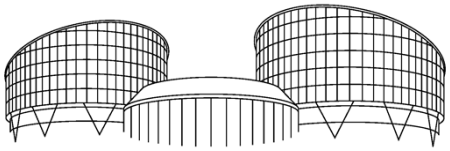

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TZIOUMAKA v. GREECE

(Application no. 31022/20)

JUDGMENT

Art 8 • Positive obligations • Family life • Non-enforcement of domestic decisions granting custody of two minor children to their mother and requiring the father to return them to her • Domestic authorities' failure to pursue adequate and timely actions to enforce applicant's right to the return of her children • By failing to act with diligence, the authorities favoured the children's integration into their new environment and thus decisively contributed to consolidation of a *de facto* situation contrary to the applicant's Art 8 right

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2024

FINAL

09/07/2024

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

In the case of Tzioumaka v. Greece,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,

and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 31022/20) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Ms Chrysovalanto Tzioumaka ("the applicant"), on 17 July 2020;

the decision to give notice to the Greek Government ("the Government") of the complaint concerning the non-enforcement of a decision granting custody of the applicant's children to her and to declare the remainder of the application inadmissible;

the decision to grant priority to the case under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 19 March 2024,

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

INTRODUCTION

1. The application concerns non-enforcement of domestic decisions granting custody of two minor children to their mother, the applicant, and requiring the father to return them to her. According to the applicant, the father refused to comply with the above-mentioned decisions and the authorities were not sufficiently active in helping her restore her relationship with the children, despite her relevant requests, including recourse to criminal proceedings against the father of the children.

THE FACTS

2. The applicant was born in 1992 and lives in Didymoteicho Evrou. She was represented by Mr E. Athanasopoulos, a lawyer practising in Patra.

3. The Government were represented by their Agent, Ms N. Marioli, and Ms Z. Chatzipavlou, Senior Advisor at the State Legal Council.

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

I. BACKGROUND TO THE CASE

5. The applicant married K.K. in Soufli in December 2011. They had two daughters, E. and G., born in May 2012 and in February 2015 respectively.

6. In April 2016 the applicant and K.K. were with their two daughters in Soufli to celebrate Easter along with the applicant's family. K.K., under the pretext that he was taking the children to the playground, took E. and G. away and drove them to his parents' house in the village of Kolokythas in the Amaliada region. The applicant immediately returned to the house in which the family was residing in Amaliada but any attempt she made to meet the children or contact them by phone was in vain, as K.K. and his parents insulted her and refused to let her approach the children while manifesting aggressive and violent behaviour towards her.

II. JUDICIAL PROCEEDINGS CONCERNING CUSTODY

7. The applicant and K.K. lodged applications against each other for interim measures in May 2016 in order to regulate, among other things, custody of the children. By decision no. 28/2016 dated 12 July 2016, delivered by the Amaliada One-Member Court of First Instance, the applicant's action to be awarded temporary custody of the children was rejected and the corresponding action of K.K. was granted. The court decided to temporarily award K.K. not only custody of the children, but also the sole exercise of parental responsibility "on account of the great tension between the parties" in order to avoid "the children becoming a source of tension between the two parents". The domestic court considered that both parents were unfit to raise the children by themselves but that K.K. could be assisted by his parents, who were still young.

8. Following a new application for interim measures lodged by the applicant, by decision no. 2/2017 dated 9 January 2017 the modalities of the applicant's contact with her two children were established. On 29 July 2016, prior to the examination of that application, the applicant alleged that she had tried to see her children but had been beaten by K.K. However, subsequently, in August 2016 she had picked up the children, with the consent of K.K., to spend part of the summer vacation with them and had returned them afterwards, as their father exercised parental responsibility under decision no. 28/2016 of the Amaliada One-Member Court of First Instance. She then returned to Soufli, where she resided from that time on.

9. On 13 July 2016 K.K. brought an action against the applicant, requesting that he be assigned permanent and sole parental responsibility, including custody, of their two daughters. On 15 May 2017 the applicant brought an action against K.K. in the Amaliada One-Member Court of First Instance, requesting, among other things, that (a) their marriage be dissolved;

(b) she be awarded custody of the two children and (c) K.K. pay child support to her in respect of the children.

10. On 21 September 2018 the Amaliada One-Member Court of First Instance delivered decision no. 87/2018 in respect of the two above-mentioned actions brought by K.K. and the applicant. By that decision, their marriage was dissolved, the applicant was awarded custody of their two daughters and parental responsibility was awarded to both parents. The domestic court noted that the applicant had made considerable efforts not to be alienated from the children despite the distance and that the eventual refusal of the children to communicate with her had been caused by the neutral attitude of K.K. and the negative attitude of his parents towards her. Moreover, K.K. was ordered, pursuant to Article 950 §§ 1 and 3 of the Code of Civil Procedure, to hand over the children to the applicant; if he did not comply with that order, he would be fined 1,000 euros (EUR), payable to the applicant, and he would be sentenced to one month's detention. He was further ordered to pay child support in respect of the children.

11. On 8 October 2018 K.K. lodged an appeal against decision no. 87/2018. On 7 May 2020, by decision no. 195/2020, the Patra Court of Appeal rejected the appeal. The court specifically noted that K.K. was unfit to exercise custody of his two minor daughters, who were in fact being raised by his parents while his presence in their house was only incidental.

12. On 9 June 2020 the above-mentioned decision of the appellate court in favour of the applicant was served on K.K. along with an order to deliver the children to her on 11 June 2020 at 9 a.m. at the Amaliada police station.

13. On 10 June 2020 the first executory title (*απόγραφο*) of decision no. 195/2020 of the appellate court was delivered, by which an order was given to all competent bodies to assist in the execution of that title when legally requested.

14. On 11 June 2020 K.K. did not show up at the Amaliada police station and did not deliver the children to the applicant.

15. On 10 May 2021, following a request by the applicant dated 23 April 2021, the first executory title in respect of decision no. 87/2018 of the Amaliada One-Member Court of First Instance was delivered ordering all competent bodies to assist in the execution of the above-mentioned decision.

III. NEW CIVIL PROCEEDINGS FOLLOWING THE DECISIONS CONCERNING CUSTODY OF THE CHILDREN

16. On 15 June 2020 K.K. submitted a request for interim measures and a provisional order granting him custody of the children, citing a change in circumstances since the date when decision no. 87/2018 had been delivered by the Amaliada One-Member Court of First Instance. The request for the provisional order was rejected and K.K. withdrew his request for interim measures.

17. On 22 June 2020 the applicant brought an action in the Amaliada One-Member Court of First Instance, requesting a provisional order for the removal of parental responsibility from K.K. and that it be awarded exclusively to her. The request for the provisional order was rejected. The main action was adjourned once on 24 September 2020 at the request of K.K., a second time on 11 February 2021 on account of the suspension of trials because of the COVID-19 pandemic and a third time on 14 October 2021, when it was again adjourned at the request of K.K., with the applicant consenting to the proceedings taking place on 12 May 2022. On that date the proceedings were discontinued.

18. On 25 August 2020 K.K. submitted a new request for interim measures and a provisional order seeking to be granted custody of the children, or alternatively, to have custody granted jointly to him and the applicant, citing a change in circumstances since the date when decision no. 87/2018 of the Amaliada One-Member Court of First Instance had been delivered. The examination of that request was adjourned seven times following requests by the applicant and K.K. and was ultimately examined on 11 November 2021, when the aforesaid court delivered decision no. 22/2022 rejecting K.K.'s request in substance. It noted that the reason behind the children's refusal to meet with their mother was that K.K. and his parents had not prepared them for the transition. It also emphasised the applicant's efforts to stay in touch with her children despite the hostility exhibited by K.K. and his family and the long distance between her residence and the place where her children were residing with her ex-husband. It further noted that the applicant, in a desperate attempt to communicate with her daughters, had even consented to an interim order to defuse the unstable situation that had been created and to put an end to the legal disputes for the sake of her children; however, that did not mean that the applicant had waived her right to custody.

19. On 9 September 2020 the applicant submitted a request for interim measures and a provisional order for the immediate enforcement of decision no. 87/2018 of the Amaliada One-Member Court of First Instance and of decision no. 195/2020 of the Patras Court of Appeal, or alternatively for K.K. to be temporarily detained and to be fined EUR 100,000. She also requested that the children be transferred to an educational facility in Didymoticho, where she resided, and that she be able to meet with her children on a daily basis in the presence of a child psychologist until a final decision was delivered.

20. The request for the provisional order was examined on 10 September 2020 and the judge issued an order defining the place, time and conditions of communication between the applicant and her daughters. More specifically, K.K. was to accompany the children three times per week to the applicant's temporary home in Amaliada or to a place agreed upon between the parents, stay for thirty minutes and then leave the premises and return later to pick up

the children. K.K.'s parents' house in the village of Kolokythas was identified as the children's temporary residence. In the event that the children were reluctant to communicate with the applicant, it was up to the parents to determine for how much time K.K. would stay, whereas in the event that the children did not cooperate at all and refused to have any communication, the provisional order would not be considered to have been breached.

21. As regards the application for interim measures, its examination was postponed several times, either on account of the COVID-19 pandemic or at the request of K.K. or of the two parents jointly and was eventually scheduled to take place on 13 January 2022. On that date the applicant withdrew her application for interim measures.

22. As regards the enforcement of the above-mentioned order, on 11 September 2020 both the applicant and K.K. informed the police that K.K. had visited the applicant with their children. However, the children had started crying and refused to go with her, so K.K. had returned them to his home after spending three minutes on the premises. On 22 September 2020 K.K. informed the police that he had visited the applicant with their children on 18 September, 20 September and 22 September 2020, but that she had not been present in her temporary home. When the police requested information from the applicant regarding the above-mentioned incidents, she stated that K.K. had refused to deliver the children to her on those dates even though she had been in her home. She also stated that she had left Amaliada to return to Soufli on 2 October 2020.

IV. CRIMINAL PROCEEDINGS AGAINST K.K.

23. On 11 June 2020 the applicant lodged a criminal complaint against K.K., as, on that day, he had not delivered their minor children, who lived with him, to her as was required pursuant to decision no. 87/2018 of the Amaliada One-Member Court of First Instance and as confirmed by decision no. 195/2020 of the Patra Court of Appeal. The next day she lodged an additional complaint against G.K. and E.T., the parents of K.K., and on 30 June 2020 she lodged another criminal complaint against I.K., the brother of K.K., and his wife A.S. for assisting K.K. in not complying with the order to deliver their children to her.

24. On 12 June, 23 June and 30 June 2020 searches of K.K.'s residence were conducted by police officers in the presence of a judge in order to locate the children, without success. On those dates respectively G.K., the father of K.K., E.T., the mother of K.K., and K.K. were arrested under an expedited procedure (*αυτόφωρη διαδικασία*) and brought before the Public Prosecutor of the Amaliada Court of First Instance for the offence of kidnapping a minor, in breach of Article 324 of the Criminal Code.

25. On 8 October 2020 K.K. was arrested again in his residence and charged with the offence of kidnapping a minor, as were his parents and his

brother, who were not arrested, because on that date they had all jointly obstructed the applicant from picking up her children from their schools, even though K.K. was to have already delivered them to her.

26. On the same day, further searches were conducted at K.K.'s residence, his business and his brother's residence in the presence of a judge in order to find the children and deliver them to their mother, without success.

27. Following the lodging of several criminal complaints by the applicant, the files were merged, and criminal charges were brought against K.K. and his relatives for the offence of kidnapping a minor and an investigation was conducted. The file was submitted to the Amaliada Council of Misdemeanour Judges, which on 4 June 2021 issued order no. 35/2021 by which K.K. was referred for trial in the Patras Three-member Court of Appeal for Felonies in respect of the offence of kidnapping a minor under 14 years of age by omission concurrently and continuously. His relatives were charged with abetting the commission of the above-mentioned offence. According to the order, the kidnapping of the children had not taken place by way of removing them from their mother's care, as, at the time, under decision no. 195/2020 of the Patras Court of Appeal, they had legally been in their father's custody pursuant to decision no. 28/2016 on interim measures. Nevertheless, the kidnapping had taken place by omission, as K.K. had had a specific legal obligation to deliver his children to their mother pursuant to decision no. 195/2020 of the Patras Court of Appeal, which had rejected K.K.'s appeal. K.K.'s obligation had begun not when the latter decision was delivered or served on him, but on 11 June 2020, the day that the applicant had stated was the date on which K.K. should have voluntarily complied with the content of decision no. 87/2018 of the Amaliada One-Member Court of First Instance in respect of the delivery of the children.

28. Two parallel sets of proceedings concerning the offence of abduction were pending before the domestic courts. As regards K.K.'s charge with the offence of abduction as misdemeanour, the hearing was adjourned multiple times; the last known date to the Court for which it was scheduled was 16 January 2024. As regards the offence of abduction as felony with which K.K., his parents and his sister-in-law were charged, the hearing was adjourned on multiple occasions; the last date known to the Court for which it was scheduled was 15 November 2023 before the Patras Court of Appeal.

29. Other criminal proceedings were initiated against K.K. and a witness, L.T., who had testified under oath for the purposes of K.K.'s interim measures request against the applicant concerning the temporary awarding of custody of the two children to him, that he had an affair with the applicant. By decision 67/2023 of the Three-Member Court of Amaliada of L.T. was convicted of perjury and K.K. of instigating the perjury.

V. REQUESTS TO THE PUBLIC PROSECUTOR

30. On 9 September 2020 the applicant lodged a complaint with the Public Prosecutor of the Court of Cassation. Relying on Article 8 of the Convention, she complained that the police had not managed to track down K.K. and his accomplices and to deliver their children to her. She pointed to the domestic decision awarding her custody rights and the fact that she had submitted requests for assistance to the police and had lodged criminal complaints against K.K. and his family. She further noted that the village in which K.K. and his parents were residing had only eighty residents, who had repeatedly seen her children, but the police had refused to assist her. Lastly, she complained that K.K. had harassed her by continuously submitting requests for interim measures in his attempt to breach the *res judicata* effect of decision no. 87/2018 of the Amaliada One-Member Court of First Instance.

31. On 16 September 2020 the applicant submitted a request to the Public Prosecutor of the Amaliada Court of First Instance, seeking assistance for the enforcement of decision no. 195/2020 of the Patras Court of Appeal. She mentioned that K.K. had been harassing her by submitting consecutive requests for interim measures, which he later withdrew. She lastly stated that the Amaliada police had not offered her sufficient assistance in recovering her children. She requested that the prosecutor order the police to assist in delivering her children, as, in the past her brother-in-law had beaten her when she had attempted to communicate with her daughters. No further information has been provided concerning that request.

RELEVANT LEGAL FRAMEWORK

I. CIVIL CODE

32. The relevant domestic law may be found in *Katsikeros v. Greece* (no. 2303/19, § 21, 21 July 2022) and *I.S. v. Greece* (no. 19165/20, § 51, 23 May 2023).

33. In addition, the following relevant provisions of the Civil Code (as in force at the time when the domestic decisions were delivered and which was replaced on 16 September 2021 by Law no. 4800/2021) read as follows:

Article 1513
Divorce or annulment of a marriage

> "The exercise of parental responsibility may be entrusted to one of the parents or, if they agree, may at the same time include the designation of the child's place of residence. The court may decide differently, especially as regards the sharing of responsibility between the parents or assigning it to a third party.
>
> In order to reach its decision, the court shall consider the relationships between the child and his parents and his siblings and the agreement that his parents made concerning custody and the management of his property ..."

Article 1514
Interruption of cohabitation

"The provisions of the previous article shall also apply in cases when the spouses have ceased to live together."

34. Following the enactment of Law no. 4800/2021, certain provisions of the Civil Code were replaced as of 16 September 2021. The relevant new provisions read as follows:

Article 1511
The awarding and exercise of parental responsibility in accordance with the child's best interests

"1. Any decision taken by the parents relating to the exercise of parental responsibility shall be in the child's best interests.

2. A court's decision concerning an award of parental responsibility or the means by which it is exercised shall be in the child's best interests, which are served primarily by the substantive involvement of both parents in his raising and care and by avoiding the rupture of the child's relationship with either of the parents. The court's decision shall take into account factors such as the ability and intention of each of the parents to respect the other's rights, the parents' previous behaviour and their compliance with their legal obligations, court decisions, prosecutorial orders and previous arrangements concerning the child, which have been agreed with the other parent.

3. The court's decision shall also respect the equality between the parents and shall not discriminate, especially on grounds of sex, sexual orientation, race, language, religion, political or other beliefs, nationality, ethnic or social origin or economic status.

4. Depending on the child's level of maturity, his opinion shall be requested and taken into consideration before any decision is taken which relates to parental responsibility and his best interests."

Article 1518
Custody of a person

"Custody of a child shall include, primarily, the raising, supervision, learning and education of the child and the designation of his place of residence ... Every parent has an obligation to protect and reinforce the child's relationship with the other parent, his siblings and the other parent's family, especially when the parents do not live together or the other parent is deceased."

Article 1532
Consequences of improper exercise [of parental duties]

"If the father or mother fails to carry out the duties imposed on them by their role in the custody of the child or in the administration of his or her property or if they exercise this role in an abusive way or are unable to fulfil it, the court may, if requested by the other parent, the child's closest relatives or the public prosecutor, order any appropriate measure.

Improper exercise of parental responsibility may include, in particular:

a. the non-compliance on the part of the parent with the decisions and orders of judicial and prosecutorial authorities that concern the child or with the existing agreement between the parents for the exercise of parental responsibility;

b. the rupture of the emotional relationship of the child with the other parent and his family and causing the rupture of the child's relationship with them in any way;

c. the deliberate violation of the conditions of the parents' agreement or of the court's decision concerning the child's contact with the parents with whom he is not residing and the obstruction of contact in any way;

d. the improper exercise and deliberate omission of the exercise of the contact rights of the parent who is entitled to it;

e. the parent's refusal to pay the child support that was awarded to the child by the court or was agreed upon by the two parents;

f. the conviction of the parents, by a court decision, for domestic violence or offences related to sexual freedom or the financial exploitation of sexual life.

In the circumstances mentioned in the previous paragraph, the court may remove, fully or partially, the exercise of parental responsibility and of custody from the parent at fault and award it exclusively to the other parent and it may order any appropriate measure for securing the child's best interests ..."

II. CODE OF CIVIL PROCEDURE

35. The relevant provisions of the Code of Civil Procedure read as follows:

Article 735
On the personal relationships between spouses and children
Relocation

"The court shall have the right to order any appropriate interim measure that is required by the circumstances for regulating the relationships between the spouses and the relationships between parents and children. In particular, ... [it can] specify which parent will have temporary parental responsibility, remove parental responsibility from the parents completely or partially and regulate the contact with the child ..."

Article 946
Claim for in-person action

"1. If the debtor does not fulfil his obligation to proceed to an action that cannot be executed by a third person and its realisation is exclusively dependent on the debtor's will [to comply], the court shall order him to execute the action and in the event that he does not comply, it may convict him of its own motion and issue a monetary fine of up to EUR 50,000 to the benefit of the creditor and to a term of personal detention of up to one year."

Article 950
Rendition or delivery of a child

"1. By a decision ordering the rendition or delivery of a child, the parent who has the child shall be ordered to execute that action and, by the same decision, in the event that the parent does not execute it, the court, of its own motion, may impose a monetary fine

of up to EUR 100,000 to the credit of the person requesting the rendition or delivery and a sentence of personal detention for a term of up to one year ...

2. If the right of personal communication of the parent with the child is obstructed, the court which regulates the right of personal communication of the parent with the child, determines the contact schedule and may, for each violation, impose on the person who has obstructed the communication, even of its own motion, a fine of up to EUR 10,000 and personal detention for a term of up to one year. The obstruction of the parent's right to personal communication with the child is established by a report from a bailiff, who is present at the time designated for communication to begin."

III. CRIMINAL CODE

36. Article 232A of the Criminal Code, as in force until 30 June 2019, provided for the punishment of persons who did not comply with a court decision. The new Article 169A of the Criminal Code, as in force since 1 July 2019, provides as follows:

"1. Anyone who does not comply with a provisional order or a provision of a civil court decision or prosecutorial order concerning ... the exercise of parental care [or] communication with the child ... shall be punished by a term of imprisonment of up to three years or a fine ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that the non-enforcement of the domestic decisions granting her custody of her two minor children had violated her right to family life as provided in Article 8 of the Convention, which reads as follows:

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

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

A. Admissibility

1. The Government's submissions

38. The Government argued that the applicant had failed to exhaust domestic remedies, even though she had had plenty of remedies available to her. In particular, K.K. had been ordered to deliver the children to her pursuant to decision no. 87/2018 under threat of having a fine of EUR 1,000 imposed on him or personal detention for a term of one month. The applicant

could therefore have used the above-mentioned decision as a means of forcing K.K. to comply with the order. While it is true that, according to the Court's case-law, coercive means such as deprivation of liberty were not considered appropriate in cases of obstruction of a parent's contact rights with his or her child, in the present case even the monetary fine could be effective so as to avoid having to resort to deprivation of liberty. Moreover, the children had already been well aware of the dispute between their parents concerning their custody, so it could not reasonably be argued that the applicant had not wanted to upset them.

39. The Government further argued that an application under Article 1532 of the Civil Code for the removal of parental responsibility from K.K. for not complying with the domestic courts' decisions or his obligations deriving from them could be considered an effective measure under the circumstances. The applicant had lodged an application requesting the removal of K.K.'s parental responsibility on 22 June 2020, which had still been pending at the time when the parties submitted their observations and had later been withdrawn.

40. Moreover, the Government asserted that the applicant could have submitted a request for interim measures, as she had had a claim for the delivery of her children under Article 1518 of the Civil Code. After lodging her application with the Court, on 9 September 2020 the applicant had submitted a request for interim measures and a provisional order for the immediate enforcement of decisions nos. 87/2018 and 195/2020 or for K.K. to be personally detained and for a fine in the amount of EUR 100,000 to be imposed on him. On 10 September 2020 the duty judge had temporarily defined the modalities concerning the applicant's contact with her children. The examination in respect of the request for interim measures had been adjourned several times until 13 January 2022, when the applicant had withdrawn her application for interim measures. In the Government's view, the fact that the applicant had lodged her application with the Court prior to a decision on the above-mentioned request for interim measures rendered her application premature and the fact that she had withdrawn it reinforced the argument that the applicant had failed to exhaust domestic remedies.

41. The Government further argued that the applicant should have lodged a criminal complaint in respect of a violation of former Article 232A and the new Article 169A of the Criminal Code concerning non-enforcement of domestic decisions; however, she had not used that remedy which had been available to her.

42. Lastly, the applicant could have lodged an application with the Public Prosecutor of the Amaliada Court of First Instance requesting his assistance, in his capacity as prosecutor in charge of minors, in ordering, *inter alia*, the conduct of a social or psychiatric report on the children with recommendations by the police that public authorities should provide assistance and support to the family. The prosecutor could have invited the

parents to meet to solve their differences and could have made the necessary recommendations. However, the applicant had not reached out to the prosecutor's office, which had been informed of the relevant developments only from 11 June 2020, when she had lodged her criminal complaints concerning the abduction of her children.

43. The Government also submitted that the applicant lacked victim status. In particular, on 9 September 2020 she had submitted a request for interim measures and a provisional order. In respect of the latter, she requested that a schedule of contact with her children, without K.K.'s presence but in the presence of a psychologist, be established until a decision on her request for interim measures was delivered or until any other measure the domestic court considered appropriate was ordered. She had not requested, however, a change of the children's residence. On 10 September 2020 the duty judge had issued a provisional order setting out the way that the applicant should communicate with her daughters and K.K.'s obligations in respect of securing the children's cooperation in the event that they refused to meet with their mother. The paternal home had been designated as the temporary place of residence of the children. It follows that the applicant had submitted new requests to the domestic courts, which had regulated her rights in the above-mentioned way; thus, the present application should be dismissed as incompatible *ratione personae*.

2. The applicant's submissions

44. The applicant replied that she had exhausted all available domestic remedies and that those proposed by the Government were not effective. In particular, as regards the possibility of the applicant requesting that K.K. be fined EUR 1,000 or be personally detained for one month, the applicant stressed that the above-mentioned amount was not significant. In her application, she stated that she had asked the domestic court to set the amount of the fine for a possible breach of its operative part at EUR 50,000, but it had only imposed a fine of EUR 1,000. Relying on the Court's judgment in *Kuppinger v. Germany* (no. 62198/11, § 105, 15 January 2015), she submitted that such a low fine could not have been expected to have a coercive effect on K.K. Moreover, it was clear from the facts that K.K. had been willing to pay much more money in order to keep the children, since he had continued to institute costly legal proceedings, which he had later discontinued, in order to drain the applicant's finances. She further referred to *Ignaccolo-Zenide v. Romania* (no. 31679/96, § 111, ECHR 2000-I), in which the Court held that the request for a daily fine had been ineffective, as it constituted an indirect and exceptional method of execution.

45. The applicant also argued that the relevant procedure available to a parent who had been awarded custody was very slow and costly. In particular, she would have to request a court official to visit K.K. and ask him to deliver the children. In the event of his refusal, the court official would have to draft

a certificate attesting to his refusal to comply. Then she would have to bring an action in the district court and attest to such refusal, which would constitute an enforcement order. On the basis of that order, she would be able to request the enforced execution on K.K.'s property in respect of the fine or his personal detention. In the event that K.K. still did not comply, she would have to restart the entire procedure for enforcement. In any event, such procedure would cost the applicant more than the fine imposed on K.K. and would require a lot of time, which would result in her further alienation from her daughters. Moreover, the above-mentioned procedure would not necessarily lead to the applicant's reunification with her children, as K.K. could easily pay the fine or leave the children with his relatives, who had proved to be his accomplices thus far while he was in detention. Recourse to criminal law and the possible conviction of K.K. had not proved effective up to that point. As regards personal detention specifically, the applicant would have to pay K.K.'s subsistence while in detention, which would place an even heavier financial burden on her. On top of that, most prisons refused to accept people for personal detention, as, for example, the prison facility near K.K.'s residence, and even if they did, they were continuously overpopulated, with no means to designate a separate wing for people in personal detention (as opposed to criminal offenders). It follows from all of the above, as well as from the absence of any relevant successful examples submitted by the Government, that the procedure for fining K.K. or ordering his personal detention could not be considered an effective remedy.

46. As regards the second remedy mentioned by the Government, namely the procedure to remove parental responsibility under Article 1532 of the Civil Code, the applicant noted that such procedure was irrelevant to her main complaint, which was that the authorities had not sufficiently assisted her in enforcing the decisions awarding her custody of her two children. She did not ask the Court to substitute for the national authorities as regards the relevant removal of K.K.'s parental responsibility; rather, she focused on the ineffective assistance in the enforcement of the decisions awarding her custody rights. In any event, even if K.K. no longer had parental responsibility, she would still need to go through the lengthy and costly procedure mentioned above in order to enforce it, which would not necessarily lead to her reunification with her children.

47. Turning to the third remedy suggested by the Government, namely the request for the children's return, the applicant noted that her request for interim measures dated 9 September 2020 had been a desperate attempt on her part to be at least partially reunited with her children, even during contact hours. Unfortunately, K.K. had never complied with that order either, which had been, in any event, in violation of the *res judicata* produced by decisions nos. 87/2018 and 195/2020. In view of the fact that she had not succeeded in meeting with her daughters even under the conditions set by the provisional

order of 10 September 2020, the applicant had discontinued her request for interim measures; as a result, the relevant provisional order no longer stood.

48. As regards the fourth remedy mentioned by the Government, the criminal complaint in respect of a violation of Article 232A of the Criminal Code, currently Article 163A of the Criminal Code, the applicant argued that a criminal complaint of any kind could not lead to the enforcement of a civil-law judgment awarding custody of the children to one parent and ordering the other one to return them. K.K.'s conviction would not lead to the applicant's reunification with her children. An indirect link would render that remedy ineffective, and, moreover, that procedure would be very lengthy, as it took an average of three years to obtain a first-instance conviction. In any event, the applicant had initiated several criminal complaints of child abduction against K.K. and his relatives under Article 234 of the Criminal Code – a much more serious offence which carried a far more severe prison sentence – to no avail.

49. Furthermore, in respect of the last remedy mentioned by the Government concerning the public prosecutor, the applicant referred to the Government's observations in *Fourkiotis v. Greece* (no. 74758/11, § 55, 16 June 2016), in which they argued that the prosecutor had not been competent to deal with the enforcement of the relevant decisions of the courts, but could only order an expert examination by a child psychiatrist, make recommendations to the parents or refer them to public bodies. In the applicant's view, any application lodged with the prosecutor could not have led to the enforcement of the domestic decisions awarding her custody of her two children.

50. In any event, the applicant had submitted two requests to the public prosecution authorities: on 9 September 2020 she had lodged an application with the Prosecutor of the Court of Cassation, complaining about the fact that the police had not tracked down K.K. and his relatives or her children who resided with K.K.'s parents. She had also noted that there had been a decision in force since 2018 awarding her custody which had not been enforced, despite the numerous steps she had taken and despite the fact that the entire population of the village Kolokythas in Amaliada consisted of only eighty people.

51. Moreover, on 16 September 2020 she had submitted a request to the Prosecutor of Amaliada Court of First Instance in which she complained about K.K.'s behaviour and about the inaction on the part of the police. Nevertheless, she had not received any assistance from the prosecutors.

52. Turning to the Government's objection as to the applicant's victim status, the applicant maintained that she had withdrawn her application for interim measures dated 9 September 2020, which had been a desperate attempt to convince K.K. to allow her to see her children even under those conditions. In any event, any decision awarding her contact rights would have

been in violation of the *res judicata* produced by decision no. 87/2018, which had become final following decision no. 195/2020.

3. The Court's assessment

53. The general principles concerning non-exhaustion of domestic remedies have been summarised in *Selmouni v. France* ([GC], no. 25803/94, §§ 74-77, ECHR 1999-V); *Kozacıoğlu v. Turkey* ([GC], no. 2334/03, §§ 39-40, 19 February 2009); *Karoussiotis v. Portugal* (no. 23205/08, § 57, ECHR 2011 (extracts)); and *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

(a) Request to have K.K. fined or personally detained for a term of one month

54. The Court notes that decision no. 87/2018 included in its operative part that in the event of non-compliance, the applicant could request that K.K. be fined EUR 1,000, or that he be personally detained for one month. In this regard, the relevant objection is similar to the one that the Government referred to in other cases concerning obstruction of a parent's contact rights based on Article 950 § 2 of the Code of Civil Procedure, which has been considered ineffective by the Court (see *Fourkiotis*, cited above, § 68).

55. The Court is of the view that the same considerations apply in the present case which concerns non-enforcement of decisions awarding custody. In particular, as regards the possible fine of EUR 1,000, the Court notes at the outset that the decision of the Amaliada Court of First Instance contains no information on the financial situation of the father. Nevertheless, it cannot but observe that the overall fine of EUR 1,000 appears to be rather at the low end of the spectrum of the relevant provisions which allowed for the imposition of a fine of up to EUR 100,000 (see paragraph 35 above). Moreover, the initiative to initiate proceedings for the execution of the fine lay exclusively with the applicant rather than with the domestic authorities. In the circumstances of the present case, the threat of such sanction did not appear to have any deterrent or coercive effect on the children's father, who persistently refused to deliver the children to the applicant, despite the relevant decisions.

56. Turning to the possible personal detention of K.K. for a term of one month, the Court firstly notes that in cases concerning custody or access rights, the use of measures involving the deprivation of liberty of one of the parents must be considered an exceptional measure and can only be implemented when the other means have been employed or explored (see *I.S. v. Greece*, no. 19165/20, § 62, 23 May 2023). Moreover, the applicant lodged criminal complaints against K.K., which could have entailed a far more lengthy sentence than one month, to no avail (see for instance paragraphs 23 and 27 above). In any event, even if the complaints had been decided in the applicant's favour, they would have resulted in the father's being fined or

even, at worst, his imprisonment, but not, however, in the reunification of the applicant with her children.

57. The Court thus considers that, in the circumstances of the present case, the above-mentioned remedy was not one which the applicant should be required to have made use of.

(b) Removal of parental responsibility from K.K.

58. Turning to the second remedy suggested by the Government, namely an action based on Article 1532 of the Civil Code for the removal of K.K.'s parental responsibility, the Court notes that it has already considered the remedy provided for in the above-mentioned provision to be ineffective in situations similar to that of the applicant (see *Fourkiotis*, cited above, § 68, and *I.S. v. Greece*, cited above, § 63). The Government have not put forward any fact or argument capable of persuading the Court to depart from its position regarding the effectiveness of that remedy up until the reform of Article 1532, which applied as from 16 September 2020.

59. The Court also notes that since its reform, Article 1532 provides details as to what would constitute improper exercise of parental responsibility. It includes, *inter alia*, non-compliance with the decisions and orders of the judicial and prosecution authorities that concern the child and the rupture of the emotional relationship of the child with the other parent and his or her family. The Court considers that K.K.'s behaviour may fall under that provision. However, it is not clear to the Court how a decision leading to the removal of the father's parental responsibility could lead to redressing the applicant's allegation of a violation of Article 8 of the Convention. In particular, it is evident from the facts submitted by the parties and the relevant domestic decisions that K.K. refused to comply with the decisions awarding custody to the applicant. Therefore, under these circumstances, the Court considers that even if the applicant brought an action under the reformed Article 1532 and parental responsibility were removed from K.K., it would still not lead to the applicant's reunification with her daughters, given K.K.'s persistent refusal to allow it and, therefore, it is not a remedy that the applicant should have made use of.

(c) Other remedies proposed by the Government

60. The Government further mentioned that the applicant could have submitted a request for interim measures seeking the return of the children to her, that she could have lodged a criminal complaint in respect of the offence of non-compliance with a domestic decision and that she could have addressed the public prosecutor to request his assistance.

61. The Court firstly notes that the applicant had an enforceable judicial decision, namely decision no. 87/2018, in respect of which she had an executory title ordering all competent bodies to assist in its execution (see

paragraph 15 above). Therefore, in the Court's view, an additional decision in respect of further interim measures would not have an added value or led to the enforcement of decision no. 87/2018.

62. As regards the criminal complaint of non-compliance with a domestic decision, the Court has already considered it to be ineffective (see *I.S. v. Greece*, cited above, § 62). Moreover, it does not escape the Court's attention that the applicant lodged criminal complaints against K.K. and his relatives in respect of the same offence of which she complained before the Court, namely the abduction of the children, which entailed penalties far more severe than did the offence of non-compliance with a domestic decision.

63. Turning to the last remedy proposed by the Government, the Court notes that the applicant brought to the public prosecutor's attention the facts relevant to the case when she lodged criminal complaints on 9 September 2020, but also when she lodged separate applications on 9 and 16 September 2020. However, it appears that no action was taken by the public prosecutor.

(d) Conclusion as regards the requirement to exhaust domestic remedies

64. The Court notes overall that the applicant complained before it about an ongoing situation, rather than about a specific decision delivered by the domestic authorities. Given that, in such circumstances, the only effective remedy would have been one capable of addressing a continuing situation, the Court finds that the remedies relied on by the Government were not appropriate and that, consequently, the applicant did not have to make use of them. Moreover, the applicant already addressed the domestic courts by lodging civil and criminal claims and the police by requesting assistance with the enforcement of the relevant domestic decisions and she reached out to the public prosecutor's office, complaining about K.K.'s behaviour and his refusal to deliver the children to her. In the Court's view, the applicant undertook sufficient steps to give the authorities the opportunity to redress the alleged violation of Article 8 of the Convention of which she complained before the Court. To hold otherwise in the circumstances of this particular case would amount to excessive formalism and a burden on her, especially having regard to the importance from the viewpoint of Article 8 of the time factor in the determination of similar family matters (see *I.S. v. Greece*, cited above, § 64). It follows that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

(e) The Government's objection regarding lack of victim status

65. The Court notes that, in the Government's view, the application should be rejected as incompatible *ratione personae*, given that, in the meantime, a provisional order was issued setting the contact schedule of the applicant with her children.

66. The Court reiterates that in order to be able to lodge an application in pursuance of Article 34, a person, non-governmental organisation or group of individuals must be able to claim "to be the victim of a violation ... of the rights set forth in the Convention ...". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Micallef v. Malta* ([GC], no. 17056/06, § 44, ECHR 2009).

67. Turning to the circumstances of the present case, the Court notes that the applicant submitted a request for interim measures to set a contact schedule with her daughters, while K.K. refused to deliver them to her. She withdrew the relevant request for interim measures after she had been granted a provisional order establishing a temporary contact schedule. The Court fails to see how the establishment of a contact schedule set out in the context of a provisional order linked to a request for interim measures, which was withdrawn and was thus no longer valid, deprived the applicant of her victim status. In particular, the applicant complained that the domestic authorities had failed to assist her in the enforcement of the decision awarding her custody. If anything, a decision granting the applicant contact rights while she already had a decision awarding her custody demonstrates that the latter had still not been enforced. It follows that the Government's objection must be dismissed.

(f) Conclusion as to the admissibility

68. In view of the above, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

69. The applicant argued that the passive attitude of the authorities and the inaction of the police had resulted in the non-enforcement of the decisions awarding her custody and her alienation from her children. The applicant had been unable to have any meaningful contact with the children since they were 4 and 1.5 years old. Moreover, she had not been able to have telephone communication with them on account of K.K.'s uncooperative behaviour. That had resulted in their alienation and undoubtedly created problems in respect of the children's development. Moreover, it had a significant impact on the applicant, who had missed all those years of her children's lives, despite her considerable efforts. She further submitted that K.K. and his family had brainwashed the children and K.K. had instituted several sets of proceedings in order to exhaust her financially and psychologically. The legal proceedings had been endless and placed a heavy financial burden on the applicant, who had been forced to travel from Didymoticho to Amaliada, a

distance of more than 900 km, every time there had been a new set of proceedings, which, moreover, had been futile, as they had not resulted in her obtaining contact with her daughters.

70. In the applicant's view, ever since the proceedings which resulted in decision no. 87/2018 of the Amaliada One-Member Court of First Instance, K.K. had been unlawfully exercising his parental rights while excluding the applicant. In the meantime, the domestic authorities had remained inactive and had not facilitated the applicant's reunification with her children despite her repeated requests.

71. The applicant referred to her observations concerning the admissibility of the application and reiterated that she had not had any effective remedy available to achieve the enforcement of the relevant decisions, as the relevant proceedings to award her custody had been costly, lengthy and futile, as has already been acknowledged by the Court in similar cases (see *Fourkiotis*, cited above, § 68).

72. The applicant also referred to the criminal complaints she had lodged against K.K. and his family members. She had further sought the help of the police, who, however, had not efficiently assisted her and had been unable to locate the children during their search operations, even though the village in which the children resided, Kolokythas, was inhabited by eighty people and thus the children should have been easy to locate. Lastly, the applicant had addressed both the Prosecutor of the Court of Cassation and the Prosecutor of the Court of First Instance, requesting their assistance with the enforcement of the custody decisions, but to no avail; they had not taken any action whatsoever, even though the nature and gravity of the violation of the applicant's rights had called for coercive measures. In the meantime, the children had been further alienated from her and the applicant feared that she might never be able to be reunited with them.

2. The Government's submissions

73. The Government argued that in cases such as the present one, the State's obligation was to introduce an appropriate legislative framework and to order any necessary measures to the extent possible to reunite the members of the family, as in the present case involving the applicant and her two daughters. In the present case, the authorities had acted on those obligations. On the one hand, there had been a complete system of judicial protection regulating parental responsibility, custody and contact between divorced parents and their children. Under decision no. 28/2016, which had been delivered in accordance with the interim measures procedure, K.K. had had full parental responsibility and custody of the children; therefore, when decision no. 195/2020 of the Patras Court of Appeal had been given, the children had legally been in the custody of their father, with whom they had been living, and their contact with the applicant had been regulated by

decision no. 2/2017 of the Amaliada One-Member Court of First Instance (see paragraphs 7 and 8 above).

74. The Government further argued that K.K.'s obligation to deliver the children to the applicant had been set out in decision no. 195/2020, in which the court had rejected his appeal against decision no. 87/2018. More specifically, his obligation had begun on the date which the applicant had stated was the date when the children should have been delivered as per the first executory title which she had obtained, namely that of 10 June 2020. Ever since that date, the domestic authorities had provided every possible measure within their competence to assist the applicant with the enforcement of the relevant decision.

75. The Government submitted that a court officer could not request the assistance of the police and/or of the prosecuting authorities in order to have children forcibly removed from one parent; only the indirect execution of such a decision under Article 950 § 1 of the Code of Civil Procedure had been allowed. In particular, in accordance with domestic law as it had stood prior to 1999, a court officer could proceed to the execution of a decision to award custody with the forcible removal of the children from the non-custodial parent. However, the forcible execution of such decisions had been considered to be violence committed by the State and thus the relevant provision had been modified so as to provide for indirect execution. Even so, the police and judicial authorities had acted on the applicant's criminal complaints concerning the kidnapping of her children. Multiple searches had been effectuated to locate the minors, the files had immediately been brought to the attention of the Public Prosecutor of Amaliada, criminal charges had been brought and both a preliminary and a main investigation had been conducted. Lastly, the files had been submitted to the Council of Misdemeanour Judges which, by order no. 35/2021, had ordered that the defendants stand trial in the Patra Three-Member Court of Appeal.

76. The Government further submitted that the means of execution ordered by decision no. 87/2018 of the Amaliada One-Member Court of First Instance had been dependent on the applicant's will to comply. Moreover, the applicant had submitted new requests to the civil courts concerning the removal of K.K.'s parental responsibility and the immediate execution of decisions nos. 87/2018 and 195/2020. The non-completion of the relevant procedures had been the result of the parties' continual requests for adjournments or consent to them, and also to the applicant's withdrawal from the relevant proceedings. In the Government's view, it was clear that K.K. and the applicant had not wished to have the proceedings terminated promptly.

77. The Government also emphasised that after both parents had reported that communication between the applicant and the children had failed under the provisional order, the police had made recommendations to them and they had both declared that they did not wish to take any further action.

78. In conclusion, the Government asserted that the domestic authorities had done everything in their power to assist the applicant, but with such a tense relationship between the parents it had been difficult to bring any effort to fruition, especially in a way that would not hurt the children. In any event, the applicant had failed to enumerate any ways in which the authorities could have provided assistance but had failed to do so.

3. The Court's assessment

(a) General principles

79. The relevant general principles concerning the State's role in protecting the relationship between parents and their children have been set out in a number of cases (see *Eriksson v. Sweden*, 22 June 1989, § 71 Series A no. 156; *Olsson v. Sweden (no. 2)*, 27 November 1992, § 90, Series A no. 250; *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Ignaccolo-Zenide*, cited above, § 94; and *Santos Nunes v. Portugal*, no. 61173/08, §§ 66-69, 22 May 2012). The essence of those principles is that, given that the relationship between parents and children is protected under the Article 8 notions of family life, individuals' inability to maintain this relation calls for action by the authorities in line with their positive obligations to adopt measures to reunite, or help re-establish contact between, child and parent (see *Eriksson*, § 71; *Olsson*, § 90; and *Ignaccolo-Zenide*, § 94, all cited above). The obligation of the national authorities to take measures to facilitate such a reunion is not absolute, since the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures. The nature and extent of such preparation will depend on the circumstances of each case. Any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned must be taken into account and, more particularly, the best interests of the child (see *Hokkanen*, § 58, and *Ignaccolo-Zenide*, § 94, both cited above). What is decisive, and what the Court is called upon to review, is whether the national authorities have taken all necessary steps that could reasonably be demanded in the circumstances which were aimed at allowing the individuals concerned to reunite and preserve the relationships between them (see *Kříž v. the Czech Republic*, no. 26634/03, § 85, 9 January 2007).

80. The Court further considers that the positive obligations that Article 8 of the Convention lays on the Contracting States in the matter of reuniting a parent with his or her children must be interpreted in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). This is all the more so in the instant case, as the respondent State is also a party to that instrument, Article 7 of which contains a list of measures to be taken by States to secure the prompt return of children (see *Ignaccolo-Zenide*, cited above, § 95). In that

connection, the Court notes that it has developed a set of principles regarding cases in which the custodial parent tries to enforce the judgment in cross-border cases which apply, *mutatis mutandis*, in this case too (see, for a summary of those principles, *Raw and Others v. France*, no. 10131/11, §§ 76-84, 7 March 2013).

(b) Application of the above principles in the present case

81. The Court notes, firstly, that it has not been disputed between the parties that the ties between the applicant and her children constituted family life for the purposes of Article 8.

82. That being so, it must be determined whether there has been a failure to ensure respect for the applicant's family life. What is decisive in the present case is therefore whether the national authorities took all steps that could reasonably be demanded to facilitate the execution of decisions nos. 87/2018 and 195/2020 (see *Ignaccolo-Zenide*, cited above, § 94).

83. As regards the period to be taken into consideration, the Court notes that the parties disagreed as to the exact point at which K.K. should have started complying with his obligation to deliver the children back to the applicant. In this connection, the Court notes that a decision awarding the applicant custody was delivered in 2018 and became final and enforceable following the rejection of K.K.'s appeal in 2020. In particular, the applicant initiated the procedure to have a first executory title, which was issued on 10 June 2020 and by which all competent authorities were ordered to assist the applicant in the enforcement of the relevant decision. The decision on which the executory title was based (decision no. 195/2020 of the Patras Court of Appeal), was served on K.K. on 9 June 2020 and ordered him to deliver the children to a specific place on 11 June 2020. The Court notes that according to order no. 35/2021 of the Council of Misdemeanour Judges, the period that was taken into consideration for the offence of abduction of children by omission was calculated from 11 June 2020 onwards (see paragraph 27 above). The Court will thus take that date into account for the assessment of the authorities' compliance with the positive obligations in respect of assisting the applicant in reuniting with her children, while it will necessarily have regard to the proceedings as a whole.

84. The Court firstly notes that as regards the proceedings that concluded with the applicant being awarded custody, those proceedings started in April 2016 with the submission of requests for interim measures, which were decided promptly by decision no. 28/2016 granting the custody of the children to K.K. temporarily (see paragraph 7 above). Nevertheless, the main decision on awarding custody was delivered two years later on 21 September 2018 (decision no. 87/2018) and the related appeal took another two years to be decided (decision no. 195/2020 delivered in May 2020).

85. The Court is not convinced that such a long period of time is consistent with the essence of such an action which concerns custody of the children and

thus, by its nature, requires expediency. If particular diligence is required on the part of the authorities when the custody of a child is at stake, the Court is of the opinion that this requirement of promptness is all the more stringent in cases where, as in the present case, a parent requests the return of his or her children from the other parent who is holding them without his or her consent (see, *mutatis mutandis*, *Amanalachioai v. Romania*, no. 4023/04, § 93, 26 May 2009).

86. The Court also reiterates that, when it comes to enforcing decisions concerning the return of a child, the understanding and cooperation of all concerned is always an important factor (see *Ignaccolo-Zenide*, cited above, § 94). Furthermore, when difficulties arise, mainly as a result of the refusal of the person with whom the child is staying to proceed to the enforcement of the decision ordering his or her immediate return, it is up to the competent authorities to impose appropriate sanctions even on their own motion in respect of this lack of cooperation and, while coercive measures against children are not, in principle, desirable in this sensitive area, recourse to sanctions should not be ruled out in the event of manifestly unlawful behaviour on the part of the person with whom the child is living (see *Maumousseau and Washington v. France*, no. 39388/05, § 83, 6 December 2007).

87. In this connection, the Court observes that K.K. did not comply on 11 June 2020 with his obligation to deliver the children to the applicant in accordance with the enforceable order. Moreover, he did not comply on any future date, even though the applicant tried to enforce it by requesting the police's assistance. He limited himself to lodging several new complaints in his attempt to reverse the decision awarding custody to the applicant. It does not escape the Court's attention that since then, the applicant has been unable to retrieve her children or to even have any meaningful contact with them. It appears that the only contact that the applicant had with her two children was a meeting, held in accordance with provisional order no. 35/2021, which only lasted a few minutes and then was terminated on account of the children's refusal to stay with her (see paragraph 27 above). It is, thus, noted that the present case is marked by a clear absence of cooperation on the part of K.K., who systematically obstructed the authorities' efforts to reunite the applicant with her children. It is important to emphasise that this fact does not absolve the authorities of their responsibility to do everything necessary to facilitate such reunion (see *Aneva and Others v. Bulgaria*, nos. 66997/13 and 2 others, § 114, 6 April 2017)

88. Turning, therefore, to the actions of the authorities and their response to the applicant's requests for assistance for the enforcement of the relevant decision, the Court notes that the police effectuated three search operations in K.K.'s house and that of his relatives but did not find the children (see paragraphs 24 and 26 above). However, the Court cannot but agree with the applicant's observation that in a village which was that small (eighty

habitants, according to the applicant's allegations, which remain unrefuted), locating the children, who were attending school, could not have been that difficult.

89. Moreover, the applicant had recourse to criminal proceedings in which she complained that the children had been abducted by omission by K.K. and his relatives. However, that procedure proved ineffective, as the relevant complaint was lodged in 2020 and for more than three years no first-instance decision was given on account of consecutive adjournments of the examination of the case. In this connection, the Court reiterates that in circumstances such as those in the present case, the passage of time is a decisive factor. As regards the applicant's additional recourse to civil proceedings, it is clear that she requested to have a contact schedule established so she could have contact with her children; nevertheless, that decision was also not enforced, as only one attempt appears to have been made which was, however, unsuccessful (see paragraph 22 above); it is not clear from the parties' submissions whether additional attempts were indeed made. The Court notes that the applicant reported the failure to obtain a contact schedule to the police, who made recommendations to K.K., but it does not appear that there was any follow-up in that connection.

90. As regards the actions of the public prosecutor, who was informed by both the lodging of the relevant complaint by the applicant and also by subsequent applications which she addressed to him, the Government have not adduced evidence of any action that the prosecutor took to facilitate the applicant's reunification with her children.

91. It follows from the observations above that the applicant was left unable to enforce the decision awarding her custody of her two children for a significant period of time, while living in another city and trying to find ways to communicate with them without sufficient support from the domestic authorities, who allowed a *de facto* situation to consolidate into the disregard of judicial decisions (see *Strumia v. Italy*, no. 53377/13, § 122, 23 June 2016).

92. The Court recognises that at a certain point in time the children became reluctant to go and live with the applicant (see paragraph 22 above). It notes that that situation was probably brought about by the other parent's unlawful refusal to comply with the judgments in question and by the ineffectiveness of the enforcement measures. It finds that the protracted lack of enforcement contributed to creating and consolidating a situation where the passage of time effectively alienated the applicant and her children, which in turn significantly enhanced the difficulties in enforcing the judgments.

93. In that connection, the Court notes that the domestic authorities failed to take effective steps to enforce the domestic decisions to award the applicant custody while the children were still very young and possibly had a positive attitude towards the applicant. Subsequently, over some seven years, the applicant endured the father's conduct preventing the establishment of a genuine relationship between her and the children in disregard of the relevant

domestic decisions, without his having to bear any consequences of that unaccommodating attitude. The Court notes in this connection that the possibilities of reunification will be progressively diminished and eventually destroyed if the non-cohabiting parent who tries to enforce a decision awarding custody and the children are not assisted in having any contact whatsoever (compare *Görgülü v. Germany*, no. 74969/01, § 46, 26 February 2004).

94. The Court reiterates that it is not its role to substitute itself for the national authorities in the assessment of what specific measures were necessary to be undertaken in the circumstances, given that those authorities are in principle better placed to take such decisions (see *Stanková v. Slovakia*, no. 7205/02, § 59, 9 October 2007). It notes, however, that the measures taken have not brought about the return of the children to the applicant, nor have they led to the re-establishment of any kind of meaningful contact between her and the children with a view to rebuilding the relationships. The parent at fault, K.K., who refused to follow a final judicial decision, has remained largely unconstrained, which has allowed him to persist in his obstruction of all related efforts. The relevant authorities, faced with such obstruction, did not ensure that timely and suitable preparatory measures were put in place and carried through (see, similarly, *Aneva and Others*, cited above, § 116, and *Zavřel v. the Czech Republic*, no. 14044/05, § 52, 18 January 2007; contrast *Krasicki v. Poland*, no. 17254/11, § 93, 15 April 2014). Consequently, having regard to the foregoing and notwithstanding the respondent State's margin of appreciation in the matter the Court finds that the authorities failed effectively to pursue adequate and timely actions to enforce the applicant's right to the return of her children.

95. Accordingly, the Court considers that, by failing to act with diligence, the national authorities have, by their conduct, favoured the children's integration into their new environment and thus decisively contributed to the consolidation of a *de facto* situation contrary to the applicant's right protected by Article 8 of the Convention (see *Amanalachioai*, cited above, § 95).

96. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to effectively pursue adequate and timely actions to enforce the applicant's right to the return of her children.

97. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Application of Article 46 of the Convention

98. The relevant part of Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

99. The applicant requested that the Court provide guidance in the execution of the judgment, not only concerning this specific case, but also with regard to general legislative measures that might be needed so as to ensure the effective execution of custody decisions.

100. The Government argued that the indication of general measures was not necessary.

101. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. In the Court's view, it is not necessary in the present case to indicate general measures to the respondent State.

B. Application of Article 41 of the Convention

102. Article 41 of the Convention provides:

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

1. Damage

103. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage, emphasising that the likelihood of family reunification with her children had progressively diminished on account of the authorities' lack of action.

104. The Government argued that the amount claimed was excessive and that the finding of a violation of Article 8 of the Convention would constitute sufficient compensation for the applicant.

105. The Court, considering the seriousness of the violation and the fact that the applicant has been unable to see her children for almost seven years,

awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

106. The applicant also requested that any sum awarded to her be increased by 20% and that a further EUR 1,000 be added to that amount for the costs and expenses incurred before the Court, as per her agreement for legal representation with her representative.

107. The Government argued that the applicant had failed to produce any invoices that could justify the legal expenses requested and thus her request should be rejected.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President