Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

34.

1. The first applicant ([redacted]) is of Roma origin. The third applicant ([redacted]) is the child of the first and the second applicant ([redacted]) and he is considered by his parents to be Roma .
2. On 13 December 2013, when the first applicant was four months pregnant with the third applicant, the local health visitor (védőnő) who had met her sent a letter (esetjelző lap - Annex 1) to th[redacted]Gyermekjóléti Szolgálat (hereinafter "the Child Welfare Service", the local body which provides basic social services to families) noting that the first applicant was pregnant, that this was her sixth pregnancy, and that it was "unwanted" (the applicant denies having described it as such). In this letter the health visitor made various unfavourable comments about the first applicant, including that she was living alone, that she was living off social benefits, and that she was participating in a public work programme only because it was "obligatory"; she said the first applicant "cried and was hysterical" about the fact that she wanted to raise all her children at home. The letter also accused the first applicant of endangering the foetus by smoking during the pregnancy, and of being "distracted" and not concentrating on her unborn baby. The health visitor concluded by recommending that the third applicant should not be allowed to be taken home from the hospital by his mother after his birth. The first applicant was not formally notified of this letter. She contests all of the health visitor's accusations, with the following clarifications: she was living alone to the extent that the second applicant was working most of the time in Budapest; she does receive social benefits and participated in related public works, but believes this has no bearing on her fitness as a parent; and she could not entirely quit smoking whilst pregnant, but she reduced her smoking as much as she could.
3. On 11 February 2014, when the first applicant was six months pregnant, the local health visitor sent a letter (esetjelző lap - Annex 3) to the Borsod-Abaúj-Zemplén County Hospital recommending that they not allow the first applicant to take her new-born baby home from the hospital after birth. The only reason she gave was that all the applicants' other children had been removed and were in care. This was actually false: the applicants' daughter, [redacted] was living at home at the time. The first and second applicants were not notified of the letter.
4. The third applicant was born on 3 May 2014 in Miskolc, in Borsod-Abaúj-Zemplén County Hospital, a public hospital. On 6 May 2014, the hospital staff did not allow the first applicant to see the third applicant. The first applicant was discharged from the hospital that day but was told that she could neither say good-bye to the third applicant nor take him with her. The first applicant did not receive any information as to why she was not allowed to see or take her child home. No official decision was handed to her concerning the removal of her child into care.
5. According to ERRC research on the situation of Romani children in the Hungarian child protection system conducted in 2007 (Annex 29), Romani children were overrepresented in care institutions in Hungary at that time: 58% of the children interviewed in such institutions were of Romani origin, while the proportion of Romani children in the entire Hungarian child population was estimated to be 13%.
6. The disproportionately high number was confirmed in subsequent ERRC research published in 2011 (Annex 30), which found that 65.9% of the children in homes visited were of Romani origin.
7. The problem has also been noted by the UN Committee on the Rights of the Child (CRC). In 2006, the CRC, in its Concluding Observations on Hungary, expressed concerns about "the high rate of children placed in alternative care, often for financial reasons... The Committee is particularly worried about the considerable over-representation 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" (Annex 31, par .30). In its 2014 Concluding observations on Hungary, the CRC remained concerned that "Roma children continue to be overrepresented in care institutions" in Hungary (Annex 32, paras 36-38).
8. In [redacted]veral Romani children have been taken into care in recent years. The applicants note that the head of the Child Protection Authority is known among the local Roma community to have made it clear that Roma children in [redacted] will not be allowed home". The applicants are aware of nine cases of children belonging to eight families in the town whose parents were prohibited

Statement of the facts (continued)

35.

by the authorities from taking them home from hospital; all of those cases involve Roma. The applicants are not aware of any cases in [redacted] of non-Roma non-Roma families not being allowed to take their children home from hospital after birth as part of the process of those children being taken into care.

9. On 14 December 2015, the first-instance Child Protection Authority provided detailed information as to the removal of children into care in towns in the area within the remit of the first-instance Child Protection Authority (Annex 35). Compared to the other towns, in [redacted], where the percentage of Roma population is around 50%, the number of removals is extremely high (some example 21 times higher in 2013 than in other similar towns) (Annex 35). According to the applicants' representatives, in 2013, 19 out of the 23 decision taking children into care, and in 2014 all of the 6 temporary removals and 6 of the 10 permanent removals, concerned Romani children (Annex 36).

10. The Government Office of Borsod-Abaúj- Zemplén County (Kormányhivatal) conducted an investigation into the functioning of the child welfare service in Kesznyéten. In their write-up (Feljegyzés - Annex 33) dated 2 February 2015, the Government Office found several flaws in the functioning of the service, including that their expert programme was not in compliance with the law, their human resources were not sufficient to provide an adequate service, they were not providing an appropriate level of service, and their child-protection signalling system (gyermekvédelmi jelzőrendszer) did not function in accordance with the law. The Government Office made a decision (Annex 34) ordering the local government of [redacted] to remedy the situation.

11. On 6 May 2014, the Child Welfare Service sent a notice (Annex 7) to the Child Protection Authority that the first applicant – whom they described as being in "crisis" – had given birth to a healthy baby. The notice goes on to say that, based on the health visitor's earlier letters, the baby should not be taken home, because of the "unreliable" behaviour of the mother. The Child Welfare Service concluded by suggesting that the first-instance Child Protection Authority prevent the first applicant from taking the child home from hospital. The applicants were not made aware of this notice.

12. On 7 May 2014 (i.e. the day after the first applicant was prohibited from returning home with her child), the first-instance Child Protection Authority took a decision (Annex 9) to remove the third applicant temporarily from his parents' care. The reasons for taking the third applicant into care, in extenso, are as follows: "Due to the mother's irresponsible way of life, and inadequate housing conditions, many of her children have already been removed. Despite this, the parents decided to have another child."

13. The applicants received this decision on 12 May 2014, i.e. six days after it was made. During that time, the first and second applicants did not know where their new-born child was or the reasons why he could not be with them.

14. On 16 May 2014, the first applicant challenged (Annex 10) the 7 May decision before the Borsod-Abaúj-Zemplén County Regional Government Office of Social Affairs and Child Protection (hereinafter "the second-instance Child Protection Authority").

15. On 24 June 2014, the second-instance Child Protection Authority upheld the decision (Annex 12) to take the third applicant into care. The decision acknowledged that the first-instance decision lacked appropriate reasoning and included more detailed reasoning. It listed some reasons such as school absenteeism among the older children, illnesses of two of the older children, and the parents' failure to ensure that the children were vaccinated. The reasons also included details about the first applicant's way of life: her problematic relationship with the second applicant; smoking during her pregnancy; failure to attend health check-ups; weight loss; and being seen going in and out from the local pub. The report also alleged that the first applicant behaved irresponsibly with the children: one child was seen playing alone close to a road; and one the children was once seen playing with a "box for pills". The decision also noted that the family's housing conditions were not adequate and that the first applicant's oldest son was in a youth offender institution. The decision also accused the first applicant of having alcohol-abuse and mental-health problems.

16. On 5 August 2014, the first applicant submitted a claim (Annex 13) for judicial review of the administrative decision before the Administrative and Labour Court of Miskolc. The first applicant asked the court to end the temporary care of the third applicant and place him back with his family; or, otherwise, to annul the administrative decision and order the first-instance Child Protection Authority to start new proceedings. The first applicant contested all the reasons given for taking the third applicant into care and claimed that her personal and housing circumstances were adequate to accommodate a new-born.

Statement of the facts (continued)

36.

She admitted that she smoked but noted that she had reduced the number of cigarettes she smoked each day during the pregnancy and had given birth to a healthy baby. She also noted that she and the second applicant had renovated the home in which they were living at the time the third applicant was born, and then, later, that they had purchased a new home fully connected to the electricity, water, and gas mains. She also challenged the allegations about alcohol abuse and mental-health problems, asserting that these allegations amounted to racial stereotypes of Roma and were therefore discriminatory. She also established that she had sources of income other than welfare benefits. As to the allegations relating to her older children, she admitted that she had difficulties getting one of her sons and her daughter to attend school. She noted that only one of her children (not two) had had health problems. The first applicant claimed that all her children were vaccinated, albeit in some cases with some delay; however the delay was due to infections the children had had, which made timely vaccination impossible.

17. On 19 September 2014 the first applicant submitted a request to the Administrative and Labour Court of Miskolc to suspend the enforcement of the decision temporarily taking the third applicant into care and asked the court to return the third applicant to his family (Annex 14).

18. On 9 October 2014, the Administrative and Labour Court of Miskolc dismissed the appeal (Annex 15) and the request for suspension. It confirmed that the first applicant's way of life, living conditions, and the fact that her older children were in care justified the removal of the third applicant. The court found that the renovations and purchase of the new home could not be considered relevant, as the court could only consider circumstances at the time when the decision was taken.

19. On 7 December 2014, the first applicant submitted a request for judicial review (Annex 16) to the Supreme Court (Kúria) against the 9 October decision and asked the Kúria to reverse the decision. The first applicant argued that the decision of the Administrative and Labour Court of Miskolc violated her and her son's rights guaranteed under the Fundamental Law of Hungary (the Constitution), including the right to be free from inhuman and degrading treatment, the right to respect for family and private life, the right to equal treatment, the right to the protection of the family, the right of her son to physical, mental, and moral development, and the right of the parents to make decisions about the care and education of their children. The request also claimed violations of the third applicant's rights under the Child Protection Act (Law No. 31 of 1997), including the right to be brought up in the family, the prohibition of removal into care for financial reasons, the requirement to respect the best interests of the child, and the right, before such a last-resort measure is taken, to be informed about services that could ensure the care of the child and to receive assistance from the authorities in order to provide adequate care. The applicants note that their constitutional claims included a claim that the removal amounted to discrimination based on their Roma ethnicity.

20. In a decision delivered on 13 May 2015 (Annex 23), the Kúria dismissed the applicant's request. The Kúria reiterated that although there had been several positive developments in the life of the applicants, these developments were not sufficient to justify the return the third applicant to the family and, in any event, they happened after the removal of the third applicant and therefore could not be considered relevant to the legality of that decision. The Kúria was silent about the first applicant's allegation of discrimination.

21. On 7 August 2015, the first applicant submitted a constitutional complaint to the Constitutional Court (Alkotmánybíróság) to review the legality and compliance of the court decision with the Constitution (Annex 24). This complaint is still pending before the Alkotmánybíróság.

22. In August 2015, the third applicant was allowed to spend two weeks at home with the first and second applicants and with his siblings. According to the write-up (Feljegyzés) of the Child Welfare Service, the children enjoyed being at home. According to the third applicant's foster parent, the third applicant was very depressed for days and lost his appetite after returning to the foster parents after those two weeks spent at home with his family (Annex 37).

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

37. Article invoked	Explanation
Article 14, taken with Article 3	The applicants submit that they were subjected to inhuman and degrading treatment – the refusal to allow the first applicant to leave hospital with the third applicant on 6 May 2014 and the removal of the third applicant into care the next day – as a result of a distinction based on their Roma ethnicity. The applicants note the comments made indicating that Roma children in [redacted] would not be allowed home (see statements of facts, § 8); these were reinforced by hostile comments made to the first applicant by the health visitor (see statements of facts, § 2). Regardless of whether the Court views the stated reasons for taking the third applicant into care as legitimate, the Court cannot ignore these other statements (Baczkowski and others v Poland (2007), §§ 97-100), which show that the reasoning of the authorities was contaminated by anti-Roma bias (E.B. v France (2008), § 80). In any event, all (nine) cases of children i[redacted] who could not be brought home from the hospital by their parents involved Roma. In these circumstances, and unless the Government can demonstrate otherwise, there exists a discriminatory practice. Orsus and others v Croatia (2010), § 153 (when a measure only affects Roma, it "clearly represents a difference in treatment"). The applicants also point to the statistical research showing a highly disproportionate number of Roma children in state care in Hungary, and invite the Court to make a finding of discrimination on that basis (see statements of facts, § 5,6 and 9, and D.H. and others v Czech Republic (Grand Chamber, 2007), § 193). The applicants submit that when a measure as extreme as taking a child into care soon after birth is discriminatory, it rises to the level of a violation of Article 14, taken with Article 3 (see, mutatis mutandis, Moldovan and others (no.2) v Romania (2005), § 111 ("discrimination based on race can of itself amount to degrading treatment"). The applicants invite the Court to consider the situation of the third applicant in particular, as a child; to the extent that it is currently possible to assess, being removed from his parents and being unable to form a bond with them early in life are having a negative impact on his psychological and physical development. Given his young age, his vulnerability as an infant and a member of the Roma minority, and the ample availability of less intrusive means of ensuring the third applicant's well-being, the applicants believe that a finding of a violation of Article 3 is particularly warranted. See, mutatis mutandis, Mubilanzila Mayeka and Kaniki Mitunga v Belgium (2006) § 55.
Article 14 taken with Article 8	Without prejudice to the argument under Article 14 taken with Article 3, the applicants submit that if the Court does not make a finding of a breach of Article 3, on the basis of the same principles, it is appropriate to find a violation of Article 14 taken with Article 8. See, e.g., K. and T. v Finland (2001), § 168; Moser v Austria (2005); Wallová and Walla (2006); Zhou v Italy (2014). Not allowing the third applicant to go home with his parents from possible was not "in accordance with the law", and the authorities failed to consider less intrusive measures of supporting the family. The applicants also note that they had to rely on ordinary administrative proceedings which took over a year.
Article 13, taken with Article 3 (or, in the alternative, Article 8)	The applicants complain that they had no effective remedy against the refusal to allow the first applicant to take the third applicant home from hospital on 6 May 2014 as no official decision was made on that day. The applicants submit that this refusal could have (and almost certainly has had) irreversible effects, particularly on the third applicant. In these circumstances, the applicants were entitled to a remedy with automatic suspensive effect against the decision. In addition, the applicants only had recourse to administrative procedures incompatible with Article 13 to challenge the 7 May order. Ordinary domestic administrative law principles prevented speedy consideration of the proportionality of the decision and failed to ensure constant monitoring of a potentially evolving situation.

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

38. Complaint	Information about remedies used and the date of the final decision
Article 14, taken with Article 3	The applicants exhausted domestic remedies by challenging the decision of 7 May 2014 through the administrative courts, through to the Supreme Court (Kúria). The applicants note that they relied on the Court's case law throughout the domestic proceedings and consistently claimed that the order amounted to a breach of Hungary's Equal Treatment Act, which amounts to a claim of a breach of Article 14. The applicants note that the Court found a violation of Article 14 taken with Article 8 following comparable administrative proceedings concerning a family-law matter in E.B. v France (Grand Chamber, 2008), §§ 18-25 and 52. The administrative courts and Kúria were fully competent under domestic law to consider the discrimination claim, yet declined to do so. The applicants note that they have a claim pending before the Constitutional Court (Alkotmánybíróság). It is not presently clear under the Court's case law if the Alkotmánybíróság is a remedy which must be exhausted before an application can be lodged with the Court. In the view of the applicants, it is not an effective remedy as there is no clear definition by law what constitutes "grave constitutional question" and statistics show that only 10% of such claims are declared admissible. However, if it turns out that it is an effective remedy, the applicants urge the Court not to dismiss this application as inadmissible, but instead, as it has done in comparable cases, to wait to see how the Alkotmánybíróság deals with the case. See, mutatis mutandis, Karoussiotis v Portugal (2011), § 57 ("La Cour... tolère que le dernier échelon des recours internes soit atteint peu après le dépôt de la requête, mais avant qu'elle soit appelée à se prononcer sur la recevabilité de celle-ci"). In relation to the applicants' complaint about the refusal to allow the first applicant to leave the hospital on 6 May 2014 with the third applicant, the applicants submit that this decision was so closely bound up with the 7 May 2014 order taking the third applicant into care that the appeal against the 7 May order should also be considered a challenge against the conduct of the authorities on 6 May. See, mutatis mutandis, Oliari and others v Italy (2015), § 84 ("it is difficult to see how the applicants could have raised the question of legal recognition of their partnership except by seeking to marry, especially given that they had no direct access to the Constitutional Court"). This is particularly the case given the failure of the authorities to make any formal decision on 6 May and the absence in domestic administrative law of any remedy to challenge informal conduct of this kind.
Article 14 taken with Article 8	The applicants rely on the arguments made directly above in relation to the exhaustion of Article 14 taken with Article 3.
Article 13, taken with Article 3 (or, in the alternative, Article 8)	The applicants repeat their claim, set out earlier, that they had no effective remedy against the conduct of the authorities on 6 May 2014: not allowing the third applicant to leave the hospital with his mother, in the absence of a formal decision to take him into care. As stated directly above, the applicants submit that the 6 May conduct was nonetheless so closely bound up with the 7 May 2014 order taking the third applicant into care that the appeal against the 7 May order should also be considered a challenge against the conduct of the authorities on 6 May. The applicants should therefore be considered to have exhausted their complaint in respect of Article 13, and this complaint should be considered to have been made within the six-month time limit set out in Article 35 § 1 of the Convention.

Supplement to the Application

The applicants submit this supplement to the application in accordance with [redacted] of the Rules of Court. This supplement expands on the statement of facts and the statement of violations summarised in the application form. This document also details the applicants' request for anonymity and for urgent treatment of the application.

I. SUPPLEMENT TO STATEMENT OF FACTS

A. The Applicants' Family Situation and the Birth and Removal of the Third Applicant

1. The first applicant [redacted] is of Roma origin. The third applicant ([redacted]) is the youngest child of the first and the second applicants ([redacted]) and he is considered by his parents to be Roma. They live in [redacted] (Hungary).
2. The first applicant has six children: five boys and a girl. The second applicant is the father of the three youngest of those children (including the third applicant). All of the children have been taken into care by the Hungarian authorities at some point. The two oldest children have reached adulthood (i.e. they are over 18 years-old).
3. On 13 December 2013, when the first applicant was four months pregnant with the third applicant, the local health visitor (*védőnő*) who had met her sent a letter (*esetjelző lap* – Annex 1) to the [redacted] Gyermekjóléti Szolgálat (hereinafter "the Child Welfare Service", the local body which provides basic social and care services to families in [redacted]) noting that the first applicant was pregnant, that this was her sixth pregnancy, and that it was "unwanted" (the applicant denies having described it as such). In the letter the health visitor made various unfavourable comments about the first applicant, including that she was living alone, that she was living off social benefits, and that she was participating in a public work programme only because it was "obligatory"; the health visitor also alleged that the first applicant "cried and was hysterical" about the fact that she wanted to raise all her children at home. The letter also accused the first applicant of endangering the foetus by smoking during the pregnancy, and of being "distracted" and not concentrating on her unborn baby. The health visitor concluded by recommending that the third applicant should not be allowed to be taken home from the hospital by his mother after his birth. The first applicant was not formally notified of this letter. She contests all of the health visitor's accusations, with the following clarifications: she was living alone to the extent that the second applicant was working most of the time in Budapest; she does receive social benefits and participated in related public works, but believes this has no bearing on her fitness as a parent; and she could not entirely quit smoking whilst pregnant, but she reduced her smoking as much as she could.
4. On 16 December 2013, prior to the birth of the third applicant, the Tiszaújvárosi Járási Gyámhivatal (hereafter "the first-instance Child Protection Authority", the local body competent for ordering children to be taken into care in [redacted] and other places nearby) reviewed the temporary-care orders in place in respect of the four children still in care. The first-instance Child Protection Authority kept three of the children (all boys) in care but decided that the first applicant's one daughter ([redacted]) should be returned to the care of the first applicant (Annex

2). The first-instance Child Protection Authority reasoned that there had been positive developments in the life of the family: they had arranged their home, the second applicant had a job, and the first applicant had secured financial support from the local government. In addition, the first applicant had regular contact with her daughter, who had clearly and forcefully expressed her will to go back to her mother. The decision not to allow the boys to return home was based solely on the fact that the first applicant was again pregnant (with the third applicant).

5. On 11 February 2014, when the first applicant was six months pregnant, the local health visitor sent another letter (*esetjelző lap* – Annex 3), this time to the Borsod-Abaúj-Zemplén County Hospital, recommending that the hospital not allow the first applicant to take her new-born baby home after birth. The only reason she gave was that all the applicants' other children had been taken into and were in care. This was false: by this tim[redacted]was living at home. The first and second applicants were not notified of the letter.
6. On 19 February 2014, in a written request, the first applicant asked for her three sons who were still in care to be placed back with her (Annex 4). She argued that their situation had developed favourably, that Júlia was attending school, and that both parents were working.
7. On 7 March 2014, the first applicant's request was dismissed, like the previous time (see above, § 4), because the first applicant was pregnant (Annex 5).
8. On 10 March 2014, the Child Welfare Service conducted a visit (*környezettanulmány*) to the applicants' home to assess their circumstances. They noted that there was a toilet in the garden and that the house was furnished and clean (Annex 6).
9. The third applicant was born on 3 May 2014 in Miskolc, in Borsod-Abaúj-Zemplén County Hospital, a public hospital. The first applicant provided care for the third applicant in hospital for three days; the second applicant visited them during that time in accordance with the hospital rules.
10. On 6 May 2014, the hospital staff did not allow the first applicant to see the third applicant. The first applicant was discharged from the hospital that day but was told that she could neither say good-bye to the third applicant nor take him with her. The first applicant did not receive any information as to why she was not allowed to see or take her child home. In particular, no official decision was handed to her concerning the removal of her child into care.

B. The Practice of Taking Roma Children into Care in Hungary in General and [redacted] in Particular

11. According to research conducted in 2007 by the European Roma Rights Centre ("the ERRC" – an NGO and the applicants' representatives) on the situation of Romani children in the Hungarian child protection system (Annex 29), Romani children were overrepresented in care institutions in Hungary at that time: 58% of the children interviewed in such institutions were of Romani origin, while the proportion of Romani children in the entire Hungarian child population was estimated to be 13%.
12. The disproportionately high number was confirmed in subsequent ERRC research published in 2011 (Annex 30), which found that 65.9% of the children in homes visited (in Budapest,

Szabolcs-Szatmár-Bereg County, Borsod-Abaúj-Zemplén County, Baranya County, and Győr-Moson-Sopron County) were of Romani origin.

13. Both studies concluded that the overrepresentation of Romani children in institutional care amounted to indirect discrimination of Roma: given the lack of clear guidance in Hungary's child protection law and various shortcomings in the operation of the child protection system, the disproportionate impact that the operation of the child-care system in Hungary had on Romani families could not be justified. Poverty-related material conditions were identified as one of the major reasons for the removal of Romani children from their homes, despite an explicit ban in the Hungarian Child Protection Act on removing children because of poverty alone.
14. The problem has also been noted by the UN Committee on the Rights of the Child ("the CRC"). In 2006, the CRC, in its Concluding Observations on Hungary, expressed concerns 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*" (Annex 31, par .30). In its 2014 Concluding observations on Hungary, the CRC remained concerned that "*Roma children continue to be overrepresented in care institutions*" in Hungary (Annex 32, paras 36-38).
15. In [redacted], several Romani children have been taken into care in recent years. The applicants note that the head of the Child Protection Authority is known among the local Roma community to have said that Roma children in [redacted] "will not be allowed home". The applicants and their representatives are aware of nine cases of children belonging to eight families in [redacted] whose parents were prohibited by the authorities from taking them home from hospital and taken into care; all of those cases involve Roma. The applicants and their representatives are not aware of any cases in [redacted] of non-Roma families not being allowed to take their children home from hospital after birth as part of the process of those children being taken into care.
16. On 14 December 2015, upon the request of the applicants' representatives, the first-instance Child Protection Authority provided detailed information as to the removal of children into care in towns (*település*) in the area belonging under the authority of the first-instance Child Protection Authority (Annex 35). Compared to the other towns, in [redacted] where the percentage of Roma population is around 50%, the number of removals is extremely high (some 21 times higher in 2013 than in other similar towns). According to the applicants' representatives, who conducted extensive filed work in [redacted] in 2013 at least 19 out of the 23 decisions to take children into care concerned Romani children, and in 2014 all of the six children removed temporarily into care and at least six out of the 10 children permanently removed into care were Roma (Annex 36). (The applicants' representatives are not aware of the ethnicity of the other families, who may also turn out to be Roma.)
17. Following a request from the applicants' legal representatives, the Government Office of Borsod-Abaúj- Zemplén County (*Kormányhivatal*) conducted an investigation into the lawful functioning of the child welfare service in [redacted] In their write-up (*Feljegyzés* – Annex 33)

dated 2 February 2015, the Government Office found several flaws in the functioning of the service, including that their expert programme was not in compliance with the law, their human resources were not sufficient to provide an adequate service, they were not providing an appropriate level of service, and the child-protection signalling system (*gyermekvédelmi jelzőrendszer*) did not function in accordance with the law. The Government Office made a decision (Annex 34) ordering the local government of [redacted] to remedy the situation.

18. The applicants note that under the Hungarian Child Protection Act (Law No. 31 of 1997), children cannot be removed from their families solely for financial reasons (§ 7).

C. The Domestic Procedure

19. On 6 May 2014, the Child Welfare Service sent a notice (Annex 7) to the Child Protection Authority that the first applicant – whom they described as being in "crisis" – gave birth to a healthy baby. The notice went on to say that, based on the health visitor's earlier letters, the baby should not be taken home, because of the "unreliable" behaviour of the mother. The Child Welfare Service concluded by suggesting that the first-instance Child Protection Authority prevent the first applicant from taking the child home from hospital. The applicants were not made aware of this notice.
20. On 6 May 2015, the hospital health visitor also signalled to the first-instance Child Protection Authority that the third applicant had been born and recommended that the Child Protection Authority adopt a decision temporarily taking the third applicant into care (Annex 8).
21. As noted above, the first applicant was prevented from leaving the hospital on that date with the third applicant.
22. On 7 May 2014 (i.e. the day after the first applicant was prohibited from returning home with her child), the first-instance Child Protection Authority took a decision (Annex 9) to remove the third applicant temporarily from his parents' care. The reasons for taking the third applicant into care, *in extenso*, were as follows: "*Due to the mother's irresponsible way of life, and inadequate housing conditions, many of her children have already been removed. Despite this, the parents decided to have another child.*"
23. The applicants received this decision on 12 May 2014, i.e. six days after it was made. During that time, the first and second applicants did not know where their new-born child was or the reasons why he could not be with them.
24. On 16 May 2014, the first applicant challenged (Annex 10) the 7 May decision before the Borsod-Abaúj-Zemplén County Regional Government Office of Social Affairs and Child Protection (hereinafter "the second-instance Child Protection Authority").
25. On 12 June 2014, the Child Protection Authority made a decision that the applicants' other children – apart from the third applicant – could return home for a two-week holiday in July 2014 (Annex 11). The children's foster parents later confirmed that the children enjoyed the time with the first and second applicants and that there was a strong bond between the first and second applicants and their children.
26. On 24 June 2014, the second-instance Child Protection Authority upheld the decision (Annex 12) to take the third applicant into care. The decision acknowledged that the first-instance decision

lacked appropriate reasoning and included more detailed reasoning. The reasons now given included school absenteeism among the older children, illnesses of two of the older children, and the parents' failure to ensure that the children were vaccinated. The reasons also included details about the first applicant's way of life: her problematic relationship with the second applicant; smoking during her pregnancy; failure to attend health check-ups; weight loss; and being seen going in and out from the local pub. The report also alleged that the first applicant behaved irresponsibly with the children: one child was seen playing alone close to a road; and one the children was once seen playing with a "box for pills". The decision also noted that the family's housing conditions were not adequate and that the first applicant's oldest son was in a youth offender institution. The decision also accused the first applicant of having alcohol-abuse and mental-health problems.

27. On 5 August 2014, the first applicant submitted a claim (Annex 13) for judicial review of the administrative decision before the Administrative and Labour Court of Miskolc. The first applicant asked the court to end the temporary care of the third applicant and place him back with his family; or, otherwise, to annul the administrative decision and order the first-instance Child Protection Authority to start new proceedings. The first applicant contested all the reasons given by the second-instance authority, and claimed that her personal and housing circumstances were adequate to accommodate the third applicant. The first applicant admitted she smoked but noted that she had reduced the number of cigarettes she smoked each day during the pregnancy and had given birth to a healthy baby. The first applicant also noted that she and the second applicant had renovated the home in which they were living at the time the third applicant was born, and then, later, that they had purchased a new home fully connected to the electricity, water, and gas mains. The first applicant also challenged the allegations about alcohol abuse and mental-health problems, asserting that these allegations amounted to racial stereotypes of Roma and were therefore discriminatory. She also established that she had sources of income other than welfare benefits. As to the allegations relating to her older children, she admitted that she had difficulties getting one of her sons and her daughter to attend school. She noted that only one of her children (not two) had had health problems. The first applicant claimed that all her children were vaccinated, albeit in some cases with some delay; however the delay was due to infections the children had had, which made timely vaccination impossible.
28. On 19 September 2014 the first applicant submitted a request to the Administrative and Labour Court of Miskolc to suspend the enforcement of the decision temporarily taking the third applicant into care and asked the court to return the third applicant to his family (Annex 14).
29. On 9 October 2014, the Administrative and Labour Court of Miskolc dismissed the appeal (Annex 15) and the request for suspension. It confirmed that the first applicant's way of life, living conditions, and the fact that her older children were in care justified the removal of the third applicant. The court found that the renovations and purchase of the new home could not be considered relevant, as the court could only consider circumstances at the time when the decision was taken.
30. On 7 December 2014, the first applicant submitted a request for judicial review (Annex 16) to the Supreme Court (Kúria) against this decision, and asked the Kúria to reverse the 9 October

decision. The first applicant argued that the decision of the Administrative and Labour Court of Miskolc violated her and her son's rights guaranteed under the Fundamental Law of Hungary (the Constitution), including the right to be free from inhuman and degrading treatment, the right to respect for family and private life, the right to equal treatment, the right to the protection of the family, the right of her son to physical, mental, and moral development, and the right of the parents to make decisions about the care and education of their children. The request also claimed violations of the third applicant's rights under the Child Protection Act (*Law No. 31 of 1997*), including the right to be brought up in the family, the prohibition of removal into care for financial reasons, the requirement to respect the best interests of the child, and the right, before such a last-resort measure is taken, to be informed about services that could ensure the care of the child and to receive assistance from the authorities in order to provide adequate care. The applicants note that their constitutional claims included a claim that the removal amounted to discrimination based on their Roma ethnicity.

31. On 9 December 2014, the first applicant submitted a request (Annex 17 to the Child Welfare Service to allow her children home for the Christmas holidays. The Child Welfare Service, finding the circumstances adequate, accepted the request, and recommended to the first-instance Child Protection Authority to grant it (Annex 18). As a consequence, the first applicant's children were allowed to go home, except the third applicant.
32. On 25 December 2014, the Child Welfare Service visited the family and confirmed that the house was warm, the children were happy and playing, the family had a Christmas tree, and the children had received presents (Annex 19).
33. On 6 January 2015, on the occasion of the statutory review of the placement of the third applicant in care, the first-instance Child Protection Authority – although noting the positive developments of the conditions of the family – changed the status of the third applicant from "temporary" into "permanent" care (see below § 36., Annex 20).
34. In a decision delivered on 13 May 2015 (Annex 23), the Kúria dismissed the applicant's request for judicial review. The Kúria reiterated that although there had been several positive developments in the life of the applicants, these developments were not sufficient to justify return the third applicant to the family and, in any event, they happened after the removal of the third applicant, and so could not be considered relevant to the legality of that decision. The Kúria was silent about the first applicant's allegation of discrimination.
35. On 7 August 2015, the first applicant submitted a constitutional complaint (Annex 24) to the Constitutional Court (Alkotmánybíróság) to review the legality and compliance of the court decision with the Constitution. This complaint is still pending before the Alkotmánybíróság.

D. Further developments

36. Under the Child Protection Act, the temporary removal of a child shall be regularly reviewed by the Child Protection Authority. In the context of one of these reviews, the first-instance Child Protection Authority decided to change the third applicant's care from "temporary" to "permanent" on 6 January 2015 (Annex 20). On 30 January 2015, the first applicant appealed that decision (Annex 21). On 13 March 2015, the second-instance Child Protection Authority

accepted the arguments submitted by the first applicant (which were identical to the arguments submitted to the Kúria in her request for judicial review), annulled the decision to take the child into care permanently, and ordered the first-instance Child Protection Authority to start a new procedure, considering the current, and not the past, situation of the family (Annex 22). Following the new procedure, the first-instance Child Protection Authority, on 7 July 2015, made another decision to take the third applicant into care permanently (Annex 25), the first applicant again submitted an appeal against this decision 23 July 2015 (Annex 26), which, this time, was upheld on appeal on 7 September 2015 (Annex 27). On 19 October 2015, the first applicant lodged a request for judicial review with the Administrative and Labour Court of Miskolc (Annex 28). This request is still pending.

37. In August 2015, the third applicant was allowed to spend two weeks at home with the first and second applicants and with his siblings. According to the write-up (*Feljegyzés*) of the Child Welfare Service, the children enjoyed being at home together. According to the third applicant's foster parent, the third applicant was very depressed for several days and lost his appetite after returning to the foster parent following those two weeks spent at home (Annex 37).

II. SUPPLEMENT TO STATEMENT OF VIOLATIONS

Article 14 taken with Article 3

38. The applicants submit that they were subjected to inhuman and degrading treatment – the refusal to allow the first applicant to leave hospital with the third applicant on 6 May 2014 and the decision to remove the third applicant into care the next day which was only served on the applicants six days later – as a result of a distinction based on their Roma ethnicity. The applicants first set out how this amounts to direct discrimination or, in the alternative, indirect discrimination, based on their Roma ethnicity, and then how it amounts to a breach of Article 3.

39. **Direct discrimination.** The applicants note the comments made indicating that Roma children in Kesznyéten will not be allowed home with their families (see statements of facts, § 15); these were reinforced by the hostile comments made about the first applicant by the health visitor (see statements of facts, § 3). Regardless of whether the Court views the stated reasons for taking the third applicant into care as legitimate, the Court cannot ignore these other statements (*Baczkowski and others v Poland* (2007), §§ 97-100), which suggest that the reasoning of the authorities was contaminated by anti-Roma bias (*E.B. v France* (2008), § 80).

40. **Indirect discrimination.** All of the (nine) cases of children in [redacted] who could not be brought home from the hospital by their parents involved Roma, as far as the applicants are aware. In these circumstances, and unless the Government can demonstrate otherwise, there exists a discriminatory practice. *Oršuš and others v Croatia* (2010), § 153 (when a measure only affects Roma, it "*clearly represents a difference in treatment*"). The applicants also point to the ERRC's statistical research showing a highly disproportionate number of Roma children in state care in Hungary generally, and in [redacted] particular, and invite the Court to place the burden of proof on the Government to demonstrate that the applicants were not victims of

discrimination on that basis (see statements of facts, § 15-16; and *D.H. and others v Czech Republic* (Grand Chamber, 2007), § 193).

41. **Applicability of Article 3.** The applicants submit that when a measure as extreme as taking a child into care soon after birth is discriminatory, it rises to the level of a violation of Article 14, taken with Article 3 (see, mutatis mutandis, *Moldovan and others (no.2) v Romania* (2005), § 111 (*"discrimination based on race can of itself amount to degrading treatment"*). The applicants invite the Court to consider the situation of the third applicant in particular, as a child; to the extent that it is currently possible to assess, being removed from his parents and being unable to form a bond with them early in life are having a negative impact on his psychological and physical development. See statement of facts, § 37. Given his young age, his vulnerability as an infant and as a member of the Roma minority, and the ample availability of less intrusive means of ensuring his well-being, the applicants believe that a finding of a violation of Article 3 is warranted. See, mutatis mutandis, *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2006) § 55. In addition, the removal caused distress and psychological trauma to the parents, in particular to the first applicant as a new mother unable to leave the hospital following the birth of her new-born baby. This Court has already recognised that *"the shock and distress felt by even a perfectly healthy mother are easy to imagine"* when her new-born baby is taken into public care at the moment of its birth. *K. and T.*, § 168.

Article 14 taken with Article 8

42. Without prejudice to the argument under Article 14 taken with Article 3, the applicants submit that if the Court does not make a finding of a breach of Article 3, on the basis of the same principles, it is appropriate to find a violation of Article 14 taken with Article 8. See, e.g., *Moser v Austria* (2006); *Wallová and Walla* (2006); *Zhou v Italy* (2014). The applicants first set out the existence of an interference with the right to respect for family life, then demonstrate how it was not in accordance with the law, and finally how it was not necessary in a democratic society. The applicants rely on the arguments establishing discrimination set out above.

43. **Existence of an interference.** According to the Court's case law, *"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"*. See, inter alia, *Kutzner v Germany* (2002), *§ 58; and K. and T. v Finland* (2001), § 151. The applicants note that this Court has already established that removal of a new-born baby into state care at the moment of its birth is an *"extremely harsh measure"*; the Court has also established that *"there must be extraordinarily compelling reasons before a baby can be physically removed from the care of its mother, against her will, immediately after birth..."* (See, *K. and T. v Finland* (2001), § 168). The applicants also recall that *"when such a drastic measure for the mother, depriving her totally of her new-born child immediately on birth, was contemplated, it was incumbent on the competent national authorities to examine whether*

some less intrusive interference into family life, at such a critical point in the lives of the parents and child, was not possible". K. and T., § 168.

44. **Not in accordance with the law.** While the order of 7 May 2014 may have been in accordance with domestic law, the applicants assert that the action of the authorities in not allowing the third applicant to leave the hospital on 6 May 2014 was not in accordance with the law. There is no provision of Hungarian law which allows authorities to prevent a mother from leaving the hospital with her new-born baby in the absence of a decision from the relevant Child Protection Authority to take that child into care. To the extent that this action could be described as lawful under domestic law, the applicants submit that the law is so arbitrary as to fail the quality-of-law requirement Article 8 § 2 imposes on states. See *Rusu v Austria* (2008), § 53; *Malone v United Kingdom* (1984), § 67. The authorities were aware for many months of the signals from the health worker; nothing stopped them from taking appropriate action before the birth. They nonetheless subjected the applicants to arbitrary treatment on 6 May and left them in a great state of uncertainty until 12 May 2014, when they were finally informed of the 7 May order. See, mutatis mutandis, *Jucius and Juciuvienė v Lithuania* (2008), § 29. The applicants also note the conclusions of the Government Office that the child protection and welfare system in [redacted] was not functioning in accordance with the law. See statements of facts, § 17.

45. The applicants do not contest that the impugned measures were taken in pursuit of a legitimate aim.

46. **Not necessary in a democratic society.** The authorities did not examine the possibility of providing support to the family or to apply any less intrusive measure to protect the third applicant, as Article 8 requires in such cases. See, e.g., *Moser v Austria* (2006), § 69. The authorities had known about the third applicant's impending birth many months in advance, through the health visitor. Indeed, as described in the statement of facts, the authorities themselves had admitted there were positive developments within the family, allowing one of the children to return to live with the first and second applicants and the others to spend the holidays with them. Whilst there may have been a need to take some measures to guarantee respect for the best interest of the third applicant (and the other children), Article 8 required the authorities to use less intrusive measures, which, in domestic law is possible; for example, he could be placed under protection (*védelembe vétel*) within the family, monitored and supported by the Child Welfare Service. It is also possible in Hungary for the applicants to be placed together in a Temporary Family Centre (*Családok Átmeneti Otthona*). These are far less intrusive measures and serve the best interest of the child to be brought up in his biological family. The authorities' concerns, as set out above, mainly centred around the first and second applicants' poverty and their ability to look after their children. There is no indication that those difficulties could not have been dealt with through less intrusive, supportive measures. However, instead of taking proportionate measures, they chose the most drastic one, removing the third applicant from his family. In view of the applicants' vulnerability, as members of the Roma minority, and the existence of other less intrusive measures were available, such a drastic

interference to their family life cannot be regarded as having been necessary in a democratic society. See, *K. and T. v Finland* (2001), § 168. The Court also cannot ignore the context the first and third applicants' ethnicity and the racially-charged environment around Kesznyéten: the remarks of the head of the Child Protection Authority, along with the highly disproportionate number of Roma children in state care in Hungary, and in particular in [redacted] indicate that the decision to take the third applicant into care was contaminated by discriminatory concerns. See, mutatis mutandis, *E.B. v France* (Grand Chamber, 2008), § 80. In addition, the administrative procedure lasted one year from the physical removal of the third applicant (7 May 2014) until the decision of the Kúria (13 May 2015), which latter court took six months to deliver a decision despite the request for urgent treatment. The applicant notes, by way of comparison, the existence of specialised family and children's courts in many other Member States of the Council of Europe; in the absence of such specialised courts, the applicants were subjected to the normal administrative procedure, with its ordinary timeframe. The applicants also note that in the comparable situation where proceedings have been taken in relation to international child abduction, under EU law (Article 11(3) of Regulation 2201/2003) and the Hague Convention on the Civil Aspects of International Child Abduction (Article 11), courts have six weeks to decide claims. Indeed, the Court did not hesitate to find a violation of Article 8 by Hungary resulting from proceedings that just exceeded those six-week deadlines. *Shaw v Hungary* (2011), §§ 71-72. While similar principles do not bind the Hungarian courts in matters such as this, the principle that "the passage of time may change the circumstances" (*Shaw*, § 75) remains the same; the domestic courts ought to have handled this matter much faster, as opposed to treating it on an equal footing with other administrative matters.

Article 13, taken with Article 3 (or, in the alternative, with Article 8)

47. The applicants complain that they had no effective remedy against the refusal to allow the first applicant to take the third applicant home from hospital on 6 May 2014. Given the universally-recognised importance of bonding between parents and their new-born children (see, e.g., *K. and T. v Finland* (2001), § 151), the applicants submit that this refusal could have (and almost certainly has had) irreversible effects on the applicants, particularly on the third applicant. See above, § 41. In these circumstances, the applicants were entitled to a remedy with automatic suspensive effect against the decision. See, e.g., *Gebremedhin v France* (2007), § 66; *Winterstein and others v France* (2013), § 148(δ). In the absence of any official decision retaining the third applicant on 6 May 2014, the applicants had access to no such remedy at all under Hungarian law.
48. In relation to the administrative procedure, the applicants claim that in the absence of a specialised family or children's court or judge, it is incompatible with Article 13 for the domestic judge to apply ordinary administrative law principles to a case of a child being taken into care, as this effectively prevents consideration of the proportionality of the decision and fails to ensure the best interests of the child are respected by constantly monitoring a potentially evolving situation. See, mutatis mutandis, *Oršuš and others v Croatia* (2010), § 184 (*"there were at the relevant time no adequate safeguards in place capable of ensuring that a reasonable*

relationship of proportionality between the means used and the legitimate aim said to be pursued was achieved and maintained"). In addition, the administrative procedure lasted one year from the physical removal of the third applicant (7 May 2014) until the decision of the Kúria (13 May 2015), which latter court took six months to deliver a decision despite the request for urgent treatment. This remedy cannot be considered effective in practice as required under Article 13, in particular when the case concerns the physical removal of a child from his family and his best interests are at stake. The applicant notes, by way of comparison, the existence of specialised family and children's courts in many other Member States of the Council of Europe; in the absence of such specialised courts, the applicants were subjected to the normal administrative procedure, with its ordinary timeframe. The applicants also note that in the comparable situation where proceedings have been taken in relation to international child abduction, under EU law (Article 11(3) of Regulation 2201/2003) and the Hague Convention on the Civil Aspects of International Child Abduction (Article 11), courts have six weeks to decide such claims. Indeed, the Court did not hesitate to find a violation of Article 8 by Hungary resulting from proceedings that just exceeded those six-week deadlines. *Shaw v Hungary* (2011), §§ 71-72. While similar principles do not bind the Hungarian courts in matters such as this, the principle that "the passage of time may change the circumstances" (*Shaw*, § 75) remains the same; requiring the applicants to go through ordinary administrative procedures with no expedited time-frame deprived them of an effective remedy.

III. Anonymity and Urgency

49. The applicants request, in accordance with [redacted] of the Rules of Court, that the Court grants them anonymity and restricts access to the case files in accordance wi[redacted]) of the Rules of Court, in order to protect their identity.
50. The applicants request anonymity because of the sensitive and potentially damaging nature of the personal data included in the application and that will be included otherwise in the case file. The application discloses accusations against the first and second applicants, and particularly against the first applicant, about their parenting skills and lifestyle which are personally damaging and which they believe are defamatory. The applicants wish to avoid the psychological stress for themselves and all of their children that would come from those accusations being made public. In particular, the applicants do not wish in any way for the third applicant's future to be prejudiced by publicity about his early childhood and the experiences he has faced. The applicants have indicated their Roma identity (for the first and third applicants) in this application. The applicants recall that data as to racial or ethnic origin is considered "sensitive" personal data, for example, under European Union data protection Rules (Article 8 of Directive 95/46). The first and second applicants wish for the application to remain anonymous so that the third applicant, in future, is not limited in deciding whether to make information about his ethnicity public.
51. The applicants prefer to be known by their initials "B.T.", "M.CS.", and "B.K.CS.".
52. The applicants also request that the Court treats this application as "urgent" in accordance with the Court's priority policy. This application is closely linked to the personal or family situation of

the applicants. In particular, the well-being of a child is at issue: the third applicant has now been living apart from his family since his birth, and, as the statement of facts shows, the third applicant appears to be suffering psychological consequences of this separation. The passage of time continues to alter the situation and risks creating a permanent situation whereby it becomes impossible for the applicants to enjoy family life together. See, mutatis mutandis, *Neulinger and Shuruk v Swizterland* (Grand Chamber, 2012), § 147.