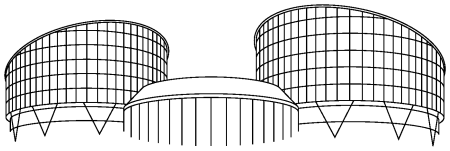

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TLAPAK AND OTHERS v. GERMANY

(Applications nos. 11308/16 and 11344/16)

JUDGMENT

STRASBOURG

22 March 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tlapak and Others v. Germany,

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

Erik Møse, *President,*
Angelika Nußberger,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 20 February 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 11308/16 and 11344/16) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four applicants on 24 February 2016. The applicants' names, nationalities and dates of birth are shown in the list appended to this judgment.

2. The applicants were represented by Mr H. Forkel, a lawyer practising in Dresden. The German Government ("the Government") were represented by their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.

3. The applicants complained, in particular under Article 8 of the Convention, of allegedly disproportionate decisions by the domestic courts in the main proceedings to withdraw parts of their parental authority, of an insufficient factual foundation for the decisions and of the length and unfairness of the main proceedings before the family courts. Concerning the same allegations, the applications also invoked Article 6. Under Article 9 of the Convention and Article 2 of Protocol No. 1 the applicants complained that they had been prevented from raising their children in compliance with their religious beliefs and that their religious beliefs were the reason for the partial withdrawal of their parental authority.

4. On 16 March 2016 the applications were communicated to the Government in respect to Article 8 of the Convention.

5. Written submissions were received from ADF (Alliance Defending Freedom) International, which had been granted leave by the Vice-President to intervene as a third party in both cases (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants in application no. 11308/16 (Tlapak) are a mother and father. Their son J. was born on 15 January 2012. The applicants in application no. 11344/16 (Pingen) are also a mother and father. Their two daughters A. and B. were born on 7 October 2009 and their son G. was born on 23 May 2013. All the applicants are members of the Twelve Tribes Church (*Zwölf Stämme*) who lived in a community of around twenty members of the church in Wörnitz, Germany. A second community with around 100 members was located in the nearby village of Klosterzimmern.

A. Background to the case

7. In 2012 the press reported about the Twelve Tribes Church and its position on the right of parents to apply corporal punishment, especially caning. Furthermore, statements by a former member of the community were published, confirming that children had been punished with rods.

8. In 2012 and 2013 the local youth offices (*Jugendamt*) visited both communities and its spokespersons were invited to a meeting at the Bavarian Ministry of Education. Corporal punishment and the issue of compulsory schooling were discussed at the meeting.

9. On 16 August 2013 the Klosterzimmern youth office and the Nördlingen Family Court received video footage from a television reporter showing ten different instances of corporal punishment in the community in Klosterzimmern. The footage, filmed with a hidden camera, showed the caning of various children between the ages of three and twelve. According to the television reporter, the person who carried out the punishment was not, in most cases, a parent of the child being punished.

10. On 3 September 2013 the Ansbach Family Court, upon an application by the competent youth office, made an interlocutory order regarding all children in the Twelve Tribes community in Wörnitz, including the applicants' children. The court withdrew the applicants' rights to decide where their children should live (*Aufenthaltsbestimmungsrecht*), and to take decisions regarding their health (*Gesundheitsfürsorge*), schooling and professional training, and transferred those rights to the youth office. The court based its decision on the above-mentioned video footage and the testimony of the television reporter and six former members of the Twelve Tribes community. It concluded that there was a reasonable likelihood that the children would be subjected to corporal punishment in the form of caning and so-called "restraining", involving holding a child's limbs tight and pressing his or her head down until the child had no strength left to cry and struggle.

11. On 5 September 2013 the youth office took the community's children into care. They were supported by around thirty police officers, who, at the same time, searched the community's premises and found a wooden rod.

12. The applicants' children were subsequently examined but no physical signs of abuse or beating were revealed.

13. J. Tlapak was subsequently placed in a foster family. As he was still being breastfed, his mother was permitted daily visits to give him milk.

14. A. and B. Pingen were also placed in a foster family. Their aunt's family was approved as fosterers and they were then placed with them.

15. Since G. Pingen was then only one year and four months old and was also still being breastfed, he and his mother were placed together in a foster family.

1. Application no. 11308/16 (Tlapak)

16. On 13 September 2013 the Ansbach Family Court heard the applicants and on 23 September 2013 it upheld its order of 3 September 2013 in an interim decision.

17. On 2 December 2013 the Nuremberg Court of Appeal dismissed an appeal by the applicants against the interim decision of the Family Court in essence, but set the decision aside to the extent it concerned the parental right to decide on schooling matters. Given the son's age, the court held that there was no need to decide on that issue in the interim proceedings.

18. In 2015 the applicants moved – without their son J. – to the Czech Republic, where they have been living since.

2. Application no. 11344/16 (Pingen)

19. The Ansbach Family Court heard the applicants on 13 September 2013 and the applicants' daughters on 18 September 2013 in the foster family's home. The daughters reported that their parents had hit them on the hand with a rod as a form of corporal punishment. On 23 September 2013 the Family Court upheld its order of 3 September 2013.

20. On 2 December 2013, upon an appeal by the applicants, the Nuremberg Court of Appeal reversed the decision to withdraw the right to decide where G. Pingen should live. The earlier decision on the daughters was upheld, with the proviso that the parents were to retain the right to take decisions on school matters and on their daughters' choice of education or training and career.

21. The son was subsequently returned to the applicants, who moved first to Belgium and later to the Czech Republic, where they have been living since. The applicants' daughters are still in the care of the foster family (see paragraph 14 above).

B. The main proceedings

1. Application no. 11308/16 (Tlapak)

22. Upon an application made by the applicants on 9 September 2013 the Family Court initiated the main proceedings and, on 24 September 2013, it commissioned an expert opinion.

23. After interviewing the applicants and observing a meeting between them and their son, the expert submitted a written opinion on 19 December 2013. He found that even though the applicants had a loving attitude towards their son, they considered corporal punishment with objects as an appropriate and necessary parenting method. Owing to their willingness to apply that method to their son, there was a likelihood bordering on certainty that if he remained with them, they would apply corporal punishment. This, the expert concluded, would significantly jeopardise the son's development and result in psychological problems. Overall, it was in the child's best interests to place him away from his parents to protect him from the applicants' parenting methods, which were dangerous for the child. Since their parenting was based on religious convictions, they were unwilling to abandon the parenting method of corporal punishment and lacked the will to cooperate with the authorities or accept help. Consequently, less intrusive measures could not be considered sufficient.

24. Subsequently the applicants submitted a privately commissioned expert opinion, in which the court-appointed expert's approach and methodology was criticised. In addition, the applicants retrospectively withdrew their consent to being assessed by the court-appointed expert and to an assessment of their son.

25. In separate proceedings the Family Court, on 1 August 2014, issued an interim decision in which it withdrew the applicants' parental right to decide on the son's assessment by the court-appointed expert and consented to such a measure.

26. On 4 August 2014, the Family Court forwarded the privately commissioned expert opinion to the court-appointed expert, who responded to the criticism and gave details of his methodology in a letter of 15 August 2014.

27. In a hearing on 19 September 2014 the court proposed an agreement between the applicants and the youth office, with the aim of returning their son to them. However, the applicants and the youth office did not agree on a settlement owing in particular to a disagreement about the son attending a state school and play therapy. Moreover, there were concerns about the parents attending a development course and assisting with medical measures. The youth office considered those aspects as essential and declined the partial settlement proposed by the applicants.

28. After hearing the applicants' son in the home of the foster family where he had been placed on 21 October 2014, the Family Court decided on

22 October 2014 to withdraw the applicants' right to decide where their son should live and to take decisions regarding his health and schooling, and transferred those rights to the youth office, which had been appointed as supplementary guardian.

29. The Family Court stated that it would be very detrimental to the best interests of the child if the son continued to live with the applicants owing to their parenting methods. Based, in particular, on the court-commissioned expert opinion and the statements by the applicants during the court proceedings, the court concluded that there was a high, concrete probability that the son would be subjected to corporal punishment using physical objects over the course of several years. According to the expert, this would give rise to an expectation that the applicants' son would suffer from psychological issues. Even though separating the parents and the child constituted a severe interference with their right to a family under Article 6 of the Basic Law (see paragraph 53 below) and may possibly have negative consequences for the child, that interference was justified in the case at hand. Corporal punishment of the kind at issue was particularly degrading for a child. It was not only banned by Article 1631 § 2 of the Civil Code (see paragraph 54 below) but also constituted an interference with a child's human dignity, protected under Article 1 of the Basic Law (see paragraph 50 below), and a child's right to physical integrity, protected under Article 2 of the Basic Law (see paragraph 51 below).

30. The court also held that the risk to the child could not be averted using less drastic measures. Throughout the course of the proceedings the applicants had unreservedly advocated their parenting style and had refused to accept the opinion that the type of corporal punishment they endorsed was covered by the ban on violence under Article 1631 of the Civil Code. The physical effects of such punishment were only short-lived, which was why it would only be possible for the youth office to observe any such effects if it made unannounced visits and the child had – by chance – been punished immediately prior to such a visit. According to the expert's explanations, the psychological consequences could, by contrast, only be determined after a longer period of time and they were difficult to discern at first glance. Although the applicants had most recently indicated to the court that they were ready to refrain from corporal punishment in the future, the court regarded such statements as not being compelling since they had not provided any grounds. The Family Court, nonetheless, pointed out that the applicants were free to reach an out-of-court settlement with the youth office concerning the conditions under which the son could be returned after the proceedings had been concluded. However, the previous settlement proposal had been refused because the applicants had not been willing to agree to have their son take part in play therapy and attend a state school.

31. In regard to the fact that the applicants had withdrawn their consent to being examined by the court-appointed expert after the expert opinion

had already been submitted, both for themselves and their child, the court held that this did not render the expert's report unusable in the proceedings. While the court had given its own consent in place of the parents' as far as it concerned the son, the parents' actions on that point could not, in light of the state's obligation to protect children under constitutional law, hinder the use of the expert opinion in the proceedings. Allowing parents to reject expert opinions they disagreed with by retrospectively withdrawing consent to an examination would prevent any effective protection of children in family court proceedings.

32. The applicants subsequently appealed against the decision of the Family Court. The Court of Appeal, after hearing the applicants, their son, the son's guardian *ad litem*, a representative of the youth office, the court-appointed expert and the expert commissioned by the applicants, dismissed the applicants' appeal on 26 May 2015.

33. In a decision of thirty-nine pages, the Court of Appeal considered in detail the applicants' statements concerning corporal punishment, publications by the Twelve Tribes Church, the expert's opinion and the criticism of the report by the privately commissioned expert. Overall it confirmed the decision and reasoning of the Family Court of 22 October 2014. The court emphasised that not all individual violations of the right to a non-violent upbringing under Article 1631 § 2 of the Civil Code (see paragraph 54 below) could justify a withdrawal of parental authority. However, there was a fear in the applicants' case that systematic caning with a rod would be the reaction whenever the child was deemed to have broken a rule. There was moreover already a threat to the child's best interests as he would live in constant fear of suffering physical pain and experiencing the resulting humiliation as psychological suffering. Beatings as such, the court held, constituted child abuse and misuse of parental authority. It was of no relevance whether or not lasting physical injuries occurred.

34. The court further held that on account of their religious beliefs, the applicants were convinced that their child-rearing methods were legitimate. Accordingly, they were neither willing nor able to avert the danger to their child and the recent contradictory statements they had made could not be considered as credible.

35. On 16 August 2015 the Federal Constitutional Court refused to admit a constitutional complaint by the applicants (1 BvR 1467/15), without providing reasons.

2. Application no. 11344/16 (Pingen)

36. The Family Court, upon an application by the applicants dated 9 September 2013, initiated the main proceedings and on 24 September 2013 commissioned an expert opinion.

37. After interviewing the applicants, their two daughters and the children's foster parents, and observing a meeting between the applicants and their children, the expert submitted a written opinion on 23 December 2013. He stated that the applicants and their daughters had confirmed that the parents had used a rod as corporal punishment on the daughters and that even though the applicants had a loving attitude towards their children, they considered corporal punishment using physical objects as an appropriate and necessary parenting method. Given the past incidents of corporal punishment and the applicants' general willingness to use that method on their children, it was virtually certain that they would subject them to corporal punishment again. The expert concluded that the applicants' rigid, authoritarian parenting style and their conviction that children should be raised to obey their parents by means of corporal punishment using physical objects from the age of three conflicted significantly with the best interests of the children and was also detrimental to the unimpaired development of their personality. He expected that such methods would likely result in psychological issues. Overall, it was in the best interests of the children to place them away from their parents. Since the applicants' parenting style was based on religious convictions, they were unwilling to abandon the parenting method of corporal punishment and were not fully prepared to cooperate with the authorities and accept help. Consequently, measures that infringed on their rights to a lesser degree could not be considered sufficient.

38. Subsequently, the applicants submitted a privately commissioned expert opinion, in which the court-appointed expert's approach and methodology was criticised. In addition, the applicants retrospectively withdrew their consent to being assessed by the court-appointed expert and to the assessment of their three children.

39. In separate proceedings the Family Court, on 1 September 2014, issued an interim decision in which it withdrew the applicants' parental right to decide on the children being assessed by the court-appointed expert and consented to the psychological examination. It also forwarded the privately commissioned expert opinion to the court-appointed expert, who responded to the criticism in it and gave details of his methodology in a letter of 1 October 2014.

40. In a hearing of 29 September 2014 the parties discussed an agreement between the applicants and the youth office, with the aim of returning the daughters to the applicants and protecting all three children. However, the applicants and the youth office could not agree on a settlement as there was disagreement in particular on the children attending a state school and therapy. Moreover, the applicants were unwilling to remain in Germany under the supervision of the youth office for an extended period of time.

41. After hearing the applicants and their daughters several times, including in parallel proceedings, the Family Court decided on 21 October 2014 to withdraw the applicants' right to decide where all three children should live and to take decisions regarding the children's health and schooling, and transferred those rights to the youth office, which had been appointed as supplementary guardian. Additionally, the court ordered the applicants' son to be handed over to the youth office.

42. In its reasoning, which was similar to that in application no. 11308/14 (see paragraphs 29-31 above), the Family Court held that the applicants' parenting methods meant that it would be very detrimental to the best interests of all three children to continue to live with their parents. The court emphasised that the aim of Article 1666 of the Civil Code (see paragraph 55 below) was not to penalise past child abuse or views on parenting that were in contradiction to Article 1631 § 2 of the Civil Code (see paragraph 54 below), but to prevent imminent threats to the best interests of children. Based, in particular, on the opinion by the court-appointed expert and the statements by the applicants and their children, the court concluded that there was a high, concrete probability that the children would be subjected to systematic corporal punishment using physical objects, which would in turn be detrimental to the best interests of the children in physical and psychological terms. The severe interference with the applicants' right to a family under Article 6 of the Basic Law (see paragraph 53 below) by separating them from their children was nonetheless not only justified but also proportionate since the risk to the children could not be averted using milder means. Besides the problem of detecting corporal punishment through unannounced visits by the youth office (see paragraph 30 above), the court also pointed out that the applicants had consistently, over the course of the proceedings, shown a lack of willingness to cooperate with the youth office and had refused to accept state schools, both of which the court found necessary to prevent degrading corporal punishment and ensure the children's autonomous development. Furthermore, the court held that it could be expected that the applicants would leave Germany if their children were returned to them and thereby elude any orderly monitoring and supervision by the competent youth office. Lastly, the court concluded that the withdrawal of the consent to being examined by the court-appointed expert did not hinder the use of the expert opinion in the proceedings (see paragraph 31 above).

43. The applicants subsequently appealed against the decision of the Family Court and applied for an interim measure to suspend the order to hand their son over to the youth office.

44. On 15 December 2014 the Court of Appeal provisionally suspended enforcement of the Family Court's order on the son. The court held that given his age, one year and six months, and the fact that he was still being breastfed, enforcement would constitute an especially serious interference

with the applicants' rights. In addition, the son's young age meant there was no imminent and sufficient risk of him being subjected to corporal punishment.

45. During the appeal proceedings the applicants proposed a settlement to the Court of Appeal. The applicants would temporarily return to Germany and for two months they would gradually be reunited with their two daughters under the supervision of the youth office. At the end of that period, if the family reunification had been successful, the Family Court's decision would be set aside and the whole family would move to the Czech Republic.

46. On 26 March 2015 the Court of Appeal conducted an oral hearing during which it heard, *inter alia*, the applicants, their daughters, the court-appointed expert, the expert commissioned by the applicants and the children's guardian *ad litem*. The applicants' daughters stated that, even though they would like to see their parents more often, they would prefer living with their foster parents. Moreover, a representative of the youth office indicated during the hearing that the applicants had not distanced themselves from their previous parenting methods in a credible way and that therefore the youth office was not able to agree to the settlement they had proposed.

47. On 10 June 2015 the Court of Appeal, in a detailed decision of forty-five pages, rejected the applicants' appeal and confirmed the reasoning of the Family Court. The court held that corporal punishment with a rod, prohibited by Article 1631 § 2 of the Civil Code (see paragraph 54 below), constituted the physical abuse of children and if applied regularly and repeatedly the competent authorities were obliged under Article 1666 of the Civil Code (see paragraph 55 below) to intervene and take the necessary measures in the best interests of the children. The applicants' daughters had consistently stated during the proceedings that they had been caned on a daily basis and the applicants themselves had confirmed that they had "disciplined" their daughters with a rod. The court was convinced that the applicants would continue to use corporal punishment on their children in the future since that parenting method was already firmly established and was based on religious beliefs from which the applicants had not fundamentally distanced themselves. Their statements had shown that they, in essence, continued to approve of corporal punishment and considered it an appropriate parenting method. The fact that the applicants had recently acknowledged that their children had a right to a non-violent upbringing did not mean they had changed their attitudes to parenting in a permanent way; rather, that had only served a procedural purpose, namely to have their daughters returned to them as soon as possible. In the court's opinion, the applicants were only prepared to refrain temporarily from corporal punishment. The court was therefore unable to find that the applicants had changed their way of parenting and distanced themselves from corporal

punishment in a manner which the court could regard as credible. Consequently, there was an imminent danger of systematic corporal punishment if the two daughters were returned to their parents. The danger also existed for the applicants' son as there was no fixed age when the applicants started "disciplining" their children as they rather considered it a tool to enforce their parental authority. As the two-year-old son was expected to start his "phase of defiance" soon, it also had to be expected that the applicants would respond with caning.

48. The Court of Appeal also confirmed that the applicants' withdrawal of their consent to being assessed did not prevent the courts from using the expert opinion as evidence and that there were no less severe measures available to avert the imminent detriment to the best interests of the children resulting from their parents' use of corporal punishment. In that regard, the court, *inter alia*, pointed to the fact that the applicants had already left Germany with their son and refused to return to live there permanently. The competent authorities would therefore from the very outset be unable to provide sufficient support to the family or effectively monitor the applicants' parenting methods.

49. On 16 August 2015 the Federal Constitutional Court refused to admit a constitutional complaint by the applicants (1 BvR 1589/15), without providing reasons.

II. RELEVANT DOMESTIC LAW

A. German Basic Law (*Grundgesetz*)

50. Article 1 § 1 of the Basic Law reads as follows:

"(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."

51. Article 2 of the Basic Law, in so far as relevant, reads as follows:

"(1) Every person shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the constitutional order or the moral law.

(2) Every person shall have the right to life and physical integrity. ..."

52. Article 4 of the Basic Law, in so far as relevant, reads as follows:

"(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed. ..."

53. Article 6 of the Basic law, in so far as relevant, reads as follows

"(1) Marriage and the family shall enjoy the special protection of the state.

(2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.

(3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect. ...”

B. German Civil Code (*Bürgerliches Gesetzbuch*)

54. Article 1631 § 2 of the German Civil Code reads as follows:

“Children have the right to a non-violent upbringing. Physical punishment, psychological injury and other degrading measures are prohibited.”

55. Article 1666 of the German Civil Code reads, as far as relevant, as follows:

“(1) Where the physical, mental or psychological best interests of a child or a child’s property are endangered and the parents do not wish, or are not able, to avert the danger, a family court must take the necessary measures to avert the danger.

...

(3) The court measures in accordance with subsection (1) include in particular

1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
2. instructions to ensure that the obligation to attend school is complied with,
3. prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time,
4. prohibitions to establish contact with the child or to bring about a meeting with the child,
5. substitution of declarations of the person with parental authority,
6. part or complete removal of parental authority.”

56. Article 1666a of the German Civil Code, in so far as relevant, reads as follows:

“(1) Measures which entail a separation of the child from his or her parental family are only allowed if other measures, including public support measures, cannot avert the danger ...

(2) The right to care for a child may only be withdrawn if other measures have been unsuccessful or if it is to be assumed that they do not suffice to avert the danger.”

C. Courts Constitution Act (*Gerichtsverfassungsgesetz*)

57. According to section 198 of the Courts Constitution Act, a party to proceedings who suffers a disadvantage from protracted proceedings is

entitled to adequate monetary compensation. In so far as relevant, section 198 reads:

> "(1) Whoever, as the result of the unreasonable length of a set of court proceedings, experiences a disadvantage as a participant in those proceedings shall be given reasonable compensation. The reasonableness of the length of proceedings shall be assessed in the light of the circumstances of the particular case concerned, in particular the complexity thereof, the importance of what was at stake in the case, and the conduct of the participants and of third persons therein.
>
> (2) A disadvantage not constituting a pecuniary disadvantage shall be presumed to have occurred in a case where a set of court proceedings has been of unreasonably long duration. Compensation can be claimed therefore only in so far as redress by other means, having regard to the circumstances of the particular case, is not sufficient in accordance with subsection (4). Compensation pursuant to the second sentence shall amount to EUR 1,200 for every year of the delay. Where, having regard to the circumstances of the particular case, the sum under the third sentence is inequitable, the court can assess a higher or lower sum. ...
>
> (5) A court action to enforce a claim under subsection (1) can be brought at the earliest six months after the filing of the notice of delay. ..."

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. United Nations Convention on the Rights of the Child of 26 January 1990

58. The United Nations Convention on the Rights of the Child entered into force for Germany on 5 April 1992. The relevant parts read as follows:

> "**Article 3**
>
> (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. ...
>
> **Article 9**
>
> (1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
>
> (2) In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. ...
>
> **Article 19**
>
> (1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. ...

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. ..."

59. The Committee on the Rights of the Child of the United Nations provided in its general comment no. 13 (2011) (The right of the child to freedom from all forms of violence (CRC/C/GC/13); published on 18 April 2011) guidance on the interpretation of Article 19 of the Convention on the Rights of the Child. The relevant parts read:

"**IV. Legal analysis of article 19**

A. Article 19, paragraph 1

1. '... all forms of ...'

No exceptions. The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. "All forms of physical or mental violence" does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

...

Physical violence. This includes fatal and non-fatal physical violence. The Committee is of the opinion that physical violence includes:

(a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment;

...

Corporal punishment. In general comment No. 8 (para. 11), the Committee defined "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion. In the view of the Committee, corporal punishment is invariably degrading.

...

Harmful practices. These include, but are not limited to:

(a) Corporal punishment and other cruel or degrading forms of punishment;

..."

60. In its general comment no. 14 (2013) (The right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14); published on 29 May 2013) the Committee provided guidance on the interpretation of Article 3 § 1 of the Convention and the factors that should be taken into account when making a best interests assessment. The relevant parts read:

"**A. Best interests assessment and determination**

...

1. Elements to be taken into account when assessing the child's best interests

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:

(a) The child's views

...

(b) The child's identity

...

(c) Preservation of the family environment and maintaining relations

...

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". ...

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child.

...

(d) Care, protection and safety of the child

...

73. Assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc., as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc.(arts. 32-39).

74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.

(e) Situation of vulnerability

...

(f) The child's right to health

...

(g) The child's right to education

..."

B. European Social Charter of 18 October 1961

61. The European Social Charter entered into force *vis-à-vis* Germany on 27 January 1965. Its Article 17 reads as follows:

"**Article 17 – The right of mothers and children to social and economic protection**

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services."

62. In a Resolution adopted on 17 June 2015 (CM/ResChS(2015)12), the Committee of Ministers of the Council of Europe stated the following regarding the interpretation of this provision:

"There is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comment Nos. 8 and 13 of the Committee on the Rights of the Child. Most recently, the following interpretation of Article 17 of the Charter has been given as regards the corporal punishment of children was made in the decision World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, sections 19-21: 'To comply with Article 17, States' domestic law must prohibit and penalise all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.'"

THE LAW

I. JOINDER OF THE APPLICATIONS

63. Given their similar factual and legal background, the Court decides that the two applications shall be joined by virtue of Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicants complained that the decisions of the domestic courts in the main proceedings to withdraw parts of their parental authority had been disproportionate and had been based on unfair proceedings that had lacked sufficient factual foundation. They further alleged that their religious beliefs were the reason their parental rights had been withdrawn and that they had been prevented from raising their children in compliance with their religious beliefs. Lastly, the applicants complained that the main proceedings before the family courts had been unreasonably long. The applicants relied on Article 8 of the Convention. Moreover, they invoked Articles 6 § 1 and 9 of the Convention and Article 2 of Protocol No. 1. The Court, as master of the characterisation to be given in law to the facts of the case (see *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I), finds it appropriate to examine all complaints solely under Article 8 of the Convention, which reads, as far as relevant, 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 ... 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. Length of proceedings

65. As far as the applicants' complaint about the length of the main proceedings is concerned, the Court reiterates that in relation to the State's positive obligations under Article 8 of the Convention it has previously considered that ineffective, and in particular delayed, conduct of custody proceedings may give rise to a breach of Article 8 of the Convention (see, for example *Moog v. Germany*, nos. 23280/08 and 2334/10, § 87, 6 October 2016; *Z. v. Slovenia*, no.43155/05, § 142, 30 November 2010; and *V.A.M. v. Serbia*, no. 39177/05, § 146, 13 March 2007).

66. Turning to the facts of the present case the court observes that the main proceedings in both applications were started upon applications by the applicants dated 9 September 2013 and ended by decisions of the Federal Constitutional Court of 16 August 2015. The proceedings, at three levels of jurisdiction, therefore lasted one year and eleven months. The Court further notes that during the one year and one month the cases were pending before the Family Court it commissioned an expert opinion, which had to be supplemented owing to criticism of it by the applicants' privately commissioned expert. The court also substituted the consent of the children in parallel proceedings, heard the applicants, their children and further witnesses and led settlement negotiations between the applicants and the

youth office. Having regard to the above, the Court considers that there were no particular delays in the course of the proceedings that could be attributed to the conduct of the Family Court. The Court therefore finds that in the light of all the material in its possession they do not disclose any appearance of a violation of Article 8 in regard to the length of proceedings. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Withdrawal of parental authority

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

B. Merits

1. The parties' submissions

(a) The applicants

68. The applicants argued that the partial withdrawal of their parental authority had been disproportionate. The domestic courts had, in an arbitrary fashion, equated corporal punishment with child abuse, even though none of the children had shown any physical signs of abuse or injuries. The applicants submitted that their parenting method of "corporal discipline" did not constitute violence or child abuse, or harm their children in any way. Nonetheless, the domestic courts had incorrectly presumed that "corporal discipline" would likely result in psychological problems. That presumption had been based on the opinion of a court-appointed expert, whose conclusions had not only been challenged to a large extent by the applicants' own expert but whose examination the applicants had also not consented to.

69. The applicants further argued that separating the children from their parents had harmed them more than corporal punishment of any kind. Consequently, the decisions had not been based on the best interests of the children. The decisions had been highly disproportionate as the courts had not considered less severe measures, but had expected the applicant parents to abandon their parenting practices and therefore their religious beliefs. Moreover, the courts had prevented the applicants from leaving Germany with their children and from moving to a country where their parenting methods were accepted.

70. In sum, the withdrawal of parental authority had not pursued a legitimate aim as it had not been geared towards the best interests of the children but had constituted discrimination based on the applicants'

membership in the Twelve Tribes Church. Furthermore, the decisions had not been "necessary in a democratic society" as they had not been based on "relevant and sufficient" reasons.

(b) The Government

71. The Government submitted that the partial withdrawal of the applicants' parental authority had constituted an interference which had aimed at protecting the rights of the applicants' children. The decisions had been "necessary in a democratic society" as there had been "relevant and sufficient" reasons to withdraw some parental rights and transfer them to the youth office. The applicants, based on their religious convictions, considered caning used for corrective and instructive purposes as legitimate and the applicants in application no. 11344/16 had already regularly used corporal punishment against their daughters with a rod. Owing to their obligation to protect children from violence, the domestic courts had been forced to withdraw those parts of the applicants' parental authority that had been necessary to protect the children's best interests, which in the instant cases had overridden the interests of the parents. The relevant court decisions had been as limited as possible with regard to which parental rights could remain with the applicants. Additionally, since the applicants had not shown in a credible manner that they had abandoned their parenting practices and had not been willing to cooperate with the competent authorities either, no other, more lenient measure had been capable of protecting the applicant children.

72. The Government also pointed out that in the main proceedings at issue there had been no further restrictions on contact between the applicants and their children and that they had not been prevented from teaching their children their religious community's ideas and beliefs. The courts had merely taken the necessary steps to prevent the children from suffering from physically and psychologically harmful behaviour, which according to the applicants was based on their religious convictions and understanding of the Bible.

73. Similarly, the courts had not prevented the applicants from leaving Germany. However, in the situation the applicants had created by leaving Germany, the domestic courts had correctly concluded that the risk to the best interests of the children could no longer be averted by more lenient measures, since these could not be sufficiently monitored or enforced by the competent domestic authorities.

74. Lastly, the Government submitted that the decisions had been based on fair proceedings, which had fully involved the applicants and their children. In addition, the courts had assessed in detail the written expert opinion as well as the challenges to it by the applicants. The courts had legitimately considered the applicants' withdrawal of their consent to the assessment as irrelevant as they had been sufficiently informed before the

examination and there was no privilege against self-incrimination in civil proceedings. In sum, the assessment of evidence by the courts had not been arbitrary or unfair, but had established a sufficient factual foundation for anticipating an imminent risk to the best interests of the children.

(c) The third-party intervener

75. The third party, ADF International, submitted that it was generally in a child's best interests to be raised by his or her parents and that removing a child from parental care was a traumatic and harmful experience. The intervener further argued that the Court had acknowledged this by emphasising the importance of upholding family ties and aiming at family reunification in its case-law. Additionally, the Court had continually requested sufficiently sound and weighty reasons to justify taking children into care and held that the mere fact that a child would be better off if placed in care was not sufficient (see *Olsson v. Sweden (no. 1)*, 24 March 1988, § 71, Series A no. 130).

2. The Court's assessment

(a) Interference

76. The parties agreed that the decisions in the main proceedings to withdraw the applicants' right to decide where their children should live, and to take decisions regarding the children's health and schooling had constituted an interference with the applicants' right to respect for their family life. The Court endorses this conclusion and observes that such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society".

(b) Legal basis

77. The Court notes that while complaining about the application of the relevant provisions in the present case, the applicants did not dispute that the relevant decisions had had a basis in national law, namely Articles 1666 and 1666a of the Civil Code (see paragraphs 55, 56 above).

(c) Legitimate aim

78. The applicants alleged that the domestic court decisions had had no legitimate aim and that the withdrawal of parts of their parental authority had not been based on considerations concerning corporal punishment but on the fact that the applicants were members of the Twelve Tribes Church and raised the children in accordance with their faith. They argued that the decisions in essence constituted discrimination on the grounds of religion.

79. The Court reiterates that the right to respect for family life and to religious freedom, as enshrined in Articles 8 and 9 of the Convention, together with the right to respect for parents' philosophical and religious convictions in education, as provided for in Article 2 of Protocol No. 1 to the Convention, convey to parents the right to communicate and promote their religious convictions in bringing up their children (*Vojnity v. Hungary*, no. 29617/07, § 37, 12 February 2013). While the Court has accepted that this might even occur in an insistent and overbearing manner, it has stressed that it may not expose children to dangerous practices or to physical or psychological harm (ibid.). This protection of minors from harm has also been affirmed in other international treaties, such as the United Nations Convention on the Rights of the Child, which obliges states to take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (see paragraph 58 above).

80. The Court notes that even though the domestic court decisions discussed the applicants' church membership and their religious views, they based their decisions on the likelihood that the children would be caned. It further observes that the connection between religious views and caning was established by the applicants themselves by justifying their parental practice with quotes from the Bible and their religious views. The Court therefore concludes that the decisions of which the applicants complained were aimed at protecting the "rights and freedoms" of the children. Accordingly, they pursued a legitimate aim within the meaning of paragraph 2 of Article 8.

(d) Necessary in a democratic society

(i) General principles

81. The Court reiterates that the question of whether an interference was "necessary in a democratic society" requires consideration of whether, in the light of the case as a whole, the reasons adduced to justify the measures were "relevant and sufficient". Article 8 requires that a fair balance must be struck between the interests of the child and those of the parent and, in striking such a balance, particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Elsholz v. Germany* [GC], no. 25735/94, §§ 48, 50, ECHR 2000-VIII; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V (extracts); and *Hoppe v. Germany*, no. 28422/95, §§ 48, 49, 5 December 2002).

82. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and second, it is in the child's best interests to ensure his development in a safe and secure environment, and a parent

cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (*Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010). It is not enough to show that a child could be placed in a more beneficial environment for his or her upbringing (see *K. and T. v. Finland* [GC], no. 25702/94, § 173, ECHR 2001-VII).

83. The Court further notes that while Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. The Court cannot satisfactorily assess whether the reasons adduced by the national courts to justify these measures were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests (see, *inter alia*, *T.P. and K.M. v. the United Kingdom*, cited above, § 72, and *Süß v. Germany*, no. 40324/98, § 89, 10 November 2005).

84. In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody issues (compare, among many other authorities, *Elsholz*, cited above, § 48). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (ibid., § 49).

85. Lastly, the Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). A positive obligation on the State to provide protection against inhuman or degrading treatment has been found to arise under Article 3 in a number of cases: see, for example, *A. v. the United Kingdom* (cited above), where the child applicant had been caned by his stepfather; and *Z and Others v. the United Kingdom* ([GC], no. 29392/95, ECHR 2001-V), where four child applicants were severely abused and neglected by their parents.

86. Moreover, even though ill-treatment in violation of Article 3 usually involves actual bodily injury or intense physical or mental suffering, in the absence of those aspects, treatment may still be characterised as degrading and fall within the prohibition set forth in Article 3, if it humiliates or

debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (*Bouyid v. Belgium* [GC], no. 23380/09, § 87, ECHR 2015, with further references). In that context the Court also notes that the Committee on the Rights of the Child of the United Nations defined corporal punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, and emphasised that all forms of violence against children, however light, are unacceptable (see paragraph 59 above).

87. Lastly, in cases relating to both Articles 3 and 8 the Court has stressed the relevance of the age of the minors concerned and the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection (see, for example, *K.U. v. Finland*, no. 2872/02, § 46, ECHR 2008; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, ECHR 2006-XI and *Ioan Pop and Others v. Romania*, no. 52924/09, 6 December 2016). The need to take account of the vulnerability of minors has also been affirmed at international level (see the references to international law in *Bouyid*, cited above, §§ 52-53 and 109).

(ii) Application to the present case

88. Turning to the circumstances of the present case, the Court notes that at the core of the applicants' complaint lies the question of whether a parental practice of caning constitutes a sufficiently weighty reason to withdraw parts of parental authority and to take children into care.

89. The Court acknowledges that the applicants argued that their practice of caning did not cross the threshold of Article 3 of the Convention and that no physical signs of abuse were found on the children when they were examined after being taken into care. While the Court does not have to decide in the present case whether the applicants' treatment of their children, either actual or anticipated, went beyond the threshold of severity to fall within the ambit of Article 3 of the Convention, it observes, nonetheless, that treatment of this kind could fall within the scope of Article 3 of the Convention (see *A. v. the United Kingdom*, cited above, § 21).

90. In order to avoid any risk of ill-treatment and degrading treatment of children, the Court considers it commendable if member States prohibit in law all forms of corporal punishment of children. In that regard it notes that Germany has already established a right for children to have a non-violent upbringing and has prohibited physical punishment, psychological injury and other degrading measures.

91. The Court notes that member States should enforce legal provisions prohibiting corporal punishment of minors by proportionate measures in order to make such prohibitions practical and effective and not to remain theoretical. Therefore, the Court finds that the risk of systematic and regular

caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care.

92. In assessing whether the reasons adduced by the domestic courts were also sufficient for the purposes of Article 8 § 2, the Court will have to determine whether the decision-making process, seen as a whole, provided the applicants with the requisite protection of their interests and whether the measures chosen were proportionate.

93. The Court observes that the applicants, assisted by counsel, were in a position to put forward all their arguments against the withdrawal of parental authority and that the courts diligently established the facts of the case. The Family Court and the Court of Appeal heard, *inter alia*, the applicants, the children – except G. Pingen –, the guardian *ad litem* of all the children and representatives of the competent youth office. As regards the fact that the courts refrained from hearing G. Pingen, who was still with his parents during the proceedings, the Court reiterates that the requirement of hearing children in custody proceedings depends on the specific circumstances of each case, in particular the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII). Given that G. Pingen had just turned two before the decision of the Court of Appeal, the Court finds it acceptable that the domestic courts did not question him.

94. Moreover, the Family Court commissioned an expert opinion, heard that expert and the one commissioned by the applicants, who challenged the court-commissioned expert's findings. The Court of Appeal also heard both experts. In that context, the Court notes that the applicants unsuccessfully criticised the court-commissioned expert's approach and pursued those arguments in the present proceedings. However, the Court has no cause to doubt the professional competence of the expert or the manner in which he conducted the interviews with all concerned.

95. In regard to the applicants' withdrawal of the consent they had given to be examined by the court-commissioned expert, the Court observes that, when the applicants were interviewed by the expert, they had been properly instructed and voluntarily underwent the interview and assessment. The Court would therefore note that the expert did not act against the will of the applicants and that the applicants were not forced to undergo the expert's assessment. In addition, the Court finds that the Government has rightly pointed out that Article 6 does not include a privilege against self-incrimination in civil proceedings and that it is therefore not necessary to accept a withdrawal of consent *ex post*, when the result of the expert opinion had already been known. Accepting such a withdrawal would jeopardize family court proceedings and a court's obligation to effectively protect children from harm. In sum, the Court agrees with the Family Court and the Court of Appeal that the withdrawal *ex post* of the applicants' consent did not render the expert opinion unusable as evidence and that

relying on the opinion was justified by the general interest of the effective protection of children in family court proceedings.

96. Having regard to the above and to the domestic court's benefit of direct contact with all of the persons concerned, the Court is satisfied that the German courts' procedural approach was reasonable and provided sufficient material to reach a reasoned decision on the question of withdrawal of parental authority in the present case. The Court can therefore accept that the procedural requirements implicit in Article 8 of the Convention were complied with.

97. Lastly, the Court has to assess whether the decisions to withdraw parts of the parents' authority and to take the children into care were proportionate. Taking children into care and thereby splitting up a family constitutes a very serious interference with the right to respect to family life protected under Article 8 of the Convention and should only be applied as a measure of last resort (see *Neulinger and Shuruk*, cited above, § 136). However, the decisions by the domestic courts were based on a risk of inhuman or degrading punishment, as prohibited by Article 3 of the Convention. The Court has previously held that even in the most difficult circumstances the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. Moreover, the domestic courts did not assess the risk for the children in the abstract – based on the applicants' view on parenting – but followed a differentiated approach and examined for each child, based on the respective age, whether it could be expected that the applicants' child-rearing methods would be put into practice and that therefore a real and imminent risk of corporal punishment existed. Given the right of children to a non-violent upbringing in German law and the conflicting but strict conviction of the applicants, the domestic courts concluded that taking the children into care was justifiable.

98. In addition, the Court observes that the Family Court and the Court of Appeal gave detailed reason why there was no other option available to effectively protect the children, which entailed less of an infringement of each family's rights. Based on the expert's opinion that the physical effects of caning were only short-lived while psychological consequences could only be determined after a longer period of time, the courts correctly concluded that an effective protection of the children by unannounced visits and closer monitoring was impossible. The Court agrees with this line of reasoning and would add that the proceedings concerned a form of institutionalized violence against minors, which was considered by the applicant parents as an element of the children's upbringing. Consequently, any assistance by the youth office, such as training of the parents, could not have effectively protected the children, as corporally disciplining the children was based on their unshakeable dogma.

99. Moreover, the Court notes that the Court of Appeal correctly pointed out that in the situation the parents had created by leaving the country during the proceedings, the detriment to the best interests of the children could no longer be averted by more lenient measures since the competent authorities would not be able to sufficiently monitor and enforce such measures. In that regard, the Court notes that the domestic courts did not order the applicants to stay in Germany but reasonably concluded that any less infringing measure would have at least entailed the need for supervision and monitoring by the competent domestic authorities. Lastly, the Court observes that the Family Court attempted to broker a friendly settlement between the youth office and the applicants, with the aim of returning the children to their parents and simultaneously protecting the children from corporal punishment.

100. In sum, the foregoing considerations are sufficient to enable the Court to conclude that there were "relevant and sufficient" reasons for the withdrawal of some parts of the parents' authority. Based on fair proceedings, the domestic courts struck a balance between the best interests of the children and those of the applicants, which did not fall outside the margin of appreciation granted to the domestic authorities.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint under Articles 8 concerning the withdrawal of parental authority admissible and the complaint under Article 8 concerning the length of proceedings inadmissible;

3. *Holds* that there has been no violation of Article 8 of the Convention in regard to the withdrawal of parental authority.

Done in English, and notified in writing on 22 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Erik Møse
Deputy Registrar	President

APPENDIX

Application no.	Applicant	Date of birth	Nationality
11308/16	**TLAPAK Noah** **TLAPAK Mo-Aydah**	30/07/1985 04/05/1990	German and American German
11344/16	**PINGEN Marc** **PINGEN Hannah**	21/11/1979 02/04/1984	German German