicants' dwelling. No other corroborating evidence, such as the children's own views, their medical files, opinions by their paediatricians or statements by neighbours had been examined. In fact, the only objective evidence in support of the finding about the children's inadequate state of health, to which the trial court referred in its decision, was a medical certificate dated a year earlier, attesting that O.S. and K.S. had been placed on record for first-stage anaemia, the accuracy of which, challenged by the applicants, was not verified. Similarly, as regards the failure of the applicants to ensure proper educational and social adaptation of their children, the courts referred primarily to the submissions by the municipal authorities that O.S. had been seen wandering and begging, but no reference to the dates, frequency, names of the witnesses or other relevant circumstances was solicited.

57. Further, there is no appearance that the judicial authorities analysed in any depth the extent to which the purported inadequacies of the children's upbringing were attributable to the applicants' irremediable incapacity to provide requisite care, as opposed to their financial difficulties and objective frustrations, which could have been overcome by targeted financial and social assistance and effective counselling. In connection with the financial difficulties, it is not the Court's role to determine whether the promotion of family unity in the case entitled the applicants' family to a particular standard of living at public expense. It is, however, a matter which falls to

be discussed by, initially, the relevant public authorities and, subsequently, in the course of the judicial proceedings.

58. As regards the extent to which the inadequacies in the children's upbringing may have been prompted by the applicants' purported irresponsibility as parents, no independent evidence (such as an assessment by a psychologist) was sought to evaluate their emotional or mental maturity or motivation in resolving their household difficulties. Similarly, in the courts' reasoning, no analysis was made of the applicants' attempts to improve their situation, such as requests to equip their flat with access to natural gas, recoup salary arrears or request employment assistance. On the contrary, the courts appear to have taken on trust the submissions by the municipal authorities that the applicants had failed to improve their living conditions and attitudes in spite of financial and other support as well as necessary counselling. Beyond the descriptive findings of the inspection reports, repeatedly pointing to the same problems, such as a rotting baby's mattress, no data was sought as regards the actual volume and sufficiency of social assistance or the substance of specific recommendations provided by way of counselling and explanations as to why these recommendations had failed. The Court finds that soliciting specific information in this regard would have been pertinent in evaluating whether the authorities discharged their Convention obligation to promote family unity and whether they had sufficiently explored the effectiveness of less far-reaching alternatives before seeking to separate the children from their parents.

59. The Court also notes that at no stage of the proceedings were the children (including O.S., who was thirteen years of age when the first-instance proceedings were pending in December 2004) heard by the judges and that by way of implementation of the removal order not only were the children separated from their family of origin, they were also placed in different institutions. Two of them live in another city, away from Romny where their parents and siblings reside, which renders it difficult to maintain regular contact.

60. Given all these foregoing considerations, the Court concludes that although the reasons given by the national authorities for removal of the applicants' children were relevant, they were not sufficient to justify such a serious interference with the applicants' family life.

61. Therefore, there has been a violation of Article 8 of the Convention.

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

62. The applicants complained that the custody decisions had been taken on the ground of their status as disabled persons, and that the State had failed to fulfil its obligation to provide them with adequate conditions in

order to preserve their family. They relied on Article 14 of the Convention taken in conjunction with Article 8. The relevant provision reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

63. The Government insisted that the children had not been removed from the applicants on the ground of their disability. They maintained that many other blind people raised their children themselves, providing them with due care. In the Government's opinion, the applicants' living conditions were the result not of their disability or income, but of their own choices.

64. The applicants contested this argument. They stated that firstly their family was unique among blind couples due to the number of their children. Furthermore, none of the families registered with the USB had such an unsuitable housing situation. Although the applicants agreed that their living conditions were not satisfactory to raise children, they nevertheless insisted that their very special situation required more efforts from the State authorities to ensure their dignity and equality with healthy people.

65. The Court notes that, although the applicants' disability might have presented them with certain challenges in raising their family, such as in search of a suitable employment or arranging the house, it finds that, to the extent that this complaint has been substantiated, there is no appearance that the applicants were treated differently than others in an analogous situation or similarly to others in a different situation (see, among many other authorities, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

66. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

67. The applicants also complained that the judicial proceedings and the courts' decisions in their case were unfair. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

68. The Government contested these arguments.

69. The Court notes that this complaint is linked to the applicants' complaint under Article 8 and must therefore likewise be declared admissible.

70. It further reiterates that, notwithstanding the difference in the nature of the interests protected by Articles 6 and 8 of the Convention, which may

require separate examination of the claims lodged under these provisions, in the instant case the lack of respect for the applicants' family life is at the heart of their complaint. Therefore, having regard to its above findings under Article 8 (see paragraphs 60-61 above), the Court considers that it is not necessary to examine the facts also under Article 6 (see *Hunt v. Ukraine*, no. 31111/04, § 66, 7 December 2006).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

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

A. Damage

72. The applicants claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government contested that claim.

74. The Court accepts that the applicants have suffered damage of a non-pecuniary nature as a result of the State's failure to comply with its obligation relating to the applicants' right to respect for their family. It finds that this non-pecuniary damage is not sufficiently compensated for by the finding of a violation of the Convention. Making an assessment on an equitable basis, it awards the applicants jointly EUR 5,000 in respect of non-pecuniary damage plus any tax that may be chargeable.

B. Costs and expenses

75. The applicants also claimed EUR 1,150 for costs and expenses incurred before the domestic courts and before the Court.

76. The Government noted that the applicants had already received a sufficient sum under this head by way of legal aid from the Council of Europe.

77. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, it observes that the applicants failed to present a legal fees agreement with their lawyer or an approved timesheet of the legal work performed before the Court. In light of this and regard being had to the fact that the applicants have already been given legal aid, the Court gives no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 8 and 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 5,000 (five thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Rait Maruste
Registrar	President