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La CEDU su rom e obblighi dello Stato
(CEDU, sez. II, sent. 10 marzo 2020, ric. nn. 24816/14 e 25140/14)

La Corte Edu si pronuncia sul caso di diversi cittadini sloveni di origine rom, che avevano lamentato una presunta mancanza di accesso all'acqua potabile ed ai servizi igienico-sanitari, tenendo conto del loro stile di vita e dello *status* di minoranza.
La Corte ha preso atto delle misure adottate, in generale, dalle autorità interne per migliorare le condizioni di vita precaria delle comunità rom in Slovenia: i ricorrenti beneficiavano di prestazioni sociali e non vivevano in uno stato di povertà estrema. La Corte ha ribadito che i ricorrenti - che erano rimasti nei rispettivi insediamenti per scelta - avrebbero potuto utilizzare i benefici sociali anche per migliorare le loro condizioni di vita. In ogni caso, le autorità slovene avevano anche assunto provvedimenti specifici in relazione al problema dell'accesso all'acqua potabile.
I Giudici di Strasburgo hanno, così, ritenuto le misure adottate dallo Stato per garantire l'accesso dei ricorrenti al consumo sicuro di acqua ed ai servizi igienico-sanitari idonee rispetto alla loro condizione di vulnerabilità, soddisfacendo, in definitiva, i requisiti di cui all'art. 8 Cedu.

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

SECOND SECTION

CASE OF HUDOROVIČ AND OTHERS v. SLOVENIA

(*Applications nos. 24816/14 and 25140/14*)

JUDGMENT

STRASBOURG

10 March 2020

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 Hudorovič and Others v. Slovenia,

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

Robert Spano, *President*,

Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges*,
and Hasan Bakırcı, *Deputy Section Registrar*,
Having deliberated in private on 4 February 2020,
Delivers the following judgment, which was adopted on that date:

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Art 8, Art 3 and Art 14 • Allegedly insufficient measures to ensure access to safe-drinking water and sanitation for Roma communities • Positive obligations triggered only by persistent and long-standing lack of access to safe-drinking water having adverse consequences for health and human dignity effectively eroding core rights under Art 8 • Existence and content of positive obligations to be determined by specific circumstances of the persons affected, legal framework and economic and social situation of the respondent State • Wide margin of appreciation accorded to States • Opportunity to access safe drinking water provided by the authorities who actively engaged with specific needs of vulnerable and socially disadvantaged community • Non-negligible proportion of Slovenian population in remote areas lacking access to public water supply and sewerage systems • Applicants not prevented from using their social benefits towards improving living conditions

-

PROCEDURE

1. The case originated in two applications (nos. 24816/14 and 25140/14) against the Republic of Slovenia lodged with the Court on 26 March 2014 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by sixteen Slovenian nationals ("the applicants"), whose details are set out in the annex to this judgment.
2. The applicants were represented by Ms N. Zidar Klemenčič, a lawyer practising in Ljubljana, and the European Human Rights Law Institute, based in Nicosia. The Slovenian Government ("the Government") were represented by their Agent, Ms J. Morela, State Attorney.
3. The applicants alleged that the State had failed to provide them with access to basic public utilities, such as drinking water and sanitation, contrary to the requirements of Articles 3 and 8 of the Convention. Relying on Article 14, they further submitted that, as members of the Roma community, they were unable to effectively enjoy the same rights as the majority population owing to the authorities' discriminatory attitudes towards them.
4. On 8 April 2015 the Government were given notice of the applications. In addition, leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court) was granted to the European Roma Rights Centre and the Human Rights Centre of the University of Ghent.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants in case no. 24816/14

5. Mr Branko Hudorovič (the first applicant) was born in 1959 and lives in the informal Roma settlement of Goriča vas in the Ribnica Municipality. Mr Aleks Kastelic (the second applicant) is the first applicant's son, born in 2007, who initially applied to the Court under the name Aleks Hudorovič. Following the Government's objection, lodged on 2 November 2015, his name was corrected to Aleks Kastelic.

6. On 26 May 2011 the first applicant and the second applicant's mother, Ms Marija Kastelic, reached a court settlement whereby the second applicant resides in the custody of his mother at a different address from that submitted by the first applicant. According to the information about the first and second applicants' family situation provided to the Government by the Ribnica Social Work Centre on 22 June 2015, the first applicant maintained contact with the second applicant under the terms agreed upon with the latter's mother. According to the first applicant, the second applicant lives mostly with him in the Goriča vas settlement.

7. More than 10% of the population residing in the Ribnica Municipality do not have access to drinking water from the public water-distribution system. The public sewage system for the discharge of urban wastewater was built solely in the town of Ribnica and the Hrastje area, while all other housing facilities must be equipped with their own septic tanks or individual water treatment plants installed at the expense of each facility or investor.

8. On 31 December 2014 there were forty-three public housing units at a subsidised rent rate provided to people with low incomes in the Ribnica Municipality. Another fourteen public housing units were provided at the market rate.

9. The land on which the Roma community settled thirty years ago is owned by the Republic of Slovenia. This marshy agricultural land is categorised in the Municipal Spatial Plan of the Ribnica Municipality as the best category of agricultural land, where construction of residential buildings is not allowed. Moreover, the Goriča vas settlement is located outside of settlement areas under high-voltage power lines where construction is not allowed due to electromagnetic radiation.

10. In the early period of the settlement, the inhabitants lived there in tents, but later some more permanent dwellings were constructed. Today most residents live in wooden huts, some of which have stonework or brick inside. Today some eighty people reside in the settlement. Demolition orders were issued in respect of five such illegally constructed huts, including one built by the first applicant. He received an order to remove the building then under construction in 2000, which came into effect in 2005. None of the demolition orders was, however, executed, one of the reasons being that alternative accommodation would have had to be provided to the Roma children living on the premises.

11. The buildings in the Goriča vas settlement are not equipped with plumbing, nor is there any sewage piping. As regards electricity, the residents rely on illegal connections to electricity poles. The collection and transport of municipal waste is regularly performed by the public municipal utility service, and it is no longer charged to the residents since they have failed to pay their bills.

12. The first applicant initially submitted that he lived in a caravan. He subsequently informed the Court that he had moved into a simple wooden hut where he lives with his son. The hut has no access to water, sewage and sanitation. According to the first applicant, they collect water from the cemetery or the nearby polluted stream or else they acquire it from other houses. Moreover, owing to the lack of sanitation services, the applicants use the area around the caravan for defecation.

13. The applicants, together with other inhabitants of the settlement, have for a number of years been seeking to obtain access to public utilities. They attended a number of meetings with the Mayor of the Ribnica Municipality and the governmental Office for Minorities (Urad za manjšine). However, as the Goriča vas settlement was established in an irregular manner, the residents have no possibility of acquiring building permits and the other documents necessary for obtaining access to the public infrastructure.

14. In 1996, the Ribnica Municipality drew up a plan to relocate the residents of the Goriča vas settlement to the Lepovče Roma settlement. Several terraced houses were to be constructed and equipped with the necessary infrastructure. The Roma from the Goriča vas settlement initially agreed to the Municipality's plan and expressed their readiness to contribute their labour to the project. However, in May 1997 the non-Roma residents of Lepovče expressed their opposition to the enlargement of the Roma settlement in their village, fearing that the proximity of the settlement would cause "further complications". Subsequently, in May 1997, the first applicant, in his capacity as representative of the Roma living in Goriča vas, declared in writing that the group was not willing to move to the proposed location. It follows from the internal communication of the Municipality that the opposition to the proposed plan partly resulted from the fact that two separate Roma groups were to be settled in Lepovče, between whom disagreements existed. The Municipality subsequently abandoned the resettlement plan.

15. On 14 April 1999 the first applicant met the Mayor of Ribnica and requested that basic utilities, specifically drinking-water supply and an electricity generator, be provided for the Goriča vas Roma settlement. The first applicant and the Mayor concluded that a diesel generator and a water tank of 2,000-3,000 litres were to be purchased and placed in the Roma settlement; a regular water supply was to be provided by the local fire brigade, with the cost of the water deliveries being borne by the residents. According to the minutes of the meeting, the Roma residents would bear the costs of adequate sanitation (chemical toilets) and arrange for the clean-up of the surrounding area.

16. Subsequently, on 26 July 1999 the Ribnica Municipality and the first applicant, representing the Roma residing in Goriča vas, signed a co-financing agreement whereby each of the parties undertook to cover 50% of the costs of the purchase of a water tank and a diesel generator. The pro forma value of the two infrastructure items, as set out in the agreement, amounted to 294,546 Slovenian tolars (SIT) (which according to the then applicable exchange rate amounted to 1,504 euros (EUR)). The Municipality committed itself to carrying out the purchase and delivering the water tank and the generator to the Goriča vas settlement. The individual Roma residents who had financially contributed to the purchase assumed ownership of the infrastructure items, and all the Roma residents of the Goriča vas settlement acquired the right to access water and electricity. In addition to the purchases, the Ribnica Municipality provided some landfill material used for the rehabilitation of the environment in the settlement.

17. It is undisputed between the parties that the water tank was purchased as part of a co-financing agreement. However, they disagreed on the subsequent course of events and the current situation as regards access to drinking water in the settlement.

18. According to the applicants, after a number of years the water tank became unusable due to mould and other fungi and they had no choice but to replace it. The tank had not been dug into the ground and therefore was not protected from the weather. Also, the applicants did not know whether the quality of water was being monitored at all. The Government, however, relying on the written testimony of a local resident, submitted that both the diesel generator and the water tank had subsequently been sold. The applicants contested that submission, arguing that "most of [the tanks]" could not have been sold as they had become inappropriate for use.

19. Regarding the water deliveries, in the period from 30 January 2010 until 1 January 2016 there were thirty-one deliveries of water to the Goriča vas settlement; each time the residents so requested 5,000 litres of water were delivered and the cost of an individual delivery amounted to EUR 35. The Roma residents were obliged to pay the costs of water transportation, while the costs of the water itself were borne by Ribnica Municipality. The Government, relying on information provided by the Ribnica fire brigade, submitted that the supplies of water had been poured into a large water tank installed in the settlement; when the tank was full, other containers had also been filled.

20. According to the applicants, the water delivered by the Ribnica Fire Brigade was used to fill private water tanks and pools where children bathed in the summer.

21. The Government further submitted that the Roma from the Goriča vas settlement had supplied themselves with water at the nearby Hrovača Cemetery, which was approximately 1 km away from the settlement. The applicants confirmed that they collected water wherever they could, including at cemeteries.

22. As regards the financial situation of the applicants, in the period from 1 May to 31 October 2015 the first applicant was entitled to monthly social assistance in the amount of EUR 269.20. The second applicant, in his mother's custody, was financially supported through her monthly social security allowance amounting to EUR 331.12, and a monthly child allowance in the amount of EUR 114.31. In addition, based on a friendly settlement between the parents, the first applicant had a duty to pay monthly child support to the second applicant in the amount of EUR 61.99.

23. On 13 October 2015 the Human Rights Ombudsman submitted a request to the Government to urgently adopt all necessary measures for the Goriča vas settlement to be connected to the public water supply system. In the meantime, a water tank had to be installed in the settlement. The Government replied that a water tank had already been installed and that spatial planning at the local level was the responsibility of the Ribnica Municipality. In reply, the Human Rights Ombudsman, noting that the Goriča vas residents had not reported the presence of a water tank, critically assessed the situation and took the view that the Ribnica Municipality had not effectively engaged with the Roma community to ensure them water and sanitation. The Ombudsman considered that the Government were violating the Roma residents' human right to water and sanitation and noted that a violation would persist until a connection to the public water supply and sanitation system was ensured.

B. The applicants in case no. 25140/14

24. The applicants, a family of fourteen, live in the informal Roma settlement at Dobruška vas 41 in the Škocjan Municipality, which is composed of approximately twenty housing units for two hundred and fifty people. Mr Ljubo Novak (the first applicant) was born in the settlement, Ms Dunja Kočevar (the second applicant) has been living there for twenty years and all of their children were born there, too.

25. The Dobruška vas 41 settlement is located on land belonging mostly to the Škocjan Municipality and the local Krka Agricultural Cooperative. According to the Roma residents and a report of the Human Rights Ombudsman, members of the Roma community were moved to the area by the local authorities of the then Novo mesto Municipality in 1963, and have lived there ever since. Construction of residential houses in the Dobruška vas 41 settlement is possible under certain conditions and subject to approval by two environmental agencies related to the fact that the land is located partially in a flood area and an area of natural value. However, the Škocjan Municipality spatial plan provides for construction of a wastewater treatment plant and the transformation of the entire area in question into a business zone. The municipal authorities have on several occasions expressed expectations that the Roma residents of Dobruška vas 41 settlement should be relocated, while arguing at the same time that there was no appropriate area for an alternative settlement in the Škocjan Municipality.

26. In the period from 2004 until 2015 several residents of Dobruška vas 41, but not the applicants, were ordered to suspend construction and remove all structures already built in the settlement. Demolition orders were also issued in respect of a few of them; however, they were not executed.

27. In 2013 the Municipality lodged criminal complaints against a number of Roma residents, including the first applicant, for unlawful occupation of real property under Article 338 of the Criminal Code. In the first-instance criminal proceedings, the defendants were found guilty and given suspended sentences of three months' imprisonment, with three years' probation. The first applicant did not provide any information on whether he had appealed and whether that conviction had become final.

28. At the date of the lodging of the application, the applicants lived in an illegally built wooden hut located on land owned by the Krka Agricultural Cooperative, without access to water, sanitation or electricity. Subsequently the applicants informed the Court that they had moved into a wooden hut they had built approximately 200 m away from the previous dwelling owing to disagreements with their neighbours which had escalated into destruction of their property and physical aggression against them. They continued to live without a proper water supply and sanitation. The Government supplemented this information, adding that the first and the second applicants had bought two plots of land and illegally constructed a building and two animal sheds without a building permit.

29. In discussions between the Škocjan Municipality and the relevant State authorities it was decided that the Municipality could not ensure individual water connections to illegally built buildings, since such a solution would contravene the domestic legal order. However, in order to comply with the national and international standards of access to water, it was decided that a group water-distribution connection would be built in the settlement, on land belonging to the Municipality. The residents would be able to instal individual water connections at their own expense, as provided by the relevant legislation. As regards water bills, it was agreed to engage a local commission on Roma issues in a process of mediation to find a suitable solution.

30. The Dobruška vas 41 settlement where the applicants reside has been connected to the public water supply system since 2011. The water supply system consists of one group water-distribution connection (a group water-access point) installed on the initiative and at the expense of the Škocjan Municipality. Nine individual connections were installed from the distribution connection to the individual users' homes. In 2015, water was supplied to seven individual connections.

31. Initially, nineteen households were interested in obtaining individual connections, including the applicants'. Only nine households subsequently joined the water supply system by committing to pay their respective shares of the total consumption. In 2015, the average monthly cost of water for a household amounted to approximately EUR 9.

32. The applicants did not apply to join the water supply system. According to them, while living at a previous location, they had been denied access to the group water-distribution connection by their neighbours, who had not allowed them to lay a water pipe under "their" land. This issue had also been raised in a letter sent to the Mayor of the Škocjan Municipality by the Human Rights Ombudsman in December 2012. The Government submitted that the applicants could have avoided the neighbours and placed the pipes along the road. The applicants responded that they had not been informed of this possibility to connect to the water system. Also after the move to the new location, the applicants had not applied for an individual water connection, nor did they clarify whether their new building could be connected to the group water-distribution connection.

33. The residents of the Škocjan Municipality also have drinking water available from the village fountain. The fountain, where the applicants obtain their drinking water, is approximately 1.8 km away from the applicants' hut; it is fitted with a tap and the water has a constant temperature of 14°C. According to the analysis by the National Laboratory for Health, the Environment and Food, the water complies with the applicable standards and is considered safe, that is to say fit to use for drinking, cooking or washing. Some residents of the Škocjan Municipality (Vinji Vrh), whose households are not connected to the public water-distribution system, supply themselves with water from the fountain, while for sanitary purposes they use rainwater or water supplied by the fire brigade.

34. As regards the sewerage system, at the material time the Škocjan Municipality had no public discharge or facility for treatment of urban wastewater. Buildings producing urban wastewater were equipped with septic tanks or cesspits, while newer buildings had small wastewater treatment plants. Septic tanks and small wastewater plants were funded by the owners of buildings where urban wastewater was produced. The public municipal utility service carried out the emptying of cesspits and small wastewater treatment plants (taking out mud and sludge). A wastewater treatment plant was under construction.

35. As regards the financial situation of the applicants, at the material time the first and the second applicants were receiving monthly child benefit in the amount of EUR 1,556.97, social assistance in the amount of EUR 868.80, and a parental benefit in the amount of EUR 252.04. Their two adult daughters, Ms Pamela Novak (the third applicant) and Julija Novak (the fourth applicant), were receiving monthly social assistance in the amount of 269.20 EUR each. The applicants were therefore receiving social benefits in the monthly amount of EUR 2,947.01. In 2016, however, those benefits were increased to EUR 3,299.85 per month. Moreover, the applicants were receiving EUR 120-130

per month as reimbursement for the costs of transporting their four children from their home to a bus station about 10 km away, from where they continued their journey to school by local bus.

II. RELEVANT DOMESTIC LAW

A. The Constitution

36. The relevant provisions of the Constitution provide as follows:

Article 14*

(*As amended by the Constitutional Act Amending Article 14 of the Constitution of the Republic of Slovenia, 15 June 2004 (Official Gazette of the Republic of Slovenia No. 69/04).)

(Equality before the Law)

"In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance.
All are equal before the law."

Article 65
(Status and Special Rights of the Romany Community in Slovenia)

"The status and special rights of the Romany community living in Slovenia shall be regulated by law."

Article 70a*

(*As newly introduced by the Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, which was adopted on 17 November 2016 and entered into force on 25 November 2016 (Official Gazette of the Republic of Slovenia No. 75/16).)

(Right to Drinking Water)

"Everyone has the right to drinking water.
Water resources shall be a public good managed by the State.
As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity.
The supply of the population with drinking water and water for household use shall be ensured by the State directly through self-governing local communities and on a not-for-profit basis."

B. Relevant legislative and regulatory acts

1. Spatial development, spatial planning and the provision of public utility services in respect of construction land

37. Spatial development and spatial planning at the local level falls within the competence of municipalities, which, in accordance with the Local Self-Government Act, are independent in managing local matters in the public interest. In terms of spatial planning, that involves first and foremost land-use allocation in order to ensure rational and efficient use of land. To that end, municipalities adopt municipal spatial plans and detailed municipal spatial plans based on the Spatial Planning Act.
38. Under this legal framework, an area must be identified as construction land before any construction project can be submitted for a building permit. The power to determine the types of public utility infrastructure to be built in individual areas is conferred upon municipalities. The latter are also responsible for constructing the public utility infrastructure, which is financed from municipal budgets, the State budget and the community infrastructure levy. This levy is a contribution to the costs of construction of the public utility infrastructure paid by individual investors. By paying the community infrastructure levy, the person liable for payment, usually the owner of the construction land, is guaranteed connection to the already built infrastructure.
39. The Construction Act provides that any construction of a new structure, a re-built edifice, a replacement building, and so forth, cannot commence until a final building permit has been obtained. Before a building permit can be issued, the relevant administrative body verifies, inter alia, whether the relevant structure will be provided with the minimum level of public utility services; those include drinking-water supply, electricity supply, wastewater discharge and access to public roads. The investor must also show that a request for an assessment of the community infrastructure levy has, or will, be lodged.
40. The Construction Act explicitly prohibits the installation of public utility connections to illegally built structures.
41. As regards legalisation of illegally built buildings and structures, they are considered as new constructions requiring a building permit. Therefore, all of the above-mentioned conditions must be met in order to legalise a building, including the provision of the minimum level of public utility services.

2. Safe drinking water and sanitation

42. There is a comprehensive regulatory framework governing the use of water in Slovenia. Water as a public good and public services related to its use, to water facilities and equipment are regulated by the Water Act. Different types of checks on water with the aim of ensuring its safety and therefore its suitability for domestic use are provided for in the Regulation of Sanitary Suitability of Foodstuffs (Products and Materials Coming into Contact with Foodstuffs) Act. Furthermore, the Rules on drinking water define the requirements to be satisfied with regard to drinking water in order to protect human health from adverse effects, and the Decree on the Methodology for Determining Prices of Municipal Utility Services for Environmental Protection provides the methodology for determining prices of obligatory public municipal utility services, such as the drinking-water supply.

43. Individual tasks to be performed within the scope of the municipal utility service of water supply are determined in the Decree on Drinking-Water Supply. In principle, the municipal service of water supply is provided throughout the area of a municipality to buildings occupied by people and structures where drinking water is used for watering animals. By way of exception, private supply of drinking water may be ensured in respect of settlements and individual buildings or structures where the municipality does not provide the public utility service. Pursuant to the Decree, settlement areas with fifty or more permanent residents and a population density of more than five residents per hectare are to be equipped with a public water-distribution system. Subject to certain derogations, also settlement areas with less than fifty residents should be equipped with such a system.

44. The planning and construction of the connection to the public water-distribution system should be ensured by the owner of the building or other structure that is to be connected. The Decree prohibits the provider of the public utility service from connecting to the public water-distribution system any buildings or structures that do not comply with the applicable rules on the discharge and treatment of urban wastewater. Both the Ribnica and Škocjan municipalities have adopted ordinances on drinking-water supply that are, in all essential provisions, aligned with the Decree and other relevant regulations.

45. As regards sanitation, the tasks performed within the scope of obligatory municipal utility service are determined in the Decree on the Discharge and Treatment of Urban Wastewater and Run-off Rainwater. The public utility service consists of discharging the wastewater into the public sewerage system, treating the discharged water, collecting urban wastewater and sludge from cesspits and from small urban wastewater plants, treatment of such wastewater and sludge in an urban or combined wastewater plant, and so forth.

46. Municipalities have a duty to provide the public utility service of sanitation throughout their respective areas; however, certain derogations regarding the scope of the service are allowed. Specifically, owners of buildings outside the designated settlement areas and where there is no public sewerage system must ensure that urban wastewater is discharged and treated in small urban wastewater treatment plants. Specific obligations related to the scope and methods of the public utility service provision are regulated by the municipal acts. Both the Ribnica and Škocjan municipalities have adopted ordinances on the discharge and treatment of urban wastewater that provide in detail the scope of the respective public municipal utility services and the locations where the urban wastewater is treated. For an owner of a property to be connected to the public sewerage system, he or she must be in possession of a final building permit and/or proof of the right to build.

3. Situation of the Roma community

47. Members of the Roma community in Slovenia are entitled to individual and community rights in the same way as all other citizens of the Republic of Slovenia. Their status is defined as a "special ethnic community" entitled to collective, special rights. In 2007, the Roma Community in the Republic of Slovenia Act was adopted. It acknowledges the special status of the Roma community in Slovenia and its successful integration into Slovene society. The Act further defines the special rights of the Roma community which are accorded to its members in addition to the rights and

obligations appertaining to all Slovenian citizens. Pursuant to section 3, the State is to provide for the implementation of the special rights of the Roma community in the areas of education, culture, employment, spatial planning and environmental protection, health and social security, as well as notification and participation in public affairs pertaining to the Roma community. Moreover, the Act determines the competences of national and local authorities for the implementation of those rights and provides for cooperation of the representatives of the Roma community in implementing their rights and obligations as provided by law.

48. Section 5 of the Act provides that the national and local authorities must include Roma settlement issues and improvement of living conditions of the Roma community members in their spatial plans. Pursuant to this section, the system of spatial planning in respect of Roma settlements is to be realised through appropriate local planning solutions. However, the initiative for planning of those settlements may under certain conditions be transferred to or taken over by the Government. The Government themselves may enact spatial planning regulations concerning Roma settlements in cases where a lack of legal regulation or municipal infrastructure could result in a serious threat to health, a long-standing disturbance of the public order or a permanent threat to the environment. In such cases, the tasks taken on by the State are carried out with State funds.

49. The interests of the Roma community in relation to the national authorities are represented by the Roma Community Council of the Republic of Slovenia, an umbrella organisation of the Roma community (section 9 of the Act). The Council consists of representatives of the Roma Association of Slovenia and the representatives of the Roma community in municipal councils. Pursuant to the Roma Community Act, the Government have a duty to adopt, in cooperation with the Roma Community Council and the municipalities, a programme of measures providing for obligations and tasks to be carried out at the national and local levels (section 6 of the Act). At the national level, the monitoring and protection of the special rights of the Roma community are primarily ensured by the Office of the Government of the Republic of Slovenia for National Minorities (Urad Vlade Republike Slovenije za narodnosti).

50. In March 2010 the Slovenian Government adopted a National Programme of Measures for Roma for the Period 2010-15 in which it defined priority areas – housing, education, employment and health care – which required specific short-term and long-term measures to improve the situation. The Government stated that the Roma settlements had not been subject to permanent regulation or controlled development. The absence of comprehensive measures and the lack of investment funds had resulted, inter alia, in poor public utilities. The Government pointed out that under the Spatial Planning Act, the municipalities were required to prepare municipal spatial plans, and encouraged them to include Roma settlements in those strategic plans, so as to provide for the redevelopment of such settlements which were mostly unlawfully occupied and the result of haphazard construction.

51. In the Fourth report on the situation of the Roma community in Slovenia (2015), in which the Government presented the implementation of the Roma Community Act and the National Programme of Measures for Roma, they noted that some municipalities had not yet adopted municipal spatial plans, which had prevented the Roma settlement in those areas from benefiting from legalisation and spatial development. Neither had some municipalities opened calls for submission of applications for public rental housing which would have allowed the members of the Roma community to apply for it, should they so wish. The Government submitted that the State did

not have any means of coercing the municipalities into action. They did note, however, that housing issues were closely related to the enjoyment of human rights such as access to safe drinking water and sanitation. The State had a duty to provide for the enjoyment of those rights at all levels, as provided in a number of international documents, and the municipalities should act in accordance with those instruments.

III. RELEVANT INTERNATIONAL AND EUROPEAN LAW MATERIAL

A. United Nations instruments

1. Convention on the Rights of the Child

52. This Convention recognises the right of the child to clean drinking water in the context of the right to health as follows:

Article 24

"1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
...
(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
..."

2. Resolution 64/292 on the human right to water and sanitation adopted by the General Assembly (28 July 2010)

53. The Resolution recognises the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights, and calls upon States and international organisations to provide financial resources, capacity building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.

3. Resolution 18/1 on the human right to safe drinking water and sanitation adopted by the Human Rights Council (12 October 2011)

54. The Human Rights Council expressed its concern that approximately 884 million people lacked access to improved water sources and more than 2.6 billion people did not have access to improved

sanitation. Affirming the need to focus on local and national perspectives in considering the issue, the Human Rights Council reaffirmed the primary responsibility of States to ensure full realisation of all human rights. It held that they should take steps, nationally and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, to achieve progressively the full realisation of the right to safe drinking water and sanitation by all appropriate means, including particularly the adoption of legislative measures in the implementation of their human rights obligations.

55. The Resolution thus calls upon States to, inter alia, continuously monitor and regularly analyse the status of the realisation of the right to safe drinking water and sanitation; assess existing policies, programmes and activities in the sectors of water and sanitation, giving due consideration to waste-water management, including treatment and reuse, and to monitor resources allocated to increase adequate access, as well as to identify actors and their capacity; assess whether the existing legislative and policy framework is in line with the right to safe drinking water and sanitation, and to repeal, amend or adapt it in order to meet human rights standards and principles; ensure free, effective, meaningful and non-discriminatory participation of all people and communities concerned, particularly people living in disadvantaged, marginalised and vulnerable situations.

4. General Comment no. 15 (2002) on the right to water adopted by the Committee on economic, social and cultural rights ("the CESCR")

56. In its twenty-ninth session from 11 to 29 November 2002, the CESCR adopted General Comment no. 15 (2002) on the right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) which, in so far as relevant, provides:

"II. NORMATIVE CONTENT OF THE RIGHT TO WATER

...

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) Quality. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

(c) Accessibility. Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and

workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;
(ii) Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;
(iii) Non-discrimination: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and
(iv) Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues.
...
Non-discrimination and equality
...
14. States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. ...
15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.
...
III. STATES PARTIES' OBLIGATIONS
General legal obligations
17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.
...
Specific legal obligations
20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil.
...
(c) Obligations to fulfil
25. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of

water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas."

5. Report of the special rapporteur on the human right to safe drinking water and sanitation on her mission to Slovenia (24-28 May 2010)

57. The then special rapporteur, Catarina de Albuquerque, noted in her Report that at the time of her visit, nearly 100% of the population in Slovenia had access to safe water and 86% of the population were connected to the public water supply system. A comprehensive system of water-quality testing was implemented at the national and municipal levels and tap water in Slovenia met European Union and WHO standards. Slovenia had established strict water-protection zones to prevent the contamination of water sources by agriculture, industry and other activities. Regular tests were conducted by 300 monitoring stations throughout the country to assess water quality. Overall, the special rapporteur concluded that Slovenia had a good framework and system in place for ensuring the provision of safe water to the general population.

58. Concerning sanitation, over half of the population were connected to a wastewater treatment facility, and the Government was making significant efforts to increase this number further. Where people were not connected to sewerage, they generally had cesspools.

59. As regards the situation of the Roma and their access to safe water, the special rapporteur noted at the outset that while official statistics reported over 3,000 Roma people were living in Slovenia, some estimates were as high as 10,000, not taking into account those Roma people who were not settled. According to the findings of an analysis on the theme "Territorial issues of Roma settlements in Slovenia" prepared by an expert group tasked to deal with the spatial problems of Roma settlements, about twenty-one of ninety-five settlements in Prekmurje and Dolenjska had no access to water, either from public water works or from a local water source. Many of them also had no access to sanitation.

60. In order to be connected to the water and sanitation networks in Slovenia, one had to apply to the municipality and present evidence of ownership and a building permit, among other documentation. Although Roma communities had been present in Slovenia for centuries, their settlements had frequently been established in an irregular manner. According to the Report, the authorities had used the "illegality" of the settlements as a principal justification for not connecting these communities to water and sanitation services.

61. The special rapporteur noted with appreciation that some municipalities had found positive solutions to addressing the sometimes difficult and complex problems associated with the Roma

community in Slovenia. For example, some municipalities had waived the requirements outlined above in order to facilitate access to water and sanitation.

62. With regard to water, the special rapporteur pointed out that while household connections were the ideal solution, in the meantime efforts should be made to find interim solutions. Such solutions could include extending the network to a public water point that would be available to all people living in the settlement, or delivering safe water in tankers. Additionally, urgent measures were necessary to improve the current status of sanitation in many Roma settlements. As with water, interim measures were critical. The special rapporteur pointed out that there were an increasing number of sanitation technologies to choose from that did not require connection to the network.

B. Council of Europe instruments

1. Recommendation Rec(2001)14 of the Committee of Ministers to member States on the European Charter on Water Resources

63. Paragraph 5 of the European Charter on Water Resources recognises the right to water in the following terms:

"Everyone has the right to a sufficient quantity of water for his or her basic needs.
International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene.
Social measures should be put in place to prevent the supply of water to destitute persons from being cut off."

2. Resolution 1693 (2009) of the Parliamentary Assembly on water: a strategic challenge for the Mediterranean Basin

64. The Parliamentary Assembly, stressing that access to water should be recognised as a fundamental human right because it is essential to life on earth and is a resource that must be shared by humankind, and acknowledging that primarily drinking-water resources will become increasingly rare, at a time when needs are increasing, recommended member and non-member States to, inter alia, (a) take the measures needed to ensure that everyone has access to water and sanitation; (b) decentralise water management systems to make them the responsibility of local and regional authorities, and give the latter the necessary legal powers and financial resources; and (c) take steps to make water sanitation techniques more generally available.

3. Resolution 1809 (2011) of the Parliamentary Assembly on water – a source of conflict

65. The Parliamentary Assembly pointed out that access to safe drinking water and sanitation was recognised as a human right by the United Nations, and noted that fresh water is a limited, fragile resource, but one which is vital for humankind. Regretting that one in six of the world's inhabitants

still did not have access to water and that almost one person in two had to live without a waste-water drainage system, the Parliamentary Assembly recommended that member and non-member States, inter alia, recognise that access to water is a fundamental human right, in line with the United Nations General Assembly Resolution 64/292 of 28 July 2010 and United Nations Human Rights Council Resolution 15/9 of 30 September 2010.

4. European Commission against Racism and Intolerance ("the ECRI")

66. In its Report on Slovenia (fourth monitoring cycle) adopted on 17 June 2014, the ECRI noted with concern the lack of access to a safe water supply in or near some settlements. Referring to a study according to which 17% of Roma obtained water from springs or neighbours, 2% from cisterns and 2% had no access to running water at all, the ECRI emphasised that the lack of access to safe drinking water had a direct negative impact on the health of the Roma communities concerned, as well as indirect repercussions on their everyday life in other areas, such as education and employment.
67. Observing that provision of water was the competence of municipalities, the ECRI established that most of them had waived the obligatory requirement of prior legalisation and had provided access to piped water for informal settlements. However, the Roma settlement of Goriča vas in Ribnica, home to approximately seventy people, around twenty-two of them children of school age, had no water supply, no electricity and no sewerage system.
68. The ECRI urged the national authorities to take immediate action to ensure that all Roma obtained practical access to a safe water supply in or in the immediate vicinity of their settlements.
69. In its Conclusions on the Implementation of the Recommendations in Respect of Slovenia Subject to Interim Follow-up adopted on 23 June 2017, the ECRI noted that the Slovenian authorities had opened a public tender for projects relating to utility infrastructure, including water collector wells and pipelines connecting Roma settlements to the distribution system. The amount of EUR 2 million in total was budgeted for the years 2016 and 2017.
70. The authorities also informed the ECRI that in September 2016 they had provided exceptional funding of EUR 30,000 to ensure access to safe drinking water for the Goriča vas settlement in Ribnica, as well as for two premises in Dobruška vas in Škocjan. However, according to NGOs, only one settlement received water cisterns; as they were not insulated, the water froze in winter. No water was supplied to other informal settlements.
71. Despite some efforts made by the Slovenian authorities, the ECRI found that the lack of practical access to a safe water supply continued to be a problem for many Roma. It concluded that its recommendation on the provision of safe water supply had not been implemented.

5. Report of the Commissioner for Human Rights of the Council of Europe on his visit to Slovenia (20-23 March 2017)

72. The then Commissioner for Human Rights, Nils Muižnieks, noted in his Report that while the authorities had installed water cisterns in Dobruška vas at the end of 2016 as a short-term solution to ensure access to drinking water, the inhabitants complained that the cisterns were not filled regularly and the water did not stay in them. Most people therefore obtained their water from a

stream polluted with sewage and waste from a meat-processing plant nearby. Drinking from or bathing in contaminated streams caused illnesses, such as diarrhoea and skin rashes, to which the children were particularly prone. The lack of water prevented the inhabitants from maintaining basic hygiene. As a result, children were mocked and avoided in school, and adults found it difficult to obtain or keep employment.

73. In discussions with the Commissioner, various interlocutors agreed that there was a lack of political will on the part of certain local municipalities in the Dolenjska region to resolve the legal status of Roma settlements and to improve the inhabitants' living conditions. They further noted that the State was not putting adequate pressure on the municipalities regarding the matter.

74. The Commissioner for Human Rights made a general recommendation to the national authorities with regard to poverty reduction and social inclusion. He encouraged the Government to define more clearly the targets of their social policies, so as to enable an assessment of the results, and not simply the level of their implementation. Social policies should be grounded on the relevant national and international human rights framework ensuring that all persons are protected in an equal and non-discriminatory manner.

C. Statistical data on European population connected to public water supply and to urban wastewater collecting systems

75. Access to improved drinking water sources is increasing, rising from 76% of the global population in 1990 to 91% in 2015. Nevertheless, according to the available Eurostat data in 2015, the percentage of European resident population which had access to drinking water through a connection to a public water supply system varied substantially from one country to another, ranging from less than 64% to 100%.

76. Also connection to the urban wastewater treatment has improved throughout Europe over recent decades. According to the European Environment Agency, in central European countries, connection rates are now at 97%, with about 75% receiving tertiary treatment, the final stage of treating wastewater before it is discharged to the environment. The rates of connection to the urban wastewater systems are generally lower in Southern, South-East and Eastern Europe, with levels at about 71%.

THE LAW

I. JOINDER OF THE APPLICATIONS

77. In view of the connection between the applications as regards the facts and the substantive questions that they both raise, the Court considers it appropriate to join them in accordance with Rule 42 § 1 of the Rules of Court.

II. THE RESPONDENT GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Anonymity, abuse of the right of application, lack of victim status, and failure to observe the six-month time-limit in respect of Aleks Kastelic, the second applicant in case no. 24816/14

1. The parties' submissions

78. The Government asserted that no person by the name of Aleks Hudorovič, born on 24 December 2007, could be found in the official records. They suggested that the second applicant's real name was Aleks Kastelic, who had been born on 24 December 2007 and was the son of the first applicant and Ms Marija Kastelic. The second applicant had had that name since birth; therefore the Government argued that his application had been lodged under a false identity and should be considered anonymous and an abuse of the right of application. In support of the latter grounds for inadmissibility, the Government further submitted that the second applicant lived with his mother, in accordance with a custody agreement between his parents. In this connection, the Government claimed that the second applicant's place of residence was connected to the public water-distribution system and had a septic tank. Arguing that he thus had access to drinking water and sanitation facilities, the Government also maintained that he could not claim to be the "victim" of a violation of the Convention within the meaning of Article 34.
79. Furthermore, the Government challenged the validity of the power of attorney signed by the first applicant on behalf of the second applicant. According to the Government the first applicant had no standing to act on behalf of the second applicant, since his mother had custody of the child. Noting that the present case does not involve a conflict between the parents over the second applicant's interests, the Government argued that the first applicant's position as a father could not be regarded as a sufficient basis to bring an application on behalf of the second applicant.
80. The applicants disputed the Government's allegations of an abuse of the right of application, submitting that they had merely given the incorrect name by mistake and that they had had no intention to mislead the Court. In their view, the identity of the second applicant was not in dispute; therefore, his application could not be considered anonymous. The representatives of the applicants pointed out that the applicants' lack of education and illiteracy, coupled with the language barriers, made communication with them very challenging.
81. As regards the second applicant's residence, the applicants submitted that despite the formal custody agreement granting custody to his mother, he spent much of his time with his father.
82. Lastly, enclosed with their observations on the applications in question, the applicants submitted a new power of attorney on behalf of the second applicant signed by his mother, Ms Marija Kastelic.

2. The Court's assessment

83. The Court observes that although the respective positions of the Government and the applicants differ, they both relate to the application of Article 34 of the Convention, taken alone or in conjunction with Article 35 § 2 (a). These provisions, in so far as relevant, are worded as follows:

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the

rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 35

"1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
(a) is anonymous ...
3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
(a) the application is ... an abuse of the right of individual application ..."

84. The Court has held that an application is to be regarded as anonymous if the case file does not contain any information enabling the Court to identify the applicant (see "Blondje" v. the Netherlands (dec.), no. 7245/09, ECHR 2009). In the present case, the Court notes that the applicants correctly stated most of the facts pertaining to the second applicant's identity, notably his first name, date of birth and family relationship with Mr Branko Hudorovič, the first applicant in case no. 24816/14. However, they made an error by attributing to the second applicant an incorrect surname. He was improperly designated by the surname of his father, whereas in fact he bears the surname of his mother.
85. Nevertheless, as is evident also from the Government's objection in which they identified the correct name of the second applicant, the incorrect naming did not prevent his identification. The Court considers that despite this error on the part of the applicants, the facts and circumstances set out in the application sufficed to dispel any doubts as to the second applicant's identity. His identity as Aleks Kastelic was subsequently explicitly confirmed by the applicants' representatives, who submitted that the incorrect name had appeared on the application owing to the difficulties in communicating with the applicants.
86. In the Court's opinion the case therefore contained sufficient information enabling it to identify the second applicant (contrast "Blondje", cited above). Furthermore, none of the elements in the case file, nor the attitude of the applicants, imply that an attempt was made to mislead the Court and pass the second applicant off under a false identity. Therefore, the Court finds that the application cannot be regarded as anonymous or an abuse due to an incorrect indication of the second applicant's surname in the initial application.
87. Secondly, the Government disputed the second applicant's victim status and claimed that he had abused the right of individual application on account of the fact that he had been resident with his mother and had had access to drinking water and sanitation facilities at her place of residence. The Government further challenged the validity of the power of attorney signed by the first applicant on behalf of the second applicant, arguing that it should have been given by the second applicant's mother, who had been granted custody of him and was therefore his legal representative.
88. As regards the first limb of this objection, the Court observes that the Government's argument focused on the second applicant's place of residence; however, it was not disputed that the first applicant had contact with the second applicant, as confirmed also by the report on the family

situation prepared by the Ribnica Social Work Centre (see paragraph 6 above). Neither did the Government dispute that the second applicant spent a considerable amount of time at the first applicant's residence. Therefore, the Court can accept the applicants' submission that the second applicant, while maintaining his primary residence with his mother, at the material time also spent time at the first applicant's residence. In the Court's opinion, while the possibly limited amount of time spent there can affect the assessment of certain aspects of the second applicant's complaints, it cannot be decisive for the decision on his victim status, nor can it constitute an abuse of the right of application. The Court considers that, to the extent that the second applicant actually lives at the first applicant's residence, he endures the same living conditions as the first applicant and is therefore entitled to complain about them to the Court.

89. As to the second limb of the Government's objection, namely the alleged invalidity of the power of attorney, the Court observes that the case before it does not raise a question of family law, but, rather, hinges on the second applicant's living conditions. It therefore takes the view that any person who is entitled under domestic law to represent the second applicant in that type of proceedings can also act on his behalf before the Court (see, mutatis mutandis, Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, with further references). The Government submitted evidence that the second applicant's mother had been granted custody of him and argued that she was therefore his only legal representative. The applicants did not dispute this, but submitted another power of authority on the second applicant's behalf, signed by his mother. The Court is therefore satisfied that the applicants have rectified any error regarding the question of which of the parents was entitled to represent the second applicant in the proceedings before the Court. It accordingly finds that the second applicant is entitled to claim to be a victim of the alleged violations of the Convention.

90. Furthermore, the Court notes that the shortcomings in the application such as examined above may, in principle, also have implications within the meaning of Rules 45 and 47 of the Rules of the Court, which set out the formal requirements regarding, inter alia, a duly completed power of attorney or authority form (Rules 45 § 3 and 47 § 1 (c)) and the indication of the applicant's name on the application form (Rule 47 § 1 (a)). Failure to comply with the requirements regarding the application form may have direct consequences for the determination of the date of introduction of the application for the purposes of Article 35 § 1 of the Convention (see, with regard to the authority form, Kaur v. the Netherlands (dec.), no. 35864/11, § 13, 15 May 2012, and Kokhreidze v. Georgia and Ramishvili v. Georgia (dec.), nos. 17092/07 and 22032/07, § 17, 25 September 2012). Specifically, the latter date is in principle decisive for the purpose of assessing whether an application has been lodged within a period of six months of the date on which the final decision was taken in the domestic proceedings.

91. In the present case, however, the Court does not find the date of the introduction of the application to be decisive for the assessment in question. Thus, the situation complained of concerns inadequate living conditions coupled with an alleged continued failure of the authorities to act to improve them. In this connection, the Court observes, without prejudging the merits of the present case, that in the case of Moldovan and Others v. Romania (no. 2) (nos. 41138/98 and 64320/01, §§ 107-109, ECHR 2005 VII (extracts)), comparable complaints of poor living conditions, albeit in combination with a number of other factors pertaining to the applicants' rights to respect for their

private and family life and their homes, were found by the Court to amount to a violation of Article 8 of the Convention of a continuing nature. The Court considers that in this case also the alleged prolonged failure of the authorities to ensure access to water and sanitation, which according to the applicants persists to date, amounts to a continuing situation. The Court further reiterates that in cases where there is a continuing situation against which no effective domestic remedy is available, the six-month period runs from the cessation of that situation (see Oliari and Others v. Italy, nos. 18766/11 and 36030/11, §§ 96-97, 21 July 2015, with further references). Given that no objection of non-exhaustion of domestic remedies was raised by the Government, in the context of the present case this means that irrespective of the deemed date of introduction of the application the latter cannot be rejected as out of time.

92. The Government's objections with regard to the second applicant in case no. 24816/14 must therefore be rejected.

B. Lack of victim status and failure to observe the six-month time-limit in respect of Pamela Novak, the third applicant in case no. 25140/14

1. The parties' submissions

93. The Government pointed out that Ljubo Novak and Dunja Kočevar, the first and the second applicants in case no. 25140/14, had signed a power of attorney for all twelve of their children, although Pamela Novak, who had been born on 31 October 1994, had already reached the age of majority by the date the application had been lodged. Arguing that the third applicant should have signed the power of attorney by herself, the Government challenged its validity and, in substance, the third applicant's victim status.

94. Enclosed with the applicants' observations on the applications in question, the third applicant submitted a new power of attorney bearing her own signature. In addition, the applicants' representatives, reiterating the same argument as the one set forth above in respect of Aleks Kastelic (see paragraph 80 above), argued that the applicants' lack of education and poor command of the Slovene language made communication with them very difficult.

2. The Court's assessment

95. The Court finds that its considerations with regard to the rectification of errors in the application form and their implications for the applicant's status as a victim and the fulfilment of the six-month requirement, as set out in the above case of Aleks Kastelic (see paragraphs 89 and 91 above), equally apply to the third applicant. The Court therefore finds that the third applicant is entitled to claim to be a victim of the alleged violations of the Convention. Likewise, her application cannot be rejected as out of time.

96. The Government's objection with regard to the third applicant in case no. 25140/14 must therefore be rejected.

C. Abuse of the right of application and lack of victim status in respect of all applicants, relating to access to drinking water and sanitation

1. The parties' submissions

97. As regards the applicants from the Goriča vas settlement, the Government submitted that the applicants had failed to inform the Court that the Ribnica Municipality had co-financed the purchase of a water tank for the Goriča vas settlement and that the Ribnica fire brigade had regularly supplied water to the residents of the settlement. Moreover, regarding sanitation facilities it had been agreed that the residents would buy and instal them at their own expense. Furthermore, the Government claimed that the Ribnica Municipality had intended to build several terraced houses in the Lepovče Roma settlement and relocate the Roma from the Goriča vas settlement to the newly built settlement, but they had refused to move there, without stating any reasons for their decision.
98. Secondly, as regards the applicants from the Dobruška vas 41 settlement, the Government submitted that they had failed to inform the Court of the existence of a public water-distribution system in the settlement. According to the Government, the applicants could have been connected to the distribution network at any time since 2011, and were still able to apply for an individual connection if they so wished. In addition, drinking water was also freely available from a village fountain throughout the year.
99. The Government argued that the aforementioned omissions on the part of the applicants constituted an abuse of the right of application. Furthermore, since in the Government's opinion the applicants had sufficient access to drinking water, they could not claim to be victims of the alleged violations of the Convention.
100. In response, the applicants from the Goriča vas settlement asserted that they did not have a reasonably accessible water supply or sanitation, which had been confirmed by the UN special rapporteur on the human right to safe drinking water and sanitation (see paragraph 59 above) and the Council of Europe Commissioner for Human Rights (see paragraph 73 above). The deliveries of water to the water tanks had not been mentioned since they had been rare and had had only a negligible effect on the applicants' daily life. As for the possibility of resettlement, the applicants argued that it had never been a realistic possibility owing to the opposition of the local majority population.
101. The applicants from the Dobruška vas 41 settlement alleged that they had been unable to connect to the public water-distribution system owing to their neighbours' obstruction, which had been well known to the Government, as had been mentioned in several documents as well as in a report by the Human Rights Ombudsman. As for the village fountain, it had been located 2 km away from their home, so the applicants had not considered it as providing reasonable access to water.
102. The applicants argued that the Government's allegation of the abuse of the right of application was unfounded and a misinterpretation of the concept. They had merely presented facts they had considered relevant for their applications. Their ultimate claim had been that they had not had access to water and sanitation and, as a result, had lived in conditions unworthy of human dignity. In the applicants' opinion, the information provided by the Government was either inaccurate or irrelevant to their personal situations; hence they contested both objections raised by the Government.

2. The Court's assessment

103. The Court observes that the main point of controversy between the parties concerns the interpretation of what constitutes adequate access to drinking water and sanitation and, in this connection, what is the scope of the obligations borne by the State and whether the respondent State fulfilled those obligations. The Government based their objections on the premise that the measures already taken for the purpose of providing the applicants with access to drinking water had been sufficient, whereas the applicants considered them wholly inadequate, arguing that the marginal importance of those measures had led them to not even mention them in their submissions to the Court.
104. The Court considers that the question of what constitutes adequate access to drinking water and sanitation is also the core issue to be examined on the merits.
105. Accordingly, the Government's objections in this regard must be joined to the merits.

III. ALLEGED VIOLATIONS OF ARTICLES 3, 8 and 14 OF THE CONVENTION

106. The applicants, relying on Articles 3 and, a fortiori, 8 of the Convention, complained that their homes did not have access to basic public utilities, notably drinking water and sanitation. They further submitted that they had been subjected to a negative and discriminatory attitude by the local authorities, who had refused to address their disadvantaged situation in any meaningful manner. In this regard, they relied on Article 14 of the Convention in conjunction with Articles 3 and 8. These provisions provide as follows:

Article 3

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

Article 8

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

Article 14

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

A. As regards the alleged violation of Article 8 of the Convention, and Article 14 taken in conjunction with Article 8

107. The Court notes that the applicants' complaints concern, first and foremost, an alleged failure by the State to provide them with adequate access to drinking water and sanitation, with consideration to their specific needs as members of the Roma community and their different lifestyle. In the Court's opinion, the present case raises mainly issues under Articles 8 and 14 of the Convention. These complaints will therefore be examined first.

1. Admissibility

(a) The parties' submissions

108. Referring to the relevant case-law of the Court, the Government asserted that Article 8 of the Convention does not acknowledge a right to be provided with a home. They pointed out that the applicants themselves had chosen the locations where they had settled and set up their residences, and that they were free to change those locations at any time. The social benefits they received (see paragraphs 22 and 35) enabled the applicants to live a decent life, which meant that if they were dissatisfied with their living conditions, they could change them, either by building sanitary facilities or by resettling.

109. The applicants disputed the Government's submissions, claiming that the lack of basic infrastructure such as running water and sanitation had resulted in hygiene problems and frequent diseases; they asserted that their discomfort, embarrassment and pain related to their living conditions, which were relevant to their enjoyment of Article 8 rights, in particular the right to respect for their private and family life. Moreover, their children were stigmatised, humiliated and unable to integrate into mainstream society because of the lack of the most basic amenities.

(b) The third-party intervener

110. The Human Rights Centre of the University of Ghent took the view that deplorable living conditions may raise an issue under both Articles 3 and 8 of the Convention. According to the third party, living conditions without access to water and sanitation fell within the scope of Article 8 in so far as they prevented individuals from enjoying their homes and affected their well-being, health and quality of life (see Costache v. Romania (dec.), no. 25615/07, 27 March 2012). Referring to the Court's case-law pertaining to environmental pollution and individuals' living conditions, the third party pointed out that private and family life could be affected even where an individual's health was not seriously endangered (see López Ostra v. Spain, no. 16798/90, § 51, 9 December 1994).

(c) The Court's assessment

111. The Court notes that certain questions with respect to the applicability of Article 8 of the Convention, taken alone and in conjunction with 14, may arise in the present case. It notes in this regard that the Government maintained that Article 8 of the Convention does not acknowledge a right to a home, while the applicants took the view that their living conditions fell within the scope of Article 8 (see paragraphs 108 and 109 above).

112. As regards the question whether an individual's living conditions may fall within the scope of Article 8, the Court reiterates that in the case of Moldovan and Others (no. 2) (cited above, § 105) the applicants' overcrowded and unsanitary living conditions, which were caused by the authorities' actions, fell within the scope of their right to respect for family and private life, as well as their homes.

113. With respect to the applicants' complaint concerning access to safe drinking water, the Court also has regard to its case-law on health and environmental risks resulting from water pollution. It notes that it has already had an opportunity to pronounce judgment on the actual or potential risks related to, inter alia, contaminated water sources, and their link to an individual's private life and home. In the cases of Dubetska and Others (no. 30499/03, §§ 109-123, 10 February 2011) and Dzemyuk v. Ukraine (no. 42488/02, §§ 77-84, 4 September 2014), even in the absence of direct evidence of actual damage to the applicants' health, the Court accepted that the respective applicants may have been affected by the water pollution at issue (see Dubetska and Others, cited above, § 111, and Dzemyuk, cited above, § 82). Furthermore, upon examination of the environmental concerns in question, the Court found that the elevated risk to the applicants' health had constituted an interference with their private lives and homes which had attained a sufficient degree of seriousness to trigger the application of Article 8 of the Convention (see Dubetska and Others, cited above, §§ 118-119, and Dzemyuk, cited above, §§ 83-84). In the two above-mentioned cases the Court acknowledged a direct link between the enjoyment of clean water sources and an individual's health.

114. The Court recalls that Article 8 does not in terms recognise a right to be provided with a home (see Chapman v. the United Kingdom [GC], no. 27238/95, § 99, ECHR 2001-I), let alone a specific home or category of home – for instance, one in a particular location (see, mutatis mutandis, Ward v. the United Kingdom (dec.), no. 31888/03, 9 November 2004). It recalls that the scope of any positive obligation to house the homeless is limited (see, mutatis mutandis, O'Rourke v. the United Kingdom (dec.), no. 39022/97, 26 June 2001).

115. Furthermore, the Court refers to the case of Denisov v. Ukraine ([GC], no. 76639/11, §§ 103-114, 25 September 2018), where the Grand Chamber outlined, in the context of an employment dispute, two different approaches the Court employs when examining whether cases involving Article 8 complaints fall within the ambit of "private life". In particular, it distinguished between the reason-based approach, under which the Court examines whether there is a private life issue in the underpinning reasons for the impugned measure, and the consequence-based approach, under which the Court analyses the effects of the impugned measure on the individual's private life. If the latter approach is at stake, the threshold of severity assumes crucial importance and it is for the applicant to show convincingly that the threshold was attained in his or her case. The Court reiterates in this connection that the consequence-based approach applies also in the context of positive obligations incumbent on the State under Article 8 of the Convention (see, for example, Fadeyeva v. Russia, no. 55723/00, §§ 68-69, ECHR 2005-IV, where the Court stated that a certain minimum level of adverse effects of pollution on the individual's health or quality of life must be demonstrated to engage Article 8).

116. The Court makes clear that access to safe drinking water is not, as such, a right protected by Article 8 of the Convention. However, the Court must be mindful of the fact that without water the

human person cannot survive. A persistent and long-standing lack of access to safe drinking water can therefore, by its very nature, have adverse consequences for health and human dignity effectively eroding the core of private life and the enjoyment of a home within the meaning of Article 8. Therefore, when these stringent conditions are fulfilled, the Court is unable to exclude that a convincing allegation may trigger the State's positive obligations under that provision. Existence of any such positive obligation and its eventual content are necessarily determined by the specific circumstances of the persons affected, but also by the legal framework as well as by the economic and social situation of the State in question. The Court considers that the question whether any positive obligations were triggered in the present case and the scope of such obligations, which are the core issues to be examined on the merits, are closely linked to the specific circumstances of the case and their level of seriousness. There is therefore a strong tie between the question of applicability and the merits in the assessment of whether or not a private life issue is raised in the present case.

117. Accordingly, the Court decides to join the issue of applicability of Article 8 and Article 14, taken in conjunction with Article 8, to the merits of the case.

118. That said, the Court considers that the applicants' complaints under Article 8 and Article 14, taken in conjunction with Article 8, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As no other grounds for declaring these complaints inadmissible have been established, the Court declares them admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

119. Claiming that the lack of water and sanitation had serious repercussions on privacy and intimate life, the applicants took the view that the margin of appreciation accorded to the State under Article 8 should be particularly narrow in the specific circumstances of their cases.

120. The applicants, relying on the Court's case of Winterstein and Others v. France (no. 27013/07, § 142, 17 October 2013), submitted that the way of life of the Roma community was to be considered an integral part of their identity. Their vulnerable position as a minority should have prompted the authorities to give special consideration to their needs and different lifestyle, both in the relevant regulatory planning framework and in concrete decisions in individual cases. The applicants furthermore argued that the national authorities had at least implicitly acknowledged the need for special measures to address the long-standing discrimination against the Roma community. They pointed out that various policy papers and research had been prepared favouring various types of legalisation in respect of Roma settlements, given that in Slovenia the Roma had not been nomadic, but rather had lived a settled life.

121. Those strategic documents had been implemented in some municipalities, with many successful projects in organising Roma settlements in Slovenia, either through amendments to land planning and legalisation of existing settlements, through purchases of land from private owners for the purpose of resettlement, or through practical improvements in living conditions in the

settlements. None of those solutions had, however, been employed by the municipalities of Ribnica and Škocjan, where the applicants lived.

122. The applicants from the Goriča vas settlement did not have access to any regular and reasonably accessible source of clean water, nor did they have any plumbing or sanitation, while the applicants from the Dobruška vas 41 settlement argued that, in view of their difficulties in accessing the only group water-distribution connection (see paragraph 32 above), the municipality should have installed at least three such connections to ensure effective access to safe drinking water. Furthermore, all applicants asserted that they had not been provided with a meaningful alternative, such as appropriate resettlement. As to the Government's submission that the Roma inhabitants of Goriča vas had refused to be resettled to a location in Lepovče, the applicants alleged that the resettlement had been blocked by the majority non-Roma population of Lepovče.

(ii) The Government

123. Referring to the relevant case-law of the Court, the Government asserted that the fact of belonging to a minority with a traditional lifestyle different from that of the majority did not exempt the members of such a minority from general laws intended to safeguard the assets of the community as a whole.

124. The Government submitted that a comprehensive regulatory framework was in place in Slovenia governing spatial development and planning, the utility infrastructure facilities, as well as the construction of buildings. Access to such utilities was provided under equal conditions to all inhabitants, including the Roma, irrespective of their personal or other circumstances. Given that the provision of water and sanitation fell within the scope of public municipal utilities, those services were not provided for profit; the charges only covered the costs of their provision. Moreover, under the applicable legislation, all buildings which required access to drinking water needed to be connected to the public water supply system, unless such a public water network did not exist in the area. Residents who applied to be connected to the public water supply system had to install individual house connections at their own expense.

125. The Government further asserted that many Slovenian residents living in remote areas had no access to drinking water from the public water supply system and had arranged access by collecting rainwater, setting up water tanks or finding similar solutions. Under Slovenian legislation, if a household does not have a possibility to connect to the public water supply system, the owner of the building must install a water tank. The public utility service provider is then obliged to supply the water tank with water. According to the Government, at least 163,000 inhabitants did not have access to the public water supply system and relied on other means of private water supply based on a water permit. Moreover, 15,000 inhabitants obtained drinking water by harvesting rainwater, for which no water permit was necessary.

126. Similarly, the discharge and treatment of wastewater and run-off rainwater was in principle a municipal utility service; however, in dispersed settlement areas inhabitants had installed individual systems such as small urban wastewater treatment plants or septic tanks. As was the case with water connection, sewerage connection to the public sewerage network had to be installed and paid for by the owners of the buildings, and so were individual treatment plants and septic tanks.

127. The Government pointed out that illegally constructed buildings were not allowed to be connected to public utility infrastructure facilities such as drinking-water supply and the discharge of wastewater, emphasising in this regard that the applicable laws applied uniformly to everyone and further arguing that any provisions to the contrary would amount to discrimination against the majority vis-à-vis the Roma community. In the Government's opinion, such regulation did not entail an interference with the exercise of an individual's right to respect for private and family life. Assuming, however, that the Court did not accept such a position, the Government further submitted that the interference in the case at hand had been justified under Article 8 § 2 of the Convention.

128. As regards the status of the applicants' settlements, the Government claimed that they had not been tolerated, referring to the relevant decisions of the Inspectorate for the Environment and Spatial Planning (see paragraphs 10 and 26 above), whereby inhabitants of both Roma settlements had been ordered to remove illegally constructed buildings and restore the land to its previous state. Although those decisions had been enforceable, they had not subsequently been enforced, since many of the buildings had housed families with children who would have had to be provided with alternative accommodation in the event of demolition. Nevertheless, the Government pointed to the fact that all the applicants had constructed buildings on land that was not owned by them, and therefore must have known that those buildings had been illegally constructed. Given the non-residential purposes of the land in question (see paragraphs 9 and 25 above), their respective buildings could not be legalised.

129. In this context, the Government further pointed out that the applicants themselves had chosen the locations where they had settled and set up their residences, and that they were free to change those locations at any time. The social benefits they received (see paragraphs 22 and 35) enabled the applicants to live a decent life, which meant that if they were dissatisfied with their living conditions, they could change them, either by building sanitary facilities or by resettling. In this connection, the Government referred to the plans of the Ribnica Municipality to build a Roma settlement in Lepovče, a possibility allegedly refused by the Roma community. Also, according to the Government the applicant Branko Hudorovič could have, but had not, applied for public rental housing which was available in the Ribnica Municipality (see paragraph 8 above).

130. Lastly, the Government submitted that appropriate positive measures had been taken to improve the living conditions of the Slovenian Roma community. Referring to the strategic framework set out in the National Programme of Measures for Roma (see paragraph 50 above) and a number of specific programmes and projects, the Government asserted that they had been focused on preservation of the existing Roma settlements and their legalisation, followed by investment in basic utilities and other infrastructure. Under the 2010-15 National Programme a number of tenders in the amount of several million euros had been awarded for co-financing of basic community infrastructure projects in Roma settlements. Spatial planning projects had been planned and implemented in collaboration with the Roma community. The Government further submitted that another National Programme was to be adopted for the period 2016-21. In terms of concrete measures benefiting the applicants, the Government referred to the plans for relocation of the Roma community from Goriča vas (see paragraph 14 above) and the co-financing of the water tank and the diesel generator (see paragraph 16 above), and to the group water-distribution connection

installed in the Dobruška vas 41 settlement (see paragraph 29 above). The Government also submitted that the Škocjan Municipality had been actively examining the possibilities for relocating the family of Ljubo Novak and Dunja Kočevar; however, they had as yet been unsuccessful in their efforts.

(b) The third-party interveners

(i) Human Rights Centre of the University of Ghent

131. This third party referred to the findings of several international human rights mechanisms, including the Council of Europe Commissioner for Human Rights, whereby forms of unequal treatment in Slovenia included preferential treatment of non-Roma in the development of infrastructure and the systemic failure to develop infrastructure in Roma communities.
132. As regards the protection afforded by Article 8, in the view of this third party a crucial question as to the State's compliance with the provision was whether it had provided for an adequate legal framework; if so, it should further be assessed whether an individual's living conditions were not linked to any unlawfulness in domestic terms (see, for example, Costache, cited above, § 23). The third party pointed out that the areas of urban planning and water and sanitation services were inherently within the remit of the State, especially since the operation of water and sanitation services were generally managed by national or local authorities. Therefore, in cases where access to those services was impeded by urban planning issues, redressing the situation necessarily depended on the steps taken by the State.
133. Moreover, where it had been shown that the State knew or ought to have known of health risks resulting from individuals' living conditions, it should be verified whether necessary and sufficient operational measures had been taken to protect the individuals concerned against those risks (see Öneryıldız v. Turkey [GC], no. 48939/99, § 93, ECHR 2004-XII). This obligation, while applying primarily to Articles 2 and 3 of the Convention, should in the opinion of this third party also apply in the context of Article 8. Furthermore, it should also be assessed whether the absence of water and sanitation services could be explained by a discriminatory attitude on the part of the authorities, which should be considered as aggravating circumstances under both Articles 3 and 8 of the Convention.
134. As regards the Court's consideration under Article 14 of the Convention, this third party pointed to the entrenched discrimination and socio-economic disadvantage faced by the Roma community, emphasising that the lack of access to basic utilities perpetuated stigmatisation and discrimination against Roma. It further pointed out that the Roma had been recognised as a vulnerable minority and an underprivileged social group in the Court's case-law (see, for example, Connors v. the United Kingdom, no. 66746/01, § 84, 27 May 2004; Chapman, cited above, § 96; and Yordanova and Others v. Bulgaria, no. 25446/06, § 129, 24 April 2012). Therefore, in the opinion of this third party, in applying Article 14 to the present case it should be assessed whether being prevented from accessing water and sanitation, access which was available to the vast majority of the population, on account of living in an informal but tolerated Roma settlement, amounted to de facto discrimination in the enjoyment of the right to respect for private and family life and the home, and the prohibition of degrading and inhuman treatment.

(ii) European Roma Rights Centre

135. This third party provided an overview of its research from 2014 in which it had collected evidence on access to safe and affordable drinking water and sanitation in ninety-three Romany settlements and neighbourhoods in Albania, France, Hungary, Moldova, Montenegro, Slovakia and North Macedonia (formerly "the former Yugoslav Republic of Macedonia"). Without claiming to be representative of the situation of the Roma in any given country, the research had been designed to demonstrate that a significant number of Roma communities had suffered problems in relation to access to water, and that those conditions had often amounted to racial discrimination. An earlier research paper, "The Housing Situation of Roma Communities: Regional Roma Survey 2011", conducted by the United National Development Programme (UNDP), had shown that a high proportion of Romany households in selected European countries had not been connected to a public water supply system: in Romania it had been 72%, in Moldova 66%, in Slovakia 38%, in Croatia 35%, in Hungary 30%, and in Albania 30%.

136. The research of this third party had produced similar results; significant numbers of Roma in the examined settlements had had no access to running water in their homes, and many Roma, especially those in segregated settlements, had suffered disproportionately from the failures of the authorities to secure their access to water and sanitation. Their water sources had often been far from home, with the burden to secure water falling disproportionately on women and girls. The water sources had often not been tested to ensure their safety and had been exposed to a wide range of contaminants, including dry toilets (pit latrines), insects, and wild animals. Roma often had not been able to afford public water service pipes and water charges, even if they had been otherwise available. In seventy-five of the sites investigated (81%), the Romany settlements had not been connected to the public water supply systems. Moreover, in sixty-three places (68%), none of the Romany households in the neighbourhood or settlements had been supplied with tap water and a functioning sewerage system. If the houses had been built on land with unclear ownership or the occupants had lacked a construction permit or similar documents, the local authorities had generally refused to connect them to the public water system.

137. In more than half of the places visited, the nearest water source had been more than 100 m away, and in some places Roma had had to walk several kilometres. Distant water resources had resulted in a high risk to public health from insufficient sanitation. According to the World Health Organization (WHO), when a water source required a walk of between 100 m and 1,000 m from home or five to thirty minutes total collection time, the quantities of water collected are unlikely to exceed 20 litres per person daily and hygiene practice may therefore be compromised, resulting in a high risk to public health from poor hygiene. When the water source was more than 1 km away from the home or required more than thirty minutes collection time, the likely volumes of water collected were very low, typically less than 5 litres per person per day; basic consumption and hygiene practice were compromised to an extent that the risk to public health from poor hygiene was very high.

138. Many Roma communities had enjoyed access to water only thanks to private donations. In two thirds of the sites surveyed, this third party had established a prima facie case of race discrimination: there had either been clear evidence that Roma had experienced less favourable conditions for

accessing water due to their ethnicity (direct discrimination), or it had not been possible to objectively justify the less favourable conditions which they had disproportionately experienced (indirect discrimination).

(c) The Court's assessment

(i) Article 8

(α) General principles

139. The Court has consistently held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life and the home (see X and Y v. the Netherlands, 26 March 1985, § 23, Series A no. 91).
140. The principles applicable to assessing a State's positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (see Gaskin v. the United Kingdom, 7 July 1989, § 42, Series A no. 160, and Roche v. the United Kingdom [GC], no. 32555/96, § 157, ECHR 2005-X). In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see Hatton and Others v. the United Kingdom [GC], no. 36022/97, § 98, ECHR 2003-VIII; Rees v. the United Kingdom, 17 October 1986, § 37, Series A no. 106, and Leander v. Sweden, 26 March 1987, § 59, Series A no. 116). Furthermore, even in relation to the positive obligations flowing from Article 8 § 1, in striking the required balance, the aims mentioned in Article 8 § 2 may be of relevance (see Rees, cited above, § 37; see also López Ostra, cited above, § 51).
141. In socio-economic matters such as housing the margin of appreciation available to the State is necessarily a wide one (see James and Others v. the United Kingdom, 21 February 1986, § 46, Series A no. 98, and Mellacher and Others v. Austria, 19 December 1989, § 45, Series A no. 169). The Court takes the view that in issues involving an assessment of the priorities in the context of the allocation of limited State resources, the national authorities are in a better position to carry out this assessment than an international Court (see O'Reilly and Others v. Ireland (dec.), no. 54725/00, 28 February 2002, and Sentges v. the Netherlands (dec.), no. 27677/02, 8 July 2003).
142. In addition, it is necessary to take into account the vulnerable and disadvantaged position of the Roma population which requires some special consideration to be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (see Connors, cited above, § 84, and Chapman, cited above, § 99). Social groups such as the Roma may need assistance in order to be able effectively to enjoy the same rights as the majority population. As the Court has stated in the context of Article 14 of the Convention, that provision not only does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them but, moreover, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of Article

14 (see D.H. and Others, cited above, § 175; Thlimmenos v. Greece [GC], no. 34369/97, § 44, ECHR 2000-IV; and Stec and Others v. the United Kingdom [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI). In the context of Article 8, the applicants' specificity as a social group and their needs has been considered one of the relevant factors in the assessment of the proportionality that the national authorities are under a duty to undertake (see Yordanova and Others, cited above, § 129).

(β) Application of those principles to the present case

143. The Court notes that the applicants did not argue that their living conditions can be deemed to have resulted from any activity of the authorities that would restrict their access to safe drinking water or pollute any existing water resources in respective settlements. They complained of insufficient provision of basic infrastructure; accordingly, the present case will be considered as concerning the State's positive obligation to take reasonable and appropriate measures to secure respect for their homes and their private and family life. The Court considers that the key consideration in its assessment concerns the scope of the State's positive obligation to provide access to utilities, especially to a socially disadvantaged group. In this connection, the domestic and international materials referred to by the parties (see paragraphs 50-51, 59-62 and 66-71 above) show that a considerable part of the Roma population in Slovenia, who live in illegally built settlements that are often removed from the densely populated areas with a public water-distribution system, face greater obstacles than the majority in accessing basic utilities. Accordingly, these factors and the possible need for concrete measures tailored to the applicants' specific situation will form part of the Court's assessment of the circumstances of the present case.

144. That said, the Court considers that the level of realisation of access to water and sanitation will largely depend on a complex and country-specific assessment of various needs and priorities for which funds should be provided. In the Court's view, the States must be accorded wide discretion in their assessment of those priorities and the legislative choices they make, given their wide margin of appreciation in socio-economic matters. That discretion must also apply to the concrete steps aimed at ensuring everyone has adequate access to water, such as the adoption of a national water strategy, national and local implementation projects of any such strategy, or, indeed, the provision of water from the public water-distribution system to individual households.

145. The Court notes that in Slovenia spatial development and planning and public utility infrastructure are subject to a comprehensive regulatory framework (see paragraphs 37-46 above) which lays down the conditions of legality for a building to benefit from public infrastructure (see paragraph 40 above) and distributes the responsibilities related to the costs of water and sanitation public utilities between the State – or municipalities – and consumers (see paragraphs 44 and 46 above).

146. The Court considers it reasonable that the State, or its local authorities, assume the responsibility for the provision of this service, while it is left to the owners to install individual house connections at their own expense (see paragraph 29 above). Likewise, given the inherently progressive nature of the development of a public water supply system, which is dependent on the financial resources of an individual State, it appears reasonable that alternative solutions such as

installation of individual water tanks or systems for harvesting rainwater are proposed in those areas that are not yet covered by a public water supply system.

147. In the Court's opinion, it is possible that such legislation could produce disproportionate effects on the members of the Roma community, in so far as, similarly to the applicants, they live in illegal settlements and rely on social benefits for their subsistence. However, as submitted by both parties, the domestic authorities recognised the vulnerability of the Roma community and acknowledged the need for positive measures aimed at improving their precarious living conditions. To that end they adopted and financially supported a comprehensive strategy and specific programmes and projects focused on the legalisation of the illegally constructed Roma settlements and on the provision of basic public utilities to their inhabitants (see paragraphs 50 and 130 above). It furthermore appears, according to the undisputed submissions of the applicants, that many Roma settlements have been regularised and benefited from practical improvements in their living conditions (see paragraphs 120 and 121 above). The Court takes note of all the affirmative action measures already taken by the domestic authorities with a view to improving the living conditions of the Roma community in Slovenia.

148. As regards the applicants' personal situations, it is not clear from the parties' submissions whether the applicants had a realistic possibility of relocating to settlements with better infrastructure (see paragraph 14 above) or obtaining alternative accommodation, such as public housing units at subsidised rent rate available in the Ribnica Municipality. While the Government mentioned this possibility in their submissions, official documents submitted by the parties show that, for such accommodation to be effectively made available, a municipality was required to issue a notice inviting applications for such housing units (see paragraph 51 above). In the present case, no information was submitted on whether such a notice had been issued. Nevertheless, irrespective of whether public housing was available, the Court can only conclude that the applicants remained in their respective settlements by choice.

149. Secondly, it is not disputed between the parties that at the material time, the applicants were receiving social benefits (see paragraphs 22 and 35 above). It would appear, based on the fact that the applicants from the Goriča vas settlement co-financed the purchase of the water tank and agreed to bear the costs of water deliveries and chemical toilets (see paragraph 16 above), and the applicants from the Dobruška vas 41 settlement bought land near the settlement and built a wooden hut, where they moved in the course of these proceedings (see paragraph 28 above), that the applicants were not living in a state of extreme poverty (contrast M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 254, ECHR 2011). Therefore, in so far as the applicants relied on State support for their subsistence, the Court considers that the national authorities recognised their situation and, through their system of social benefits, ensured that they were guaranteed a certain basic level of subsistence which was, or could have been, used, inter alia, for improving their living conditions.

150. Furthermore, the Court observes that the municipal authorities of Ribnica and Škocjan also undertook some concrete actions to ensure the applicants had access to safe drinking water. In this connection, the Government argued that the applicants' respective buildings could not be legalised because they were erected on land not intended for residential use (see paragraph 128 above). In the absence of legalisation, the buildings could not be connected to water and sanitation services. Instead, the Court notes that a water tank, co-financed by the Ribnica Municipality, was purchased

in 1999 for Goriča vas settlement, and water was delivered there by the local fire brigade upon request, while the costs of the water itself were borne by the Municipality (see paragraph 19 above). Although it is not clear whether there were any such periods when no tank was available in the settlement, the applicants asserted that several water tanks had eventually become inappropriate for use (see paragraph 18 above). On this basis, as well as on the basis of the information provided by the Government concerning water deliveries for the period of 2010-16 (see paragraph 19 above), the Court accepts that one or several water tanks were installed in the settlement in the period from 1999 to 2016 into which supplies of drinking water were placed.

151. The Court notes that there is a dispute between the parties as to the reasons why the water was not delivered more often to the Goriča vas settlement. While the applicants assert that the water tank became unusable due to mould and other fungi, the Government claim that the tank was subsequently sold by the members of the Roma community (see paragraph 18 above). Be that as it may, it is worth noting that no financial or other assistance, such as the purchase of another water tank, appears to have been requested by the applicants from the municipal authorities since 1999 for the purpose of acquiring a more regular water supply. Furthermore, the applicants did not assert that their own investment in the solution provided by the Municipality constituted a disproportionate financial burden that they could not afford. Neither did the applicants allege that the water delivered to the Goriča vas settlement by the local fire brigade (see paragraphs 18-20 above) was not safe for drinking, or complain of any specific dangers to health or diseases in this respect. In the light of this, the Court concludes that the above arrangement provided the applicants from the Goriča vas settlement with the possibility of accessing safe drinking water.

152. The Court considers that a similar conclusion can be reached with regard to the applicants from the Dobruška vas 41 settlement, where the Škocjan Municipality installed and financed a group water-distribution connection from which individual connections could be installed for supplying water to individual households. Nine individual connections were installed from the distribution connection to the individual users' homes in the settlement, supplying water to seven of them (see paragraph 30 above). The applicants did not join the water supply system, allegedly owing to obstruction by hostile neighbours. However, it must be noted that they did not even apply to have water installed in their previous home (see paragraph 32 above). Neither is it clear from the applicants' submissions whether they took any steps towards obtaining an individual water connection after moving to a new location (ibid.). In this connection, given that the applicants not only chose their new location, but had also bought the land on which they built their home, even if only to avoid further disputes with their neighbours, in the Court's opinion they were themselves responsible for verifying whether they would be able to connect to the public water supply system and for taking steps to ensure their individual connection.

153. Setting up a common water tank for an entire settlement or a public water point available to everyone in the settlement may be considered an interim rather than a permanent solution (see paragraph 62 above). However, in the Court's opinion these positive measures did provide the applicants with the opportunity to access safe drinking water. Moreover, in the absence of any evidence to suggest the contrary, the Court considers that the domestic authorities have taken those measures in good faith. The Court also notes in this respect that the applicants failed to show any

shortcomings in the measures already taken by the authorities regarding their quality of life in relation to other, more permanent, solutions.

154. The Court further notes that the applicants failed to explicitly address the issue of what measures should have been adopted by the State to constitute compliance with its obligation to provide access to basic public utilities. The applicants from the Goriča vas settlements made no submissions in that regard, while the applicants from the Dobruška vas 41 settlement argued that at least three water-distribution connections should be installed in the settlement to ensure effective access to safe drinking water (see paragraph 122 above), without, however, explaining whether they had taken any actions to acquire a connection to the existing group water-distribution connection, either at their previous location or after moving to the new location, or how additional water-distribution connections would impact their personal situation.

155. Neither did the applicants provide any information which would allow the Court to assess whether the municipal authorities of Ribnica and Škocjan, respectively, de-prioritised their interests in the regulation of their settlements and access to safe drinking water in favour of other, less urgent measures and projects aimed at improving the infrastructure of the majority population. In the absence of such submissions, the Court can only refer to the information supplied by the parties, whereby more than 10% of the population residing in the Ribnica municipality do not have access to drinking water from the public water-distribution system (see paragraph 7 above), and also some residents of the Škocjan Municipality do not have such access, but instead supply themselves with water from the village fountain (see paragraph 33 above). In this connection, the Court further notes that undisputed information provided by the Government shows that a non-negligible proportion of the Slovenian population living in remote areas do not have access to the public water supply system and have to rely on alternative means of private water supply, such as water tanks (see paragraph 125 above).

156. In the present case, the respective municipal authorities undertook measures that, as already found, provided the applicants with the opportunity to access drinking water, notwithstanding the irregular status of their settlements and the nature of the land the applicants' respective buildings had been built on (see paragraph 128 above). In the Court's opinion, the positive steps taken by the respective municipalities allow for the conclusion that they have acknowledged the disadvantages suffered by the applicants as members of a vulnerable community and shown a degree of active engagement with their specific needs. It is true that those steps did not entail the provision of household connections that are generally considered the ideal solution (see paragraph 62 above), or, in the case of the water tank installed in the Goriča vas settlement, even made that possible. However, the applicants were not prevented from making use of their social benefits that allowed them to provide for their essential needs (see paragraph 149 above) to employ alternative solutions such as installing private water tanks or systems for collecting rainwater. As regards the State's own legal and financial obligations in this regard, the Court takes the view that, while it falls upon the State to address the inequalities in the provision of access to safe drinking water which disadvantage Roma settlements, this cannot be interpreted as including an obligation to bear the entire burden of providing running water to the applicants' homes.

157. Lastly, the measures taken by the municipalities did not include any steps to ensure sanitation for the applicants; however, the Court notes that a considerable part of the population in Slovenia

does not as yet benefit from a public sewerage system; in fact, it would appear that both relevant municipalities are significantly better equipped with public water supply than sanitation (see paragraphs 7, 33, 34 and 58 above). According to the undisputed submissions of the Government, in the Ribnica Municipality only the town of Ribnica and the Hrastje area were at the material time connected to such a system, while the Škocjan Municipality had no public discharge or facility for treatment of urban wastewater. Considering the limited access to sanitation in the two municipalities, it would be difficult, in the absence of proof to the contrary, to conclude that the applicants' respective situations were accorded less importance than those of the majority population. Furthermore, taking account of the inherently progressive nature of the development of public infrastructure and the State's wide discretion in the prioritisation of resources for urban planning (see paragraph 144 above), in the Court's opinion only particularly convincing reasons such as a serious risk to health could justify imposing a burden on the State to take any steps with regard to the applicants' respective situations. However, while the applicants complained of frequent diseases (see paragraph 109 above), they neither made any concrete submissions to that effect nor presented evidence in support of their claims (see, mutatis mutandis, Denisov v. Ukraine, cited above, § 114). In that connection, it is worth noting that the applicants did not argue that they were in any way, financially or otherwise, prevented from installing their own septic tanks or employing other solutions alternative to the public sewerage system.

158. Reiterating, firstly, that the applicants received social benefits which could have been used towards improving their living conditions, secondly, that the States are accorded a wide margin of appreciation in housing matters, and thirdly, that the applicants have not convincingly demonstrated that the State's alleged failure to provide them with access to safe drinking water resulted in adverse consequences for health and human dignity effectively eroding their core rights under Article 8 (see paragraphs 115 and 116 above), the Court finds that the measures adopted by the State in order to ensure the applicants access to safe drinking water and sanitation took account of the applicants' vulnerable position and satisfied the requirements of Article 8 of the Convention.

159. The Court accordingly concludes that, even assuming that Article 8 is applicable in the instant case, there has been no violation of that provision. In these circumstances the Court finds it unnecessary to decide on the issue of applicability of Article 8 (see paragraph 117 above).

(ii) Article 14 in conjunction with Article 8

160. The applicants essentially complained that the State had failed to sufficiently consider their specific needs as members of a disadvantaged Roma community in the provision of basic utilities, notably water and sanitation. According to the applicants, in the two municipalities in question, discriminatory attitudes, prejudice and stereotypes had played a major role in the local authorities' inactive approach to resolving the applicants' lack of basic infrastructure. The parties' submissions are summarised in paragraphs 119-130 above.

161. The Court notes that it has dealt with the applicants' core grievance in the context of its assessment of the scope of the State's positive obligation to provide access to basic utilities to a socially disadvantaged group and concluded that the respondent State in the present case has not violated Article 8 of the Convention (see paragraphs 143-159 above).

162. In light of this, the Court finds it unnecessary to decide on the issue of applicability of Article 14 of the Convention, as it considers that, for the reasons stated above and assuming that Article 14 applies, there has been no violation of Article 14 of the Convention in conjunction with Article 8.

B. As regards the alleged violation of Article 3 of the Convention, taken alone and in conjunction with Article 14

163. The applicants complained that the discomfort and pain resulting from their lack of basic amenities amounted to degrading and inhuman conditions contrary to Article 3 of the Convention. The Government argued there has been no action or practice on the part of the State which would fall within the scope of Article 3 of the Convention and would be prohibited under that Article. The parties' submissions are substantially the same as the ones made under Article 8 of the Convention and are summarised in paragraphs 119-130 above.
164. The Court notes at the outset that this complaint is linked to the one examined above and must therefore likewise be declared admissible (see paragraph 118 above).
165. In this connection and with respect to the issue of applicability of Article 3 of the Convention, the Court cannot exclude the possibility that State responsibility could arise for "treatment" where an applicant, in circumstances wholly dependent on State support, found himself or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity (see O'Rourke, cited above, and Budina v. Russia (dec.), no. 45603/05, 18 June 2009).
166. However, in the present case the Court has established that the positive measures undertaken by the domestic authorities provided the applicants with the opportunity to access safe drinking water, irrespective of how and whether it was realised (see paragraph 151 above).
167. For this reason, even assuming that the alleged suffering reached the minimum threshold and that Article 3 is applicable in the present case, there has been no violation of this provision, taken alone and in conjunction with Article 14.

IV. CONCLUSION

168. In view of the above conclusions, it is not necessary for the Court to examine the Government's objections of abuse of the right of application and lack of victim status in respect of all applicants.

FOR THESE REASONS, THE COURT

1. Decides, unanimously, to join the applications;

2. Joins to the merits, unanimously, the Government's objections of abuse of the right of application and lack of victim status in respect of all applicants, relating to access to drinking water and sanitation;

3. Joins to the merits, by a majority, the issue of applicability of Article 8 and Article 14, taken in conjunction with Article 8;

4. Declares, unanimously, the applications admissible;

5. Holds, by five votes to two, that there has been no violation of Article 8 of the Convention in respect of the applicants in application no. 24816/14;

6. Holds, unanimously, that there has been no violation of Article 8 of the Convention in respect of the applicants in application no. 25140/14;

7. Holds, unanimously, that there has been no violation of Article 14 of the Convention in conjunction with Article 8;

8. Holds, unanimously, that there has been no violation of Article 3 of the Convention, taken alone or in conjunction with Article 14;

9. Holds, by five votes to two, that, as a consequence, it is not necessary to examine the Government's objections and the issue of applicability of Article 8 and Article 14 taken in conjunction with Article 8, which have been joined to the merits.

Done in English, and notified in writing on 10 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı — Deputy Section Registrar

Robert Spano — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pavli, joined by Judge Kūris, is annexed to this judgment.

R.S.
H.B.

APPENDIX
List of applicants

File no.	Case name	Date of lodging	Name of Representative	Introduced by
1.	24816/14 Hudorovič v. Slovenia	26/03/2014	N. Zidar Klemenčič	Branko HUDOROVIČ
2.	25140/14 Novak and Kočevar v. Slovenia	26/03/2014	N. Zidar Klemenčič	Aleks KASTELIC Ljubo NOVAK Dunja KOČEVAR

File no.	Case name	Date of lodging	Name of Representative	Introduced by
				Pamela NOVAK Julija NOVAK Matjaž NOVAK Mojca NOVAK Milena NOVAK Gabrijela NOVAK Aleksander NOVAK Tatjana NOVAK Žan NOVAK Žarko NOVAK Urška NOVAK Damjan NOVAK

PARTLY DISSENTING OPINION OF JUDGE PAVLI, JOINED BY JUDGE KŪRIS

"Water is a commodity with a social value, one that is necessary for meeting the basic needs of every human being."[1]

1.The present case involves a dispute regarding the respondent State's failure to ensure access to clean water and sanitation to members of two Roma communities over an extended period of time. The majority hold that, even assuming that Article 8 of the Convention is applicable in the circumstances – a question that has been left open – the respondent State has done enough to fulfil its positive obligations and therefore has not violated the applicants' Article 8 rights. I am unable to agree with this conclusion with respect to the applicants in the first application (no. 24816/14).
2.The two applications raise a novel question in that the Court, apparently for the first time, has been called to decide to what extent, if any, Article 8 of the Convention guarantees a right of access to clean water in circumstances where families have been legally unable to connect to the regular public water supply. It is also significant, in my view, as it raises complex questions related to the treatment of historically marginalised communities, and to whether Article 8 or other Convention provisions impose any special obligations in this respect.

A.Applicability of Article 8: denial of access to the public water supply for an extended period of time

3.The majority hold that Article 8 does not guarantee "access to safe drinking water ... as such", but that a "persistent and long-standing lack of access to safe drinking water can, by its very nature, have adverse consequences for health and human dignity effectively eroding the core of private life and the enjoyment of a home" (see paragraph 116 of the judgment). In reaching this conclusion, the majority judgment recalls our established case-law regarding State obligations to ensure that individual applicants – who hitherto happened to have access to water, normally by virtue of being connected to the public water supply – are protected from threats to their clean water, for example

as a result of industrial activities or other types of environmental pollution (see paragraph 113 of the judgment).

4.I do not disagree with the first part of the threshold test proposed by the majority, namely that a long-standing lack of access to a safe water supply, which "by its very nature" affects health and human dignity, comes under the scope of Article 8. It is not clear whether the second part of the proposed test – "effectively eroding the core of private life and enjoyment of a home" – is meant simply as rhetorical emphasis or, conversely, as imposing a burden on applicants to show that the adverse consequences for their health or dignity are so severe that they have "eroded the core" of their Article 8 rights. If the latter, this would be hard to reconcile with our case-law or the nature of the rights at stake. An indication of adverse consequences stemming from a lack of access to clean water and basic sanitation for an extended period of time would be sufficient in my view.

5.The majority judgment seems compelled to adopt a test of "stringent conditions" in order to avoid imposing an unreasonable burden on States in an area that has historically been seen as falling under the head of socio-economic rights. But putting aside the debatable matter of the strict dualism of rights, what precise burden would be imposed on States by recognising a right of access, in principle, to the public water supply, or comparable alternatives? Such a right cannot, of course, be absolute – very few Convention rights are – and could be restricted on reasonable grounds of balancing against competing public interests, such as the remoteness of a particular dwelling or settlement, or other factors that may render the applicants' connection to the public water supply (assuming one is available in the first place) unreasonably burdensome on the public purse or otherwise impractical. The grounds for restricting Article 8 rights, as listed in the second paragraph of that provision and which ought naturally to inform the scope of any positive obligations imposed on States, include "the economic well-being of the country", "public safety" and other relevant considerations. In conducting its assessment, the Court might even confine itself to reviewing the national legal framework on access to water, ensuring that it is generally consistent with Article 8 obligations and that it has not been applied in an arbitrary or discriminatory fashion in the individual case before us. Where a sufficient public water supply is not available in the vicinity of a particular settlement, it may be reasonable to expect its inhabitants to rely on other sources of clean water and sanitation, possibly with support from the national authorities or on a cost-sharing basis.

6.This approach is mandated, in my view, by the fact that access to clean water is one of the few things that are actually essential to human survival and has therefore been increasingly recognised, including by the member States of the Council of Europe already twenty years ago, as belonging to the category of fundamental rights (as the judgment recognises, inter alia, in paragraphs 63 and 113). It is, after all, very hard to accept that noise pollution or unpleasant smells can be significant enough nuisances to interfere with a person's personal and home life[2], but that living without safe water for decades is somehow not as significant.

7.Lack of access to a clean water supply and basic sanitation for extended periods of time is, by definition, a predicament that adversely affects core private life interests and basic human dignity. One does not need to prove that this is so. Our established line of case-law on environmental pollution holds, as the majority acknowledge, that water pollution raises an issue under Article 8 "even in the absence of direct evidence of actual damage to the applicants' health" (see paragraph 113 of the judgment). What matters is whether the environmental hazard has caused "significant

impairment" to one's ability to enjoy one's home, considering aspects such as the intensity and duration of the nuisance (see Udovičić v. Croatia, no. 27310/09, §139, 24 April 2014), and its physical and mental effects on health and quality of life (see Fadeyeva v. Russia, no. 55723/00, § 69, ECHR 2005-IV). I consider that these principles are fully applicable, perhaps with even greater force, to the situation of applicants who never had a proper clean water supply in the first place. There is no meaningful, real-life difference between having one's water supply contaminated by a nearby cemetery (as in the case of Dzemyuk v. Ukraine, no. 42488/02, 4 September 2014) and being forced, like the current applicants, to collect water from cemeteries and other unsafe sources for very long periods.

8.A qualified right of access to water is also supported by our existing jurisprudence on prolonged denial of essential public services, such as urban waste removal. Thus, in Di Sarno and Others v. Italy (no. 30765/08, 10 January 2012) the Court held that the Naples local government's failure to collect and process urban waste over several months – even though some of these services had been outsourced to private companies – created a sanitation crisis that adversely and significantly affected the residents' private and home lives, in violation of Article 8. Having no access to clean, running water for prolonged periods produces a permanent sanitation crisis, and especially so for families with small children.

9.In conclusion, I consider that a long-standing denial of access to safe water, especially when the persons involved live in the relative vicinity of the public water supply, amounts to an interference with the right to respect for private and family life, and the enjoyment of one's home, under Article 8 of the Convention. The claim would be stronger where the barriers to access are primarily of a legal or administrative nature, rather than based on public finance or other socio-economic considerations. The former situation has more in common with a standard negative interference with Convention rights than a positive obligation imposed on national authorities.

B.Justification for the interference with the applicants' Article 8 rights

10.It is, in my view, of significance that the applicants in the present case belong to the Roma ethnic community, which is recognised in Slovenia (as well as many other countries) as having a special status and special needs, due to its plight of historical marginalisation and disadvantage (see paragraphs 47-51 and 142 of the judgment). In this respect, the Court, without prejudging the merits of a particular case, cannot ignore the fact that the denial of access to basic public services to Roma settlements has been used historically by less-than-friendly local authorities as a method of pressuring the Roma to move elsewhere, or with similar discriminatory motives. This point was made forcefully by Judge Pettiti in his dissenting opinion in Buckley v. the United Kingdom (no. 20348/92, 29 September 1996), the first case decided by this Court involving Roma rights. The third-party brief of the European Roma Rights Centre in the present case makes similar arguments from a more recent, comparative perspective (see paragraph 138 of the judgment), suggesting that these discriminatory practices against the Roma continue to persist. Finally, the applicants have specifically claimed in the present case that discriminatory attitudes played "a major role" in the refusal of the local authorities to connect them to the public water supply (see paragraph 160 of the judgment). In view of this historical context, the Court should apply close scrutiny to any

justifications put forward by national authorities for the denial of basic public services to Roma communities. With these considerations in mind, let me now turn to the merits of the case.

1. With respect to the applicants in the first application

11.The applicants in the first application, Mr. Hudorovič and his son, live in the informal Roma settlement of Goriča vas, which is located about one kilometre from the centre of Ribnica Municipality. The settlement is located outside the formal residential area of Goriča vas, which includes non-Roma families. The Government's submissions and the record before us do not specify exactly how far the Roma settlement is from the main residential area of Goriča vas, but the locality as a whole is quite small and the terrain is flat, agricultural land. Even though this small Roma community has lived there for three decades, it has never been allowed to connect to the public water supply, whether through individual or collective connections. Importantly, in my view, both the centre of Ribnica municipality and the non-Roma residences of Goriča vas itself appear to be connected to the public water supply, a fact about which the Government's submissions are silent. In addition, the applicants do not claim a right to be provided with water free of charge.
12.The respondent Government have advanced a long line of arguments, largely endorsed by the majority judgment, as to why the authorities have done enough to grant the first applicants adequate access to water over the years. These include claims related to possible resettlement of the applicants in a more adequate location; the level of social assistance from which the applicants benefit; the ability of the individual applicants to afford better housing elsewhere[3]; and the alternative water supply solutions provided by local government. None of these arguments explains, however, why the first applicants were never offered any form of direct access to the nearby public water supply, which would have provided a sustainable and adequate solution for safe water. This is not a remote community by any reasonable definition of the term, and the Government have not argued that connecting them to the water grid would require any considerable expenditure. In addition, the settlement appears to meet the basic eligibility requirements for connection to the public water supply under Slovenian law, in view of its size and density (see paragraph 43 of the judgment).
13.The only argument put forward by the Government in this respect is a formal one: that the Roma settlement of Goriča vas is "informal" and therefore national law prohibits its connection to any public services. In general terms, there is nothing objectionable about a State seeking to discourage illegal constructions and preserve public order by legally restricting their access to public utilities. However, in the specific context of Roma communities, other vulnerable groups (including children) or even the general population in some respects, the legality argument has been repeatedly rejected by this Court as not constituting sufficient justification, on its own, for serious interferences with Article 8 rights (see e.g. in the context of evictions, Ivanova and Cherkezov v. Bulgaria, no. 6577/15, 21 April 2016). States are required to take into account the vulnerabilities of Roma communities and even take positive measures to try and accommodate their specific needs and lifestyle (see, among others, Chapman v. UK, [GC], no. 27238/95, ECHR 2001-I, and Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012).
14.Conversely, lack of access to clean water and sanitation tends to perpetuate the stigmatisation and segregation of Roma communities and does nothing to counter existing prejudice against them.

There are, therefore, good reasons for rejecting strict informality justifications in this context, and those reasons include questions of historical fairness – since Roma communities, including those in the present case, may not have had a genuine choice in settling in certain informal locations in the past (see paragraph 25 of the judgment) – as well as general proportionality considerations.

15.In fact, Slovenian legislation on the status of the Roma is largely built around the same principles and, in practice, a lack of formal legality of dwellings has not prevented local authorities from finding ways of connecting long-tolerated Roma settlements to the public water supply. The situation of the applicants in the second application is a case in point. As a result, the reliance of the Ribnica municipal authorities on a strict reading of the legality requirement rings hollow in the circumstances of the first application.

16.Finally, the majority judgment discusses in some detail whether the water tanks purchased with the partial assistance of the municipality provided a satisfactory alternative to the first series of applicants. According to the data provided by the Government, the fresh water deliveries into these tanks, when they were available, occurred on average every two months. Since the tanks were exposed to the elements year-round, the applicants and other independent sources have asserted that they developed mould, froze in winter and became generally unsafe for human consumption in between fresh deliveries. It is, of course, not a simple matter for an international court to make factual findings on the adequacy of water deliveries, especially in the absence of any judicial findings at national level. In such circumstances, the Court might prudently choose to give some weight to the findings of independent expert missions which had examined, or received reports from, the situation on the ground at the relevant time – such as those of the European Commission against Racism and Intolerance, the Council of Europe Commissioner for Human Rights and the Slovenian Human Rights Ombudsman (see, respectively, paragraphs 67, 72 and 23 of the judgment). Going against the practically unanimous conclusions of these respected expert bodies, the majority find today that the water tank deliveries were adequate enough.

17.The "practical and effective rights" doctrine requires this Court to scratch below formal justifications in order to assess the genuine impact of interferences with the fundamental rights and freedoms guaranteed by the Convention to individual human beings. If one looks beyond formalities, the case of the first applicants from Goriča vas is ultimately a tale of two communities, one Roma and one belonging to the majority, living a stone's throw from each other – one of them has running water coming out of their taps, and the other has never had it at all for over thirty years. This in a country with an annual GDP per capita upwards of 20,000 euros.

2. With respect to the applicants in the second application

18.The applicants who lodged the second application are a family of fourteen who live in the informal Roma settlement of Dobruška vas 41 in Škocjan Municipality. This small settlement appears to be somewhat more remote than Goriča vas and more isolated from neighbouring non-Roma communities. They also live in informal housing and complained of a long-standing lack of access to clean water and sanitation.

19.There are, however, some significant factual differences between their situation and that of the first series of applicants. The most important one, in my view, is the willingness shown by the local

authorities to go some way towards providing a sustainable and safe water solution for the settlement, namely by installing a collective water-distribution connection as of 2011, that is some three years before the lodging of the second application. While the family is in principle eligible to install an individual connection to the collective access point, it appears that they have not been able to do so, in part due to conflicts with their neighbours, which forced them to relocate within the settlement. The Government have indicated that it is nevertheless possible for them to establish an individual connection through alternative routes. While one ought to be sympathetic to their ongoing predicament, I agree with the majority conclusion that, on the basis of the record before us, the second series of applicants have not sufficiently established the existence of any prohibitive barriers in this respect that can be imputed to the national or local authorities. There has therefore been no violation of the Article 8 rights of the second series of applicants.

C.Alleged violations of Article 14 of the Convention

20.The applicants have alleged that discriminatory attitudes and prejudice have played a "major role" in the local authorities' failure to grant them access to a sustainable clean water supply over an extended period of time. This amounts to a claim of either direct or indirect discrimination, on the ground of their ethnic minority status, which, if proven, would be incompatible with Article 14 of the Convention, read together with Article 8.

21.It seems clear from the multiple national and international sources cited in the judgment that the applicants are not alone, among the Slovenian Roma population, in experiencing serious challenges in terms of access to clean water and sanitation. Furthermore, there are indications that discriminatory attitudes, including de facto discrimination, may have contributed to some extent to this state of affairs[4]. Be that as it may, in view of my conclusion under Article 8 that the authorities did not sufficiently take into account the special needs and situation of the applicants in the first application, as members of a Roma community, in their decision to deny them access to the nearby public water supply, I do not find it necessary to consider whether there has been a separate violation of Article 14 of the Convention.

D.Alleged violations of Article 3 of the Convention

22.The applicants have also alleged that the discomfort and pain resulting from their lack of access to safe water and basic sanitation over an extended period of time amounted to inhuman and degrading conditions, contrary to Article 3 of the Convention. Of particular relevance in this respect are the applicants' claims that the lack of access to basic sanitation and related amenities had an especially serious impact on their children, who as a result felt ostracised, stigmatised and rejected by the general community, to the point that it affected even their ability to attend school. The psychological impact on Roma children of being treated as less than equal members of society with respect to something as elementary as access to water may, in itself, generate feelings of humiliation which could rise to the threshold of degrading treatment. Therefore, I would not exclude that a denial of, or a failure to provide, access to clean water and sanitation for extended periods of time might, in principle, constitute treatment prohibited by Article 3, especially where families with children are involved.

23.In its case-law on Articles 3 and 8 of the Convention, the Court has emphasised the States' positive obligations to protect, in law and in practice, children and other vulnerable members of society from threats to their physical and mental well-being, e.g. as a result of treatment by other individuals or State employees (see, in the context of corporal punishment, Wetjen and Others v. Germany, nos. 68125/14 and 72204/14, 22 March 2018; Tlapak and Others v. Germany, no. 11308/16 and 11344/16, 22 March 2018; A and B v. Croatia, no. 7144/15, 20 June 2019). Furthermore, in Moldovan and Others v. Romania (no. 2) (no. 41138/98, 12 July 2005), the Court found a violation of Article 3 in circumstances where the applicants, whose houses had been destroyed by anti-Roma mob violence, were left to endure for over ten years poor living conditions with detrimental effects on their health and well-being, coupled with a discriminatory and dismissive attitude of the authorities. It does not require a great leap to extend these rationales to State action or inaction – including due to a flawed legal framework – that exposes children and other vulnerable persons, including those belonging to disadvantaged communities, to prolonged distress and humiliation as a direct result of lack of access to safe water and basic sanitation.

24.This notwithstanding, I voted with the majority to find no violation of Article 3 in this case – although, as should be clear from the above, on somewhat different grounds – on the basis that the current applicants have not sufficiently shown that the treatment they were subjected to reached the threshold of gravity required by Article 3 of the Convention, including in terms of its effects on their physical and mental well-being.

25.In conclusion, I consider that the applicants' access to water claims come under the scope of Article 8 and that there has been a violation of that Article with respect to the applicants who lodged the first application. The finding of no violation by the majority in this novel and important case will contribute little, I fear, to alleviating the plight of inequality and disadvantage that many European Roma continue to face. "Separate but equal" access to water is, simply, not good enough.

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[1] Recommendation Rec(2001)14 of the Committee of Ministers on the European Charter on Water Resources.

[2]2 See, e.g., Moreno Gomez v. Spain (no. 4143/02, ECHR 2004-X).

[3] Incidentally, this argument appears to ignore the community aspects of Roma rights as an ethnic and cultural minority. While some Roma may choose to live among the majority communities, many of them may consider it important for the preservation of their identity and lifestyles to live among fellow Roma.

[4] For example, the UN Special Rapporteur on the human right to safe drinking water and sanitation, in her conclusions from the 2010 visit to Slovenia, called on the authorities to "[e]liminate all forms of discrimination, including de facto discrimination, which deprives certain segments of the population of access to safe drinking water and sanitation" (at para. 58(c)). Available at https://digitallibrary.un.org/record/709553?ln=en.