



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

SECOND SECTION

CASE OF B.T. AND B.K.CS. v. HUNGARY

(Application no. 4581/16)

JUDGMENT

Art 8 • Placement of a Roma child in temporary State care immediately following his birth • Domestic authorities' failure to carry out a genuine balancing exercise between the interests of the child and those of his biological parents • Domestic authorities' failure to conduct in-depth and careful assessment of the situation, including short-term and long-term aspects affecting the child • Decisions based on the mother's previous conduct during her pregnancy and towards her other children • Serious shortcomings in the decision-making process depriving the mother of adequate involvement concerning the care of her child • Disproportionate interference with the right of the mother and her child to respect for their family life

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 June 2025

FINAL

10/09/2025

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

In the case of B.T. and B.K.Cs. v. Hungary,

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Péter Paczolay,

Anja Seibert-Fohr,

Davor Derenčinović,

Gediminas Sagatys,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 4581/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Hungarian nationals, Ms B.T. and Mr B.K.Cs. (“the applicants”), on 21 December 2015;

the decision to give notice of the application to the Hungarian Government (“the Government”) in respect of the first and second applicant and to declare the remainder of the application inadmissible;

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 13 May 2025,

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

INTRODUCTION

1. The present case concerns the placement of the second applicant, a child of Roma origin, in temporary State care immediately following his birth. The applicants complain of a violation of Articles 3, 8, 13 and 14 of the Convention.

THE FACTS

2. The first applicant, B.T., was born in 1976. The second applicant, her son B.K.Cs., was born on 3 May 2014. They live in Kesznyéten. The applicants were represented by the European Roma Rights Centre, a non-governmental organisation based in Brussels.

3. The Government were represented by their Agent, Mr Z. Tallódi, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The first applicant is of Roma origin and the second applicant is considered by his parents to be Roma. The first applicant had five children born between 1997 and 2010. They were placed under child protection on 28 September 2010 because the older children had not attended school and the two youngest children had not received necessary medical care. They

were temporarily placed in various childcare institutions and with foster families on 21 June 2011. On 20 December 2011 the children were placed in temporary foster care (*átmeneti nevelésbe vétel*).

I. THE SECOND APPLICANT'S PLACEMENT IN TEMPORARY CARE

6. On 13 December 2013, when the first applicant was four months pregnant with her sixth child, B.K.Cs., the local health visitor (*védőnő*) wrote to the Kesznyéten Child Welfare Service (*gyermekjóléti szolgálat*) and the Tiszaújváros Guardianship Authority about her, explaining that she had an “unplanned” pregnancy with her sixth child. The report mentioned that the first applicant was living alone, receiving social benefits and participating in the public work programme only because it was obligatory. She had endangered the unborn baby's and her own health by smoking and not attending regular medical check-ups. Furthermore, all her older children had been placed in foster care and she had not changed her attitude or living conditions since then. The report recommended that she should not be allowed to take the baby home from the hospital after delivery. Neither B.T. nor her partner, M.Cs., the father of the second applicant, were informed about this report.

7. On 16 December 2013 the Tiszaújváros Guardianship Authority reviewed the placement of B.T.'s four minor children in temporary foster care. It took note of the positive changes in the first applicant's living conditions and the fact that the parents had decent accommodation; the father, M.Cs., was in work; and the mother received financial support from the municipality. It returned B.T.'s daughter to her from temporary foster care, but upheld the temporary foster care of her sons, essentially because she was expecting another child. B.T. made a request for the termination of the temporary foster care of her sons. This request was dismissed on 7 March 2014 on the grounds that the child protection authority suggested that the placement should be maintained, given B.T.'s pregnancy.

8. On 11 February 2014, during the sixth month of the first applicant's pregnancy, the local health visitor wrote to the Borsod-Abaúj-Zemplén County Hospital recommending that the baby should not be released from hospital with his mother following delivery. The reason for this recommendation was that, so far as the health visitor knew, all the first applicant's children were in care and B.T. was a heavy smoker. The parents were not informed of this recommendation.

9. On 3 May 2014 the first applicant gave birth to the second applicant. According to the first applicant, she was discharged from the hospital on 6 May 2014 but was not allowed to take her baby, the second applicant, with her. The first applicant submitted that she had not been informed of the reasons for this measure and that she was never shown any decision allowing

her child to be taken away from her. According to the Government, the applicant was discharged from hospital on 7 May 2014.

10. On 6 May 2014 the Child Welfare Service wrote to the Tiszaújváros District Guardianship Authority reiterating that, on the basis of the health visitor's assessment, the baby should not be sent home with his mother, who was in a "crisis" because of her irresponsible behaviour. On the same day, a hospital nurse transferred a "recommendation" to the Guardianship Authority informing them that B.K.Cs. could not be sent home with his parents as all the other children in the family were in temporary foster care and the mother had not cooperated with the local health visitor. The nurse asked the Guardianship Authority to issue a decision to place the second applicant in temporary State care.

11. On 7 May 2014 the Tiszaújváros District Guardianship Authority decided to suspend the parental rights of both the first applicant and the child's father, M.Cs., and placed the child in the temporary care (*ideiglenes hatályú elhelyezés*) of a foster mother, B.H. The Authority stated that the first applicant had an irresponsible lifestyle and that three of her children had been committed to State care because of her living conditions. Furthermore, the baby's physical, mental and emotional development would be seriously endangered in his family environment.

12. Having received the decision on 12 May 2014, the first applicant appealed. She maintained that the statements about her irresponsible lifestyle and her living conditions were based on a situation that dated back to 2011. She referred to a decision of the Guardianship Authority of 16 December 2013 which noted positive changes in both respects (see paragraph 7 above). She submitted that the Guardianship Authority was aware that she was providing a financially and emotionally stable and loving family environment to her children. She also claimed that a disproportionate number of Roma children were taken into temporary foster care in Kesznyéten.

13. On 24 June 2014 the Borsod-Abaúj-Zemplén County Guardianship Authority, acting as an appeal body, upheld the first-instance decision. It noted that the mother had not given up smoking during her pregnancy and had not attended the medical checkups suggested by the health visitor. It also stated that the parents had not ensured that their other children attended school and kindergarten regularly and received adequate medical care. Furthermore, the first applicant had neglected the educational development of the children. They had been unprepared for school and had often worn dirty clothes. They had developed pulmonary diseases because of the mother's smoking and had been seen wandering around unattended in the neighbourhood. Counselling by the child protection authorities had been unsuccessful, so the children had first been placed under temporary child protection and then taken into foster care. The authority dismissed the argument that the child's father had a high and regular income, stating that he did not live in the same household as the first applicant. Neither did the

authority find it relevant that the first applicant participated in the public work programme, since this was a precondition for qualifying for social benefits.

14. On 5 August 2014 the first applicant's lawyer sought judicial review of the decision of the Borsod-Abaúj-Zemplén County Guardianship Authority by the Miskolc Administrative and Labour Court, arguing that the administrative decisions breached the mother's and the child's rights to respect for their private and family life. He submitted that there had been no evidence that the first applicant had endangered B.K.Cs. There had been no substantive grounds for removing him from the family and that removal had been disproportionate. The legal representative also claimed that the removal had been discriminatory as Roma children were taken into State care in a disproportionate number. On 9 September 2014 the first applicant also asked the court to suspend the enforcement of the decision taking her child into temporary care.

15. On 9 October 2014 the Administrative and Labour Court dismissed the first applicant's claim. Relying on the previous reports about the first applicant's attitude towards her other children, her living conditions, and the fact that the father's regular workplace was in Budapest, about 180 kilometres away, and he therefore seemingly did not participate in the upbringing of the children, the court found that the first applicant had been correctly prevented from taking B.K.Cs. home and that it had been appropriate to take him into temporary care.

16. The first applicant's lawyer lodged a petition for review with the *Kúria*. He argued that a child could only be removed from his or her family if the family environment constituted a risk to his or her physical, intellectual, emotional or moral development, which was not the case. B.K.Cs. had been removed from his family solely because of the family's lack of appropriate accommodation and financial means. He asserted in this respect that the decisions had failed to take into account the positive developments in the family's circumstances since 2011, when the other five children had been taken into foster care. He reiterated that the measure was in breach of the principle of equal treatment, as such measures targeted Roma children.

17. In its judgment of 13 May 2015, the *Kúria* dismissed the first applicant's petition and upheld the lower court's judgment. It held that there had been positive developments in the family's situation, notably, their living conditions had improved; and the first applicant had regular contact with her other children. However, since these developments had taken place after the first-instance administrative decision, they could not be taken into account when assessing the lawfulness of that decision. Moreover, according to the *Kúria*, even if the administrative authority had taken the positive developments into account, it had been right to conclude that they were insufficient to justify the baby's return to his family or to end his placement in temporary care. The judgment was served on the first applicant on 22 June 2015.

18. The first applicant lodged a constitutional complaint against the *Kúria*'s judgment asking the Constitutional Court to review the lawfulness of the judgment. She maintained that the measure had been disproportionate as removing the child from his family was possible only if there was a serious danger to his development. In her submission, the only reason for removing her son from the family environment had been the family's poor financial circumstances. On this basis, she argued that the measure was in breach of her right to family life and constituted degrading treatment. She also complained about the perceived unfairness of the administrative proceedings. She pointed out that Roma children were more likely to be taken into state care because of the biased attitude of the authorities. She argued that the removal of her son also constituted discriminatory treatment.

19. The complaint was dismissed on 26 January 2016. The Constitutional Court found that the restriction of the first applicant's parental rights had been necessary to safeguard the second applicant's right to care and protection. Given that the courts had applied constitutional principles when assessing the case, the measure had been proportionate and decided on in the best interests of the child. As regards the complaints concerning the alleged degrading and discriminatory nature of the measure, the Constitutional Court found that the applicant's submission contained no meaningful reasoning.

II. THE SECOND APPLICANT'S PLACEMENT IN FOSTER CARE

20. On 6 January 2015 the Tiszaújváros District Guardianship Authority reviewed the second applicant's placement in temporary care and decided to transfer him to long-term foster care (*nevelésbe vétel*). On 13 March 2015 the Borsod-Abaúj-Zemplén Guardianship Authority revoked this decision and remitted the case for re-examination with the instruction to gather information about the parents' living conditions and their attitude towards the child during their visits.

21. In the resumed proceedings the Tiszaújváros District Guardianship Authority upheld the second applicant's placement in foster care of B.H. and suspended the parents' exercise of their parental rights. The first applicant and M.Cs. were allowed to have contact with their son once a month for an hour. The Guardianship Authority relied on the report issued by the child protection services on 7 August 2014. This assessed the positive developments in the first applicant's circumstances as insufficient to support a conclusion that her attitude to the upbringing of her children would change and stated that until the parents could provide evidence of positive change, the child could not be taken home.

22. That decision was upheld on appeal on 7 September 2015 by the Borsod-Abaúj-Zemplén County Guardianship Authority, which found that the positive developments in the parents' living conditions and their regular contact with their older children did not constitute a sufficient basis to conclude that the parents would care adequately for the children. The

Borsod-Abaúj-Zemplén County Guardianship Authority found it relevant that the first applicant's other children had been taken into foster care primarily because they had not been attending school, and also because the parents had not provided adequate living, health and sanitary conditions. The authority would not return the children unless the parents provided evidence that their stance towards the schooling of their children had changed.

23. The first applicant sought judicial review. On 3 May 2016 the Miskolc Administrative and Labour Court set aside the previous administrative decisions and remitted the case to the Tiszaújváros District Guardianship Authority. It held that the administrative authorities had failed to adequately establish all the circumstances of the case.

24. In August 2015 the second applicant was allowed to spend two weeks with his parents and siblings.

25. On 25 March 2016 the Tiszaújváros District Guardianship Authority terminated the second applicant's placement in foster care with B.H. and decided to return him to his parents. The Guardianship Authority found that the living conditions of the parents were adequate, that the parents were cooperating with the child protection services and that they maintained regular contact with their children in foster care and had a regular income. The second applicant returned to his parents on 1 April 2016.

III. OTHER PROCEEDINGS INITIATED BY THE APPLICANTS

26. On 13 June 2016 the applicants, M.Cs., and two other plaintiffs (a couple whose child had also been taken into State care) filed a civil action for damages in the Miskolc Regional Court against the Kesznyéten Municipal Administration, the Kesznyéten Public Notary, the Borsod-Abaúj-Zemplén County Governmental Office and the Borsod-Abaúj-Zemplén County Hospital. They claimed that the Municipal Administration had breached their right to respect for family life in that the health visitor had not given them the necessary support during the mothers' pregnancies but had instead made recommendations for the removal of their children. They also claimed that they had been discriminated against, referring to derogatory statements made by the health visitor about the mothers' ethnic origins. Furthermore, the Municipal Administration had not provided the basic social services required to deal with the families' vulnerable situation and the Governmental Office had given its decisions on placing the children in foster care only after a delay, having based them on the degrading comments of the health visitors, in violation of the plaintiffs' right to respect for their family life and to equal treatment. Finally, the County Hospital had separated the children from their mothers without an official decision. The plaintiffs emphasised that their claim did not concern the lawfulness of the children's placement in State care as this question had been subject to separate proceedings.

27. At the hearing held on 9 October 2017, the health visitor explained that her task was to signal any anomalies threatening the health of children

and that severe neglect was considered a form of abuse. As to her comments on the unwanted nature of the first applicant's pregnancy, she explained that it was not meant to be offensive but a statement of fact that might be relevant as a risk factor for the health of the foetus. She also stated that she had taken part in many sensibilisation trainings, but she had had to realise that she could not succeed in her job without the cooperation of the persons concerned. Social worker K.M. who took over the case after the second applicant's placement in temporary care stated that the first applicant had been uncooperative and that she had been unable to establish a relationship of trust with her. She did not have any reservations about the plaintiffs on account of their Roma origin since she herself was of Roma origin and she felt it her task to motivate the people living in Kesznyéten to have a better life.

28. The Miskolc High Court dismissed the applicants' action on 1 April 2019. On appeal, on 23 January 2020 the Debrecen Court of Appeal partly overturned the first-instance judgment and upheld the applicants' claims against the Municipal Administration concerning the failure to provide the requisite level of child protection services and against the Governmental Office concerning the failure to review the second applicant's placement in foster care between 2 June and 18 December 2014, which resulted in the violation of the applicants' right to family life. At the same time, it found it established that the first applicant had been separated from her baby on the day on which the guardianship authorities ordered the temporary custody of the child, which was immediately enforceable. It awarded the applicants damages in the amount of HUF 300,000 (approximately 750 euros).

29. The plaintiffs, the Governmental Office, and the County Hospital, sought review by the *Kúria*, which upheld the judgment of the Debrecen Court of Appeal on 25 May 2021.

30. Meanwhile, on 13 September 2017 the first applicant, M.Cs. and their three minor children, including the second applicant, lodged another action for damages against the Borsod-Abaúj-Zemplén County Governmental Office for the breach of their right to respect for their family and private life, their right to fair administrative proceedings and their right not to be discriminated against. They maintained that three of their minor children had been unlawfully taken into foster care (in case of B.K.Cs. from 6 January 2015 to 1 April 2016), that there had been bias in the conduct of the administrative proceedings and that they had been discriminated against because of their Roma origin.

31. During the proceedings, the court heard employees of the Guardianship Authority and the Child Welfare Service that had dealt with the applicants' case. Witnesses explained how they had encouraged the first applicant to seek extended visits in addition to regular ones where changes in her attitude could be monitored and how she had been advised in matters of child-care in order to facilitate the return of her children. One of the social workers, K.M., who had personally advised the applicant, stated at the

hearing of 28 June 2018 that she herself was also of Roma origin and she had never experienced prejudice against the Roma on the part of her colleagues.

32. The Miskolc High Court dismissed the applicants' action on 9 November 2018. On appeal, on 31 January 2019 the Debrecen Court of Appeal found that the Governmental Office had breached the applicants' right to family life in that it had failed to review the necessity of placing the second applicant in foster care within the prescribed period and had not returned the other minor children to their parents in a timely manner despite a court order. The court ordered the respondent to pay the plaintiffs compensation for non-pecuniary damage in the amount of 200,000 Hungarian forints (HUF) and HUF 150,000 to each parent and to each child, respectively. Subsequently, on 30 September 2020 the *Kúria* overturned the judgment of the Debrecen Court of Appeal and quashed the provisions of the final judgment finding an infringement of the right to family life, prohibiting the defendant from further infringements and ordering it to pay damages. It also upheld the first-instance judgment in this respect.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

33. Act no. XXXI of 1997 on child protection and guardianship authorities (the "Child Protection Act") provides, in so far as relevant, as follows:

Section 7

"A child may only be separated from his or her parents or other relatives in the child's best interests, in cases and in a manner specified by law. A child may not be separated from his or her family solely for financial reasons."

Temporary placement

Section 72

"(1) If a child is left without supervision, or if his physical, intellectual, emotional, and moral development is seriously endangered by his or her family environment or by him- or herself, and therefore his or her immediate protection is necessary, the guardianship authority, the police, the immigration authority, the asylum authority, or the prison director (hereinafter "the referring authority") should issue an immediately enforceable order to temporarily place the child

aa) with a parent who has been living separately from the child, or other relative or person capable and willing to provide care for the child

ab) if *aa)* is not applicable

1. in case of children under twelve years old, with the closest foster parent providing temporary care for children, except for children whose health or personal status, dangerous behaviour or any other reason necessitate the child's institutionalisation.

...

(2) Serious danger necessitating a temporary removal from the care of the parents is the ill-treatment or neglect of a child that puts his or her life in immediate danger or may cause serious and irreparable harm to his or her physical, intellectual, emotional or moral development.

...

(4) From the date of the care order the parents' parental rights are suspended.

..."

Section 128

"In proceedings before the guardianship authority, the parents and other legal representatives, the caregiver, the child [aged fourteen or more] of restricted legal capacity, the parent whose legal capacity is partially restricted in respect of legal declarations in guardianship proceedings, the child without legal capacity [aged under fourteen] and everyone whose obligations are affected by the proceedings and – if necessary – the child's close relatives should be heard..."

34. The relevant rules concerning on temporary placement orders are in Government Decree no. 149/1997 (IX. 10.) on Guardianship Authorities, Child Protection Procedure and Guardianship Procedure, which provides as follows:

Temporary placement order

Section 95

"(1) A temporary placement order, as an immediate measure in the child's interest, is justified in case of

a) serious danger to the child

..."

Section 96

"The referring authority shall hear the persons listed in section 128 of the Child Protection Act, except where a serious danger directly puts the child's life at risk.

..."

II. RELEVANT INTERNATIONAL MATERIAL

35. The relevant provisions of the United Nations Convention on the Rights of the Child, concluded in New York on 20 November 1989, provide as follows:

Article 9

"1. States Parties shall 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.”

Article 18

“1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.”

36. The relevant part of the Concluding Observations of the Committee on the Rights of the Child (the “CRC”), Hungary, U.N. Doc. CRC/C/HUN/CO/2 (2006) of 27 January 2006 reads as follows:

“30. The Committee is concerned about the high rate of children placed in alternative care, often for financial reasons, many of them for a long period of time, including very young children and children with disabilities. It notes with regret that about half of these children are not in foster families but in institutions. The Committee is particularly worried about the considerable overrepresentation of Roma children among children in institutions. The Committee is also very concerned that not enough efforts are made to return children to their families as soon as possible.”

37. The relevant part of the Concluding observations of the CRC on the combined third, fourth and fifth periodic reports of Hungary, U.N. Doc. CRC/C/HUN/CO/3-5 of 14 October 2014 reads as follows:

Children deprived of a family environment

“37. The Committee urges the State party to ensure that children are not separated from their parents because of poverty and lack of housing, and recommends that the State party prohibit the placement of children in care institutions due to the economic situation of families and that it use this only as a last resort in accordance with the United Nations guidelines for the alternative care of children, adopted on 20 November 2009. The Committee also recommends that the State party take all necessary measures to provide families in need with adequate social housing and CRC/C/HUN/CO/3-5 8 support measures, and increase social benefits to low-income families with children in order to prevent out-of-home placements.

38. The Committee notes the amendments to the Child Protection Act of 1 January 2014 that prohibit the placement of children below the age of 12 in care institutions, but regrets that the amendments do not cover children with disabilities, chronically ill children or multiple siblings. The Committee is also concerned that:

(a) Roma children continue to be overrepresented in care institutions;

...”

38. The relevant part of the Concluding observations of the CRC on the sixth periodic report of Hungary, U.N. Doc. CRC/C/HUN/CO/6 of 3 March 2020 reads as follows:

“F. Family environment and alternative care (arts. 5, 9–11, 18 (1) and (2), 20, 21, 25 and 27 (4))

Family environment

26. Recalling its previous recommendations (CRC/C/HUN/CO/3-5, para. 37), the Committee urges the State party:

(a) To fully implement the prohibition of the separation of children from their families and their placement in alternative care on the basis of the economic situation of those families, through comprehensive programmes that tackle the multiple challenges that families are facing, and to ensure that separation is used only as a last resort in accordance with the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex)...”

THE LAW

I. PRELIMINARY REMARK

39. The Court notes at the outset that the first applicant is also complaining on behalf of her son, the second applicant. She is entitled to do so under the Court’s case-law, given that the present case concerns a conflict over a minor’s interests between the first applicant as his mother and the authorities who have a care order in respect of him. The first applicant, as the minor’s mother, also has standing to apply to the Court on her son’s behalf in order to protect his interests (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII; *Roengkasettakorn Eriksson v. Sweden*, no. 21574/16, § 61, 19 May 2022; and *V.Y.R. and A.V.R. v. Bulgaria*, no. 48321/20, § 60-61, 13 December 2022).

II. SCOPE OF THE CASE

A. The parties’ submissions

40. The Government maintained that the case concerned three interrelated issues: the alleged inadequacy of the social services provided to the family prior to the birth of B.K.Cs., the temporary care order in respect of the second applicant, and the placement of B.K.Cs. and B.T.’s other children in foster care. The Government raised a number of objections to the admissibility of all three issues.

41. The applicants submitted observations in reply to those of the Government. They emphasised that their complaint before the Court only concerned the separation of the applicants at the hospital and the temporary care order in respect of the second applicant. The domestic proceedings about

the inadequacy of the social services and the foster care decisions concerned separate facts and fell outside the scope of the case before the Court.

B. The Court's assessment

42. The Court reiterates that, for the purposes of Article 32 of the Convention, the scope of a case “referred to” it in the exercise of the right of individual application is determined by the applicant’s complaint or “claim”, which consists of two elements: factual allegations and legal arguments (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 109-10, 20 March 2018). The Court is not restricted by the legal grounds an applicant puts forward under the Convention and the Protocols thereto. In contrast, the Court cannot rule on whether facts which were not alleged by the applicants represented a violation of the Convention, although it does have jurisdiction to review circumstances complained of in the light of the entirety of the Convention or to “view the facts in a different manner” (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 99-101, 1 June 2021).

43. The Court observes that in their application form the applicants complained about the proceedings leading to the withholding of the second applicant from his parents immediately after his birth and his being taken into temporary State care. Those proceedings ended with the Constitutional Court’s decision of 26 January 2016 dismissing B.T.’s constitutional complaint (see paragraph 19 above).

44. In the absence of any application lodged with the Court relating to the social services provision for the applicants before the birth of B.K.Cs. or to the proceedings concerning B.K.Cs.’s placement in foster care and the decisions on the applicants’ contact rights during that placement, those issues fall outside the Court’s jurisdiction and the Court cannot deal with them. In order for the Court to examine the temporary care proceedings properly, it must, however, assess the case and the proceedings as a whole and place those proceedings in context, which inevitably means that it must, to some degree, have regard to other circumstances relating to the treatment of B.T., B.K.Cs. and the family by the authorities.

45. In the light of the above, the Court does not find it necessary to examine either the Government’s preliminary objections in respect of the alleged inadequacy of the social services provided prior to B.K.Cs.’s birth or in respect of the taking into foster care of B.T.’s children or the parties’ submissions in respect of the compatibility of these proceedings with Article 8 of the Convention.

III. PRELIMINARY OBJECTION REGARDING THE APPLICATION AS A WHOLE

46. In the Government's view, the applicants had failed to inform the Court of essential facts, namely that they had initiated civil proceedings (see chapter C. of the Facts part above). There had therefore been an abuse of the right of application, and the application should be declared inadmissible pursuant to Article 35 § 3 (a) of the Convention. They claimed that the applicants had submitted false information in order to obtain a judgment to pursue a political agenda with the Committee of Ministers. Furthermore, a member of a civil society organisation had been present in the hospital following the birth of the second applicant who knew that the hospital had no legal basis to withhold the child from his mother but had not prevented its doing so.

47. The applicants maintained that they had provided all the information they had concerning their complaint, that is, about the unlawful placement of the second applicant in temporary care. They reiterated that the civil proceedings referred to by the Government were related to the lack of adequate social services in the region and the unlawful foster care order, those being issues that did not form part of their complaint.

48. The Court reiterates that under Article 35 § 3 (a) an application may be rejected as an abuse of the right of individual application if, among other reasons, it is knowingly based on untrue facts. The submission of incomplete and therefore misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

49. Turning to the application at hand, the Court notes that it concerns the alleged unlawful separation of the second applicant from his mother and his being taken into State care. The relevant information was included in the initial application form and as the applicants emphasised, their complaint before the Court was limited to the circumstances of those measures alone. The Court also takes note of the applicants' explanation that they omitted to inform the Court about the subsequent civil proceedings in their application as they considered the subject matter of those proceedings to be different from their complaint before the Court.

50. In the Court's view, while it is true that the facts giving rise to the civil proceedings initiated by the applicants against the public authorities were

intertwined with those giving rise to the temporary care order, they did not concern the core of the matter underlying the applicants' complaint under the Convention. The Court therefore does not find that by omitting to provide information about the proceedings in question in their application, the applicants had intended to mislead it.

51. There is no evidence either capable of leading the Court to consider that the applicants' application to the Court was aimed, as the Government argued, at pursuing a political agenda. In any event, the Court has previously held that an application motivated by publicity or propaganda does not, by that very fact alone, constitute an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009).

52. Against the background described above and bearing in mind the scope of the case as defined in paragraph 44 above, the Court must reject the Government's objection claiming an abuse of the right of application.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. The applicants, relying on Article 8 of the Convention, complained that the second applicant had been unjustifiably separated from his mother and placed in temporary State care.

54. Article 8 provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. Admissibility

1. *The parties' arguments*

55. The Government submitted that the State could not be held liable for actions of public health care institutions or their employees who did not exercise state authority. The applicants themselves had acknowledged in their civil action that the hospital did not have any power conferred upon it by law to separate the second applicant from the first applicant. Therefore, the complaints concerning the hospital's actions fall outside the scope of the Convention *ratione personae*.

56. The Government further maintained that the judgment of the Debrecen Court of Appeal of 23 January 2020 (see paragraph 32 above) provided sufficient compensation for the violation of the applicants' right to family life through the Hungarian authorities' failure to review the necessity of the second applicant's continued placement in foster care within the time-

limit prescribed by law. In this respect, the applicants can therefore no longer claim to be victims within the meaning of Article 34 of the Convention.

57. The applicants disagreed. They pointed out that they had indeed been awarded some compensation for the fact that the revision of the care order concerning the second applicant and the implementation of the domestic court decision concerning the first applicant's older children had been unlawfully delayed. However, they reiterated that the said matter did not form part of their complaint before the Court.

2. *The Court's assessment*

58. The Court reiterates that compatibility *ratione personae* requires the alleged violation of the Convention to have been committed by a Contracting State or to be in some way attributable to it. In the present case, the applicants complained about the decision of the domestic authorities to take the second applicant into State care and later on confine him into long-term foster care. The impugned decisions have been taken by the relevant national authorities within their jurisdiction. The Government's argument in this respect must therefore be dismissed.

59. As regards the applicants' victim status, the Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V; *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts). In the present case, the Court notes that the domestic judgment relied on by the Government found a violation of the applicants' rights on account of the delayed revision of the care order concerning the second applicant between 2 June and 18 December 2014 and the failure to provide the requisite level of child protection services between 2 June and 18 December 2014 (see paragraph 28 above). That judgment did not acknowledge a breach of the applicants' rights complained of before the Court (see paragraph 47 above). Therefore, this preliminary objection should also be dismissed.

60. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

61. The applicants maintained that the removal of the second applicant from his family had not been in accordance with the law, as the relevant domestic legislation only allowed for removal in the case of a child's "serious endangerment" as a result of the abuse of the child or other circumstances seriously endangering the child's life or causing irreparable harm to his or her health or mental, emotional or physical development (see paragraph 33 above). None of these circumstances had been present in the applicants' case. Furthermore, the second applicant had been retained in hospital without a formal decision, as the decision had only been taken a day after the first applicant's release from the hospital. Moreover, the parents had not been informed about the proceedings.

62. In addition, the authorities had failed to consider the possibility of providing support to the family, and the first applicant had been accused of being an unfit parent in the fourth month of her pregnancy, when it was recommended that the child should not be allowed to leave the hospital with his family.

63. Similarly, there had been no consideration of less intrusive measures, including placing the second applicant under child protection or providing accommodation for the family or the mother and child. The authorities had also failed to consider the positive developments in the mother's behaviour towards her other children.

64. As regards the decision-making process, the applicants argued that the authorities had not appropriately balanced the interests of the child and his biological parents and they had never seriously contemplated their being reunited. This was in their view evidenced by the fact that the family was reunited only a year and a half later, in the course of entirely separate legal proceedings.

(b) The Government

65. The Government argued that the second applicant's placement in temporary care had been justified by the child's best interests and not by the first applicant's ethnic origin or financial circumstances. They maintained that the first applicant's refusal to give up smoking or attend medical checks during pregnancy were not the direct reason for the second applicant's removal but indicators of an unchanged attitude, similar to what had led to the removal of her other children in 2011.

66. Furthermore, the second applicant's removal from the family served to protect his rights from the risks of parental neglect which his siblings had been subjected to prior to their removal. As regards the applicants' assertion that the authorities should have provided the family with child care assistance

before removing the second applicant from her care, the Government considered that the lack of cooperation from the parents as regards their older children which had lasted for years had made any less severe child protection measure other than temporary placement impossible.

67. Although the child welfare services noted the family's poor living conditions, these were not due to financial deprivation but rather the applicant's inability or unwillingness to provide proper care for her children. The father's absence and the applicant's employment were also assessed in terms of their relevance to the applicant's commitment to responsible parenting. Moreover, the fact that the applicant had previously neglected the health of her children was given special consideration, particularly in the case of the second applicant, a newborn child who required the most care.

68. As regards the proportionality of the measure, the Government pointed out that the second applicant's removal from his mother had been a temporary measure and would be terminated upon periodic review if positive changes in the family's living conditions were observed. Indeed, the subsequent positive changes in the first applicant's conduct had led the authorities to order the termination of the second applicant's foster care placement. Although there was a slight delay with the return of the second applicant, this shortcoming had been acknowledged and remedied by the Debrecen Court of Appeal.

2. *The Court's assessment*

(a) **General principles**

69. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention. Any such interference constitutes a violation of that Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under its paragraph 2 and can be regarded as "necessary in a democratic society" (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 113, ECHR 2002-VI, and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 202, 10 September 2019).

70. In determining whether disputed measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 (see *P., C. and S. v. the United Kingdom*, § 114 and *Strand Lobben and Others*, § 203, both cited above).

71. The domestic authorities have the benefit of direct contact with all the persons concerned and the Court's should not substitute itself for them in the exercise of their responsibilities for the regulation of the State care of children and the rights of parents whose children have been taken into care. The Court's task is rather to review the decisions taken by those authorities in the

light of their domestic powers and of the Convention and the State's margin of appreciation (see *P., C. and S. v. the United Kingdom*, cited above, § 115).

72. The margin of appreciation to be accorded will vary in the light of the nature of the issues and the seriousness of the interests at stake. While States enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, in particular where an emergency arises, the Court must still be satisfied in the particular case that the removal of the child was justified, and it is for the State concerned to establish that there was a careful assessment of the impact of the proposed care measures on the parents and the child, as well as of the possible alternatives to taking the child into State care, prior to the implementation of the measure. Furthermore, the taking of a newborn baby into State care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from its mother against her will immediately after birth as a consequence of a process in which neither she nor her partner has been involved. Furthermore, the Court has in certain instances attached weight to whether the authorities, before taking a child into State care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether those had proved unsuccessful (see *Strand Lobben and Others*, cited above, § 211).

73. In cases where a child has been taken into State care, the Court will also look at the authorities' decision-making process to determine whether the views and interests of the natural parents were made known to, and duly taken into account by, the authorities and that the parents were able promptly to exercise any remedies available to them. What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been sufficiently involved in the decision-making process, seen as a whole, to provide them with the requisite protection of their interests and whether they have been able fully to present their case (see *N.V. and C.C. v. Malta*, no. 4952/21, § 59, 10 November 2022).

74. It is essential that a parent be placed in a position where he or she may obtain access to the information which is relied on by the authorities in taking measures of protective care or in taking decisions relevant to the care and custody of a child. Otherwise, the parent will be unable to participate effectively in the decision-making process or to put forward in a fair or adequate manner those matters militating in favour of his or her ability to provide the child with proper care and protection (see *P., C. and S. v. the United Kingdom*, cited above, §§ 119-20).

75. Finally, it is well established in the Court's case-law that in all decisions concerning children their best interests are of paramount importance. This reflects the broad consensus on this matter, expressed notably in Article 3 of the UN Convention on the Rights of the Child (see, for example, *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational*

surrogacy arrangement abroad and the intended mother [GC], request no. P16-2018-001, French Court of Cassation, § 38, 10 April 2019, with further references, and *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010).

(b) Application of those principles to the present case

76. The Court notes that the second applicant was born on 3 May 2014 and was taken from his parents when the first applicant left the hospital. It is uncontested that this measure constituted an interference with the applicants' rights to respect for their family life under the first paragraph of Article 8 and that it falls to be determined whether it complied with the requirements of the second paragraph of that Article.

77. The Court reiterates in this respect that the taking of a newborn baby into care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from his mother against her will immediately after birth and as a consequence of a procedure in which neither she nor her partner has been involved (see *Hanzelkovi v. the Czech Republic*, no. 43643/10, § 72, 11 December 2014).

78. In the present case, the domestic authorities based the measure complained about on findings that the mother had been neglecting her parental responsibilities by failing to provide her other children with adequate care, further noting that she had continued smoking for a prolonged period of time and had not attended the recommended antenatal check-ups. The authorities therefore considered that leaving the second applicant in her care would put his health and development at risk and decided that the first applicant's parental rights should be suspended. The Court is prepared to accept that those were "relevant" considerations, but is not convinced that they were also "sufficient" to justify the measure complained about in the circumstances of the present case.

79. The Court further appreciates that the present case involved balancing of competing interests in a very complex and delicate family situation. In such circumstances, where it has been shown that domestic authorities acted with sufficient diligence, obtained and relied on the appropriate evidence and assessments from professionals, and gave primary importance to the best interests of the children involved, the Court would need strong reasons to substitute its own assessment for that of the authorities (see *A and Others v. Iceland*, nos. 25133/20 and 31856/20, § 90, 15 November 2022).

80. As regards the approach adopted by the local authority prior to the second applicant's birth, the Court first notes that there is no indication that the domestic authorities, in particular the local health visitor or the Child Welfare Service, ever carried out any evaluation of whether less stringent measures than temporary placement would have sufficed.

81. In the submission of the Government, given that the first applicant had not cooperated with the child protection services concerning the care

provided to her other children, the authorities could not have been expected to adopt a gradual approach in respect of the second applicant.

82. The argument accepted by the administrative authority which reconsidered the decision rested on the mother's failure to make use of the assistance and follow the guidance of the authorities in the upbringing of her other children. The guardianship authority which reconsidered the first applicant's case was of the view that her stance towards the child welfare service and her understanding of the need to cooperate remained unchanged during her pregnancy with the second applicant.

83. The childcare authorities started to monitor the applicants' family in connection with the first applicant's allegedly negligent parenting and lack of care for her children at least in 2010, when her other children were placed under child protection measures.

84. However, no details were provided in relation to the assertion that she remained uncooperative during her pregnancy with the second applicant. Material in the case-file suggests that the local health visitor took the view that the baby should not be entrusted to his mother's care as early as December 2013 (see paragraph 6 above). There is no evidence that the first applicant was monitored by the childcare authorities during her pregnancy or that her attitude towards her unborn child was questioned after that visit, or that she was warned about her behaviour and the consequences that might follow.

85. The Court reaffirms that the authorities' role in the social welfare field is, precisely, to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties (see *Saviny v. Ukraine*, no. 39948/06, § 57, 18 December 2008 and *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013). In the present case, shortcomings in this respect were highlighted in the civil proceedings brought before the national courts, which confirmed that family assistance in respect of the first applicant had been inadequate (see paragraph 28 above). This, in the Court's view, also implied that the support provided to her within the "primary child protection system" had not been sufficiently effective.

86. It is also relevant that the first applicant consistently reaffirmed her intention to resolve the situation concerning her other children, and moreover, took steps to that end. In the proceedings related to the care of her other children, the authorities noted positive changes in the first applicant's conduct and living conditions. The Court finds it relevant that the temporary foster care placement of her daughter was terminated, and the child had already been returned to her mother by December 2013. Yet, there is no indication that the domestic authorities, in particular the local health visitor or the Child Welfare Services, sought any independent assessment of the family's progress or took account of the fact that when the first applicant gave birth she was going through substantial changes in her life. Their decisions were largely premised

on an assessment of the first applicant's lack of capacity to provide care dating back some years.

87. The Court is fully conscious of the primary interest of the child in the decision-making process. The harm which parental neglect can cause should not be disregarded. However, from the documents available in the present case there was no allegation or evidence of life-threatening or imminent harm, and any presumed risk therefore appears to have been manageable.

88. As stated above, the removal of a baby from its mother at birth requires exceptional justification, given the special relationship between the newborn and the mother (see paragraph 77 above). It is a step which is traumatic for the mother and places her own physical and mental health under a strain, and it deprives the newborn baby of close contact with his natural mother. While the Court recognises the complexity of the situation and the difficulties faced by the domestic authorities in balancing the interest of the second applicant and his parents, it has not been shown that, in the process leading to the suspension of the mother's parental responsibilities and the placement of the child in temporary care, the domestic authorities made an attempt to carry out a genuine balancing exercise between the interests of the child and those of his biological parents. In particular, they do not seem to have conducted a more in-depth and careful assessment of the situation, including both the short-term and long-term aspects affecting the child, but were instead satisfied with the mother's previous conduct.

89. Finally, the Court has regard to the manner of implementation of the temporary placement order. It finds it essential in this context that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking child protection measures.

90. The Court notes that the first applicant consistently maintained that the second applicant had been retained at the hospital without any formal decision and without her being informed about the reasons therefor (see paragraphs 9 and 61 above). At the same time, the domestic courts examined this issue and found that she had been separated from her baby on the day on which the guardianship authorities ordered the temporary custody (see paragraph 28 above). In these circumstances, the Court is unable to take a final stance on this point but can nonetheless stress that it would be wholly inappropriate that a newborn baby would be retained at the hospital without any formal decision and without informing the mother of the reasons.

91. The Court further notes that the retention of the second applicant in the hospital and his subsequent temporary placement with a foster parent were essentially based on the local health visitor's report to the Child Welfare Service (see paragraphs 6 and 10 above) and the County Hospital (see paragraph 8 above). The material in the case file suggests that none of these documents was transferred to the first applicant prior to the decision-making. The lack of disclosure of such vital documents as social services' reports is capable of affecting the ability of the parents not only to foresee the potential consequences of legal proceedings but also to influence their outcome.

92. The Court further observes that, with the exception of situations where a serious danger would directly put the child's life at risk, domestic law required an authority making a temporary care order to hear the child's parents (see paragraph 34 above). While that would have allowed the first applicant an effective opportunity to challenge the health visitor's assessment that her baby could not be entrusted to her care, there is no indication that such a hearing ever took place, depriving the first applicant of adequate involvement in the decision-making process concerning the care of the second applicant.

93. In the light of the above factors, the Court concludes that the decision-making process at domestic level was seriously flawed, and the measure constituted a disproportionate interference with the applicants' right to respect for their family life.

There has therefore been a violation of Article 8 of the Convention in respect of both applicants.

V. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLES 3 AND/OR 8 OF THE CONVENTION

94. The applicants also complained of alleged discrimination, in breach of Article 14 read in conjunction with Articles 3 and/or 8 of the Convention.

95. Article 3 provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

96. Article 14 provides 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.”

A. The parties' arguments

1. *The Government*

97. The Government argued that the applicants could not provide evidence that non-Roma families in the applicants' situation had been treated differently. Furthermore, all the witnesses in the civil proceedings subsequently instituted by the applicants, including a social worker who herself had been of Roma origin, had denied being influenced by the applicants' ethnic origin.

98. The Government further questioned the methodology and reliability of sociological studies and reports submitted by the applicants in support of their discrimination claim, which suggested the overrepresentation of Roma children in the child protection system. There were no official data or statistics on the ethnic origin of children in foster care or on the overall number of Roma children in the population.

99. Were perceptions to be decisive in the circumstances, the Government referred to the statement of the notary of Kesznyéten who had testified in the civil proceedings that according to her perception over 95 % of children in the town's kindergarten and school were Roma, whereas "only" 67.12 % of all children in Kesznyéten were under child protection measures in the relevant period. It could therefore not be argued that the children concerned were taken under protection on account of their Roma origin, because the proportion of children perceived as Roma in the town exceeded by far the proportion of children in protection.

2. *The applicants*

100. The applicants maintained that the racially motivated taking of the second applicant into State care had in itself amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

101. In support of their assertion that the removal of the second applicant from his family had been discriminatory and in breach of Article 14 of the Convention in conjunction with Article 8 thereof, the applicants claimed that the health visitor had made a number of hostile comments concerning the first applicant as a result of her Roma origin. They also alleged that the head of the Child Protection Authority was known among the local Roma community to have made it clear that Roma children in Kesznyéten "would not be allowed home".

102. The applicants further argued that there was a disproportionate number of Roma children in State care in Hungary. In support of their assertion, the applicants pointed to the Concluding observations of the CRC, which expressed concern about the overrepresentation of Roma children in institutional care (see paragraphs 36 and 37 above). They also relied on two research studies carried out by the European Roma Rights Centre in 2007 and in 2011 on the situation of Roma children in the Hungarian child protection system. The research studies showed that in 2007, 58% of the children interviewed in such institutions were of Roma origin, while the proportion of Roma children in the entire Hungarian child population according to that study had been estimated at 13%. In 2011, 65.9% of the children in homes visited had been of Roma origin.

103. The applicants contended that the Government's statistics (see paragraph 99 above) were misleading and should be interpreted as meaning that in the small geographic area of Kesznyéten two-thirds of the children were under child protection measures, which shifted the burden on the Government to show that no discrimination had taken place. The number of children being removed from their parents' care was twenty-one times higher than in similar towns in Hungary. In 2013, at least nineteen of the twenty-three decisions to put children into State care concerned Roma children and in 2014 all six children placed in temporary care and six out of ten children placed in permanent care had been of Roma origin.

104. The applicants further disputed the Government's assertion that in Kesznyéten 98% of children were of Roma origin and stated that the number was rather around 50%.

B. The Court's assessment

105. The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see, amongst many authorities, *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017 and the cases cited therein). Discrimination on account of a person's ethnic origin is a form of racial discrimination (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 176, ECHR 2007-IV). Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 144, ECHR 2005-VII). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (see *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 58, ECHR 2005-XII).

106. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified (see *D.H. and Others*, cited above, § 177).

107. As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others* (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *D.H. and Others*, cited above, § 178).

108. As a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. Their vulnerable position means

that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Horváth and Kiss v. Hungary*, no. 11146/11, § 102, 29 January 2013).

109. Turning to the present case, the Court notes that the second applicant was taken into care on the basis of the findings by the domestic authorities that the first applicant had neglected her older children which consequently had put the second applicant in danger (see paragraph 75 above). In other words, the placement was motivated by what the authorities considered to have been in the child's best interests at the relevant time and not on reasons relating to the applicants' Roma origin. Nothing in the case file indicated that the ethnic origin of the child or his family were ever mentioned by any of the domestic authorities to justify his placement (compare *Terna v. Italy*, no. 21052/18, § 98, 14 January 2021). To the contrary, it transpires from the testimony of one of the social workers involved in the case, who herself was of Roma origin, that neither she or any of her colleagues had ever expressed prejudice towards the applicants on account of their ethnicity (see paragraphs 27 and 31 above).

110. To the extent that the applicants complain that the health visitor had made hostile comments about the first applicant during her pregnancy, the Court cannot discern any particular statement, direct or implied, related to her ethnic origin (see paragraphs 6 and 8 above). Nor can the general allegation of a purported statement by the head of the Child Protection Authority "that Roma children in Kesznyéten would not be allowed home", as submitted by the applicants (see paragraph 101 above) and of which they have provided no evidence whatsoever, substantiate the claim that the second applicant had been taken into care solely due to his Roma origin (compare *Negrea and Others v. Romania*, no. 53183/07, §§ 78-80, 24 July 2018; and contrast *Bączkowski and Others v. Poland*, no. 1543/06, §§ 97-100, 3 May 2007).

111. Finally, insofar as the applicants relied on various reports indicating the overrepresentation of Roma children in institutional care in Hungary, the Court does not find them decisive to the specific circumstances of the present case, in noting that the second applicant had never been in institutional care but instead in foster care of a private individual (see paragraph 11 and 21 above).

112. In view of the foregoing, while the taking into State care of the second applicant led the Court to find a violation of the applicants' right to respect for their family life (see paragraph 90 above), the information and objective evidence available before it is not sufficiently strong to convince the Court that it was part of an organised policy or that the conduct of hospital staff or the domestic authorities was intentionally racially motivated (see, *mutatis mutandis*, *V.C. v. Slovakia*, no. 18968/07, § 177, ECHR 2011 (extracts)).

113. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLES 3 AND/OR 8 OF THE CONVENTION

114. The applicants further complained that they had had no effective avenue to raise their complaints about the alleged violation of their Convention rights with the domestic authorities, in breach of Article 13 of the Convention taken in conjunction with Articles 3 and/or 8 of the Convention. They argued, in particular, that they could not challenge the retention of the second applicant by the County Hospital.

115. The Government argued that the applicants could bring their complaints before relevant court instances, including the Constitutional Court.

116. Having regard to the facts of the case, the submissions of the parties and its findings relating to Article 8 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is thus no need to give a separate ruling on the admissibility and merits of the applicants' complaint under Article 13 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. The applicants each claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

119. The Government contested these claims as excessive.

120. The Court considers that the applicants must have suffered non-pecuniary damage on account of the violation found. Accordingly, ruling on an equitable basis, it awards them jointly EUR 10,000 under this head.

B. Costs and expenses

121. The applicants did not submit claims for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT,

1. *Rejects*, unanimously, the Government's objection claiming an abuse of the individual right of petition;
2. *Declares*, unanimously, the complaint under Article 8 concerning the placement of the second applicant in temporary State care admissible;
3. *Declares*, by a majority, the complaint concerning Article 14 read in conjunction with Articles 3 and 8 inadmissible;
4. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;
5. *Holds*, unanimously, that there is no need to examine the complaint under Article 13, read in conjunction with Articles 3 and/or 8 of the Convention;
6. *Holds*, by five votes to two,
 - (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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
7. *Dismisses*, by a majority, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

B.T. AND B.K.CS. v. HUNGARY JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Partly concurring, partly dissenting opinion of Judge Derenčinović;
- (b) Partly dissenting opinion of Judge Seibert-Fohr.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE DERENČINOVIĆ

1. I firmly agree with the majority that there has been a violation of Article 8. However, given the facts of the case and the applicants' profiles, I have reservations as to the approach taken in the assessment and reasoning.

2. In particular, the domestic authorities' decision, in this case, to separate a mother from her child immediately after his birth in hospital and to deprive them of the right and the opportunity to build a meaningful relationship for almost two years should not have been examined solely from the perspective of proportionality – the approach taken by the majority – but also from that of lawfulness. This would have been the proper response to the arguments raised in the application as to “the alleged unlawful separation of the second applicant from his mother and his being taken into State care” (see paragraph 49 of the judgment). However, the majority remained silent on this point.

3. Under the domestic legislation, the separation of a parent from a child and the latter's placement in foster care are indeed exceptional measures that should be applied only in very exceptional circumstances. As cited in paragraph 33 of the judgment, Hungarian law prohibits separating a child from his or her family for financial reasons (section 7 of the Child Protection Act). Moreover, section 72(2) of the same Act defines serious danger necessitating a temporary removal from the care of the parents as consisting in ill-treatment or neglect of a child that puts his or her life in immediate danger or may cause serious and irreparable harm to his or her physical, intellectual, emotional or moral development.

4. The threshold for applying the measure of temporary removal from parental care would appear to be very high. I have difficulty discerning how the application of such a radical measure on the grounds of the mother's “lifestyle” (irregular medical check-ups and smoking during pregnancy), her “poor living conditions” and her failure to take adequate care of her older children, all of whom had been taken from her, meets the conditions laid down in the domestic legislation. It seems rather clear that the authorities failed to establish how these elements had resulted in putting the life of the newborn child in immediate danger or how they might have caused serious and irreparable harm to his well-being.

5. The authorities' mishandling of the situation was exacerbated by the fact that both applicants belong to the Roma community. According to available statistics, a disproportionate number of Roma children have been placed in institutional care in Hungary (cited in paragraphs 37-38 of the judgment). Although the second applicant in this case was entrusted to foster rather than institutional care, this does not change the fact that he was taken from his natural environment and separated from his mother for a very long time. The fact that the Roma community has been disproportionately affected

by the application of the radical measure of temporary removal of the child from parental care should also have been taken into consideration as an important factor in the Court's assessment, which should have gone much further than analysing the proportionality criteria alone. Without prejudging any conclusion the Chamber might have reached with regard to the complaint under Article 14, such an overall assessment might also have brought to light an arguable claim of discrimination, which would have justified at least declaring the applicants' discrimination complaint in the present case admissible.

6. Finally, like my colleague Judge Seibert-Fohr, I cannot support the majority decision to award the applicants only half of the amount they claimed in respect of non-pecuniary damage. The amount awarded is not in keeping with the seriousness of the violation in this case. Likewise, it does not seem to be justified in view of the Court's standards for awarding just satisfaction in respect of non-pecuniary damage in comparable cases (see the EUR 25,000 awarded to a single applicant in *A.S. v. Norway*, no. 60371/15, § 74, 17 December 2019, and the EUR 20,000 awarded to the applicant in *Y.I. v. Russia*, no. 68868/14, § 100, 25 February 2020).

PARTLY CONCURRING, PARTLY DISSENTING OPINION
OF JUDGE SEIBERT-FOHR

122. While I fully concur with the majority’s finding of a violation of Article 8 in the present case, I disagree with the unusually low award in respect of non-pecuniary damage for a case like this. The award of EUR 10,000 for both applicants is insufficient and well below the sums usually awarded (for the award of EUR 25,000 (twenty-five thousand euros) to a single parent, see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019). Taking into account the fact that the second applicant was separated from the first applicant shortly after his birth for a period of almost two years – a period which is essential for a child’s emotional development and the parent-child relationship – the award should have corresponded to both applicants’ substantial grievance. I have therefore dissented from the majority in this respect, together with Judge Derenčinović.

123. Moreover, I firmly disagree with the standard set out in paragraph 112 of the judgment for complaints under Article 14, read in conjunction with Articles 3 and/or 8 of the Convention. For a violation of these provisions, it is necessary to prove neither the existence of an “organised policy” nor that the conduct of “the domestic authorities was intentionally racially motivated”.

124. According to the Court’s established case-law, Article 14 forbids any “difference in treatment of persons in analogous, or relevantly similar, situations” and “based on an identifiable characteristic, or ‘status’” (see *Biao v. Denmark* [GC], no. 38590/10, § 89, 24 May 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010; *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV; and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008) protected by Article 14 of the Convention (see *Varnas v. Lithuania*, no. 42615/06, § 106, 9 July 2013, and *Hoogendijk v. the Netherlands (dec.)*, no. 58641/00, 6 January 2005). A difference in treatment will be discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised (see *Molla Sali v. Greece* [GC], no. 20452/14, § 135, 19 December 2018, and *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017). If there is no such justification, the difference in treatment will be in violation of Article 14, irrespective of whether it is based on an organised policy or an intentional motivation. Accordingly, the Court has recognised that indirect discrimination does not necessarily require a discriminatory intent (see *Biao*, cited above, § 103, and *D.H. and Others*, cited above, § 184). Therefore, requiring an organised policy or racial motivation for such difference in treatment by State authorities would be not

only inappropriate but also in sharp conflict with the Court's established jurisprudence under Article 14.

125. It is worth noting in this respect that in *V.C. v. Slovakia* (no. 18968/07, 8 November 2011), in which the Court ultimately did not find it necessary to separately determine whether the facts of the case also gave rise to a breach of Article 14 of the Convention (§ 180), the Court explicitly stated that it was relevant from the viewpoint of Article 14 that serious shortcomings liable to particularly affect members of the Roma community had been identified (§ 178). Therefore, the *mutatis mutandis* reference to that judgment in paragraph 112 of the present judgment, in an effort to substantiate the alleged standard of organised policy and racial motivation, is, if not misleading, at any rate inappropriate in the present context.