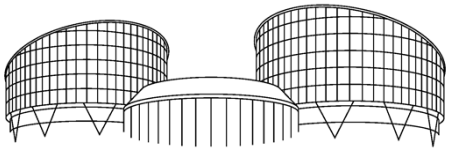

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VYSHNYAKOV v. UKRAINE

(Application no. 25612/12)

JUDGMENT

STRASBOURG

24 July 2018

FINAL

24/10/2018

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

In the case of Vyshnyakov v. Ukraine,

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

Vincent A. De Gaetano, *President,*
Ganna Yudkivska,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 3 July 20018,

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

PROCEDURE

1. The case originated in an application (no. 25612/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Sergiy Oleksiyovych Vyshnyakov ("the applicant"), on 17 April 2012.

2. The applicant, who had been granted legal aid, was represented by Mr M. Tarakhkalo and Ms O. Protsenko, lawyers practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. The applicant alleged that the domestic authorities had failed to enforce the court judgment granting him rights of access to his minor daughter. He further complained that in another set of proceedings the domestic courts had failed to properly determine his daughter's place of residence and had thereby discriminated against him on grounds of sex.

4. On 12 December 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Mykolayiv.

6. The applicant married O. in 2006. The spouses lived in Mykolayiv. On 21 March 2007 their daughter S. was born. In August 2007 the couple separated. O. continued to live with the child at a different address in Mykolayiv and that place of the child's residence was not, at that time, a matter of dispute between the parents.

7. On 15 April 2009 the Leninsky District Court of Mykolayiv, in response to an application from O., pronounced the couple's divorce.

A. Access rights judgment, its enforcement and related issues

8. On 4 June 2009, in response to a claim brought by the applicant against O. concerning hindrance of access to the child, the Leninsky District Court of Mykolayiv granted the applicant rights of access to his daughter. It ordered that the applicant should be granted an opportunity to see his daughter no less than three times a week, including overnight stays with the applicant, the dates and times thereof to be fixed by mutual agreement in advance.

9. On 13 July 2009 the local police examined the applicant's complaint concerning threats which O. regularly made when the applicant went to see the child, as well as O.'s refusal to let the child stay overnight with him and her restriction on the amount of time which the applicant could spend with the child. The police refused to open criminal proceedings because of the absence of the constituent elements of a criminal offence.

10. In the autumn of 2009 O. and S. moved to Selydove in the Donetsk Region. The distance between Mykolayiv and Selydove is about 600 kilometres by road. In view of that, the applicant initiated civil proceedings asking the court to determine that the child should live with him in Mykolayiv. That claim was dismissed as unfounded by the courts with the final decision being taken by the Higher Specialised Court on Civil and Criminal Matters ("the HSCU") on 1 August 2011.

11. On 20 October 2009, at the applicant's request, the Mykolayiv State Bailiffs' Service opened proceedings for the enforcement of the judgment of 4 June 2009. However, on 22 October 2009 the bailiffs' decision was quashed since the procedure for enforcement of a court judgment of that kind was not specified by law.

12. On 19 November 2009 the applicant arrived in Selydove, where O. allowed him to see the child for about one hour. On 27 January 2010, when O. and S. arrived for a short stay in Mykolayiv, the applicant attempted to see his daughter, but O. refused to let him take the child overnight. On 20 October 2011 when the applicant arrived in Selydove and attempted to collect the child from the childcare centre, O. arrived and took back the child. The applicant's complaints to the police on account of those incidents were dismissed because of the absence of the constituent elements of a criminal offence.

13. On 28 March 2012 the applicant submitted to the Selydove State Bailiff's Service a writ of execution of judgment dated 4 June 2009. On 29 March 2012 the State bailiff opened the enforcement proceedings. On 9 April 2012 in the presence of the applicant, O. and two witnesses, the State bailiff read out the operative part of the judgment of 4 June 2009 and issued a resolution on termination of the enforcement proceedings, considering that the judgment had been fully enforced by so doing.

14. The applicant brought a challenge in the courts against the termination of the enforcement proceedings. The courts upheld the bailiffs' decision, finding that it had been taken in accordance with the law. The final decision was taken by the HSCU, which on 3 August 2012 dismissed the applicant's appeal on points of law.

15. On 20 November 2012 in proceedings concerning child support allowances, the applicant admitted that he took the child to Mykolayiv to live with him for about one or two months per year.

16. In January 2013 the applicant brought a claim for damages against O. for obstructing enforcement of the judgment of 4 June 2009 granting him access rights. The courts dismissed the claim for lack of proof. The final decision in those proceedings, rejecting the applicant's appeal on points of law, was delivered by the HSCU on 14 June 2013.

17. On 21 June 2013 the Leninskyy Dstrict Police Department in Mykolayiv opened criminal proceedings following the applicant's complaint that O. had refused to comply with the judgment of 4 June 2009. On 10 December 2014 the police terminated the criminal proceedings because of the absence of the constituent elements of a criminal offence. The applicant challenged that decision in the court. On 1 April 2015 the Leninskyy District Court of Mykolayiv quashed the decision of 10 December 2014 after finding that the investigator had failed to substantiate his conclusion. The criminal investigation was resumed.

18. In 2014 the applicant instituted civil proceedings in Selydove Town Court seeking to determine anew his access rights in view of the impediments caused by O. On 12 January 2014 his claim was dismissed as unfounded. However, on 8 December 2015 the Donetsk Regional Court of Appeal partly allowed the applicant's claim. It found that O. had prevented the applicant from properly exercising his access rights and ruled that the applicant should be given the opportunity of spending one month with his daughter during the summer and one week during the winter school holidays every year until she attained the age of majority.

19. On 26 May 2016 the Selydove department of State bailiffs' service opened enforcement proceedings in relation to the judgment of 8 December 2015. On 10 June 2016 the bailiffs notified O. about the judgment of 8 December 2015.

B. Civil dispute regarding the child's place of residence

20. In spring 2014 illegal armed groups associated with two self-proclaimed entities known as the "Donetsk People's Republic" and the "Luhansk People's Republic" started operating in the Donetsk and Luhansk Regions, seizing control of certain parts of those regions by force. Ukraine's armed forces launched a military anti-terrorist operation against them. A ceasefire line was later put in place. Selydove is in the territory controlled by the Ukrainian Government, about twenty-five kilometres from the ceasefire line, and was included in the list of locations where the military anti-terrorist operation was being conducted. According to information provided by the Government, in April 2014 certain movements of illegal armed groups had been registered in Selydovo, but no active military operations had ever taken place in that area.

21. In August 2014 the applicant lodged a claim with the Selydove Court seeking a declaration that O. was unlawfully failing to cooperate in executing the judgment of 4 June 2009 granting the applicant access rights. He also asked the court to determine that the child's place of residence should be his home in Mykolayiv. He argued that O. was unemployed and had no source of independent income, and that the child was fully dependent on the child support payments which the applicant was duly making. He also argued that it was dangerous for the child to continue to reside in the proximity of a theatre of armed conflict. Moreover, there was a risk that the conflict might spread to Selydove. In support of the latter assertion the applicant cited media reports according to which representatives of the so-called "Donetsk People's Republic" were threatening to capture all the territory of the Donetsk Region.

22. On 5 May 2015 the Selydove Court rejected the applicant's claim. The court established that the applicant was employed and had good references from his employer, and had no recorded mental health or addiction problems. The court quoted a report compiled by the child protection authority in Mykolayiv, according to which the applicant could provide secure, well-equipped accommodation suitable for a child, and had stable employment and income. However, the applicant had failed to prove that O. had no independent income or had failed to perform her parental duties or was engaged in unlawful or immoral conduct. The court also stated that the applicant had not substantiated the allegation that the child's life was in danger and the mere fact of anti-terrorist military operations taking place in the region did not prove that risk.

23. On 4 August 2015 the Donetsk Regional Court of Appeal upheld the Selydove Court's judgment, finding that the applicant had failed to substantiate the allegations that the child's place of residence should be changed.

24. On 23 December 2015 the HSCU upheld the lower courts' decisions. It stated that the Selydove Town Court had correctly established the relevant facts and had properly applied the law. The HSCU agreed with the lower courts' conclusion that separating the child from the mother had not been justified.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

25. According to Article 51 of the Constitution, each spouse has equal rights and duties in the marriage and family.

B. Family Code of 10 January 2002

26. The Code provides that a woman and a man have equal rights and obligations in family relations, marriage and family (Article 7 § 6). The place of residence of a child under ten years of age is to be determined jointly by the parents (Article 160 § 1). If parents who live separately cannot agree on the place of residence of a child under the age of fourteen years, the dispute may be determined by a guardianship authority or by a court. When deciding such a dispute, the guardianship authority or the court should take into account the parents' respective attitudes to their parental duties, the personal disposition of the child to each parent, the age of the child, the child's state of health, and other relevant circumstances (Article 161 § 1). The guardianship authority or court may not order that the place of a child's residence is to be with a parent who has no independent income, or abuses alcohol or drugs, or may cause damage to the child's development by dishonourable conduct (Article 161 § 2).

C. Criminal Code 5 April 2001

27. Article 382 § 1 of the Code provides:

> "1. Wilful failure to comply with a court sentence, judgment, ruling or resolution which has entered into force, or hindrance of the enforcement thereof, shall be punishable by a fine of between 500 and 1,000 times the statutory tax-free monthly income, or by deprivation of liberty for a term of up to three years."

D. Law on enforcement proceedings

28. The relevant provisions of the Enforcement Proceedings Act of 21 April 1999 (in force until 5 October 2016) set out the general conditions for the enforcement of judgments on prohibiting or abstaining from certain

actions. The procedure included an initial stage of voluntary compliance by debtors with the judgment and a subsequent stage during which the bailiffs could impose financial sanctions on the debtors and request the initiation of criminal proceedings against them in the event of non-compliance with the judgment (section 76 of the Act in the wording until 9 March 2011 and section 75 of the Act in the wording after 9 March 2011). Section 75 § 4 (in the wording after 9 March 2011) also provided that during the enforcement of a judgment of this kind the bailiffs should notify the debtor of the operative part of such a judgment and prepare a report to that effect; after the preparation of the report, the bailiff terminated the enforcement proceedings. Section 63 of the Enforcement Proceedings Act of 2 June 2016 (in force since 5 October 2016) deals with a similar procedure for the enforcement of judgments of this kind.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF NON-ENFORCEMENT OF JUDGMENT GRANTING ACCESS TO THE CHILD

29. The applicant complained that the domestic authorities had failed to enforce the judgment of 4 June 2009 granting him rights of access to his minor daughter. The applicant relied on Articles 6 and 13 of the Convention.

30. The Court, master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaint from the standpoint of Article 8 of the Convention. Article 8 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

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

B. Merits

1. The parties' submissions

32. The applicant contended that he had had to initiate court proceedings for access to the child because of his former spouse's refusal to respect his right of communication with his daughter. He also maintained that his former spouse had systematically prevented him from exercising his right of access as determined by the judgment of 4 June 2009. His attempt to enforce the judgment by enlisting the assistance of the State bailiffs' service turned out to be futile. The State bailiffs remained totally inactive and had failed to impose fines on his former spouse or to seek her criminal prosecution for non-compliance with the court judgment. The applicant contended that the State authorities' inactivity in ensuring the enforcement of judgment of 4 June 2009 was attributable to the lack of any appropriate legislative and administrative basis.

33. The Government submitted that there were not sufficient details specifying the impediments that the applicant had allegedly experienced in having access to the child. The hostility of the child's mother towards the applicant and her decision to move to another town was not imputable to the State authorities. After the mother and the child had moved to a different town, the applicant had taken opportunities for spending time with the child for several weeks per year. If the schedule established by the judgment of 4 June 2009, granting access to the child three times a week, had not been suitable in view of the distance between the towns, the applicant could have sought a change of the access regime. Overall, the measures taken by the authorities to enforce the judgment of 4 June 2009 had been sufficient in the circumstances of the present case.

2. The Court's assessment

(a) The relevant principles

34. The Court notes that mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII).

35. The essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There are, in addition, positive obligations inherent in an effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community, including other concerned third parties, and the State's margin of appreciation. The Court has already repeatedly held that in matters relating to their custody the interests of children are of paramount importance. The child's best interests must be the primary consideration and may, depending on their nature and

seriousness, override those of the parents (*Ónodi v. Hungary*, no. 38647/09, § 30, 30 May 2017, with further references).

36. In cases concerning the implementation of the contact rights of one of the parents, Article 8 includes a parent's right to the taking of measures with a view to his being reunited with his child and an obligation on the national authorities to facilitate such reunion, in so far as the interest of the child dictates that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family; the State's obligation is not one of result, but one of means (see, *Kacper Nowakowski v. Poland*, no. 32407/13, § 74, 10 January 2017, with further references).

37. The adequacy of the measures taken is to be judged by the swiftness of their implementation, as the passage of time can have irremediable consequences for the relationship between the child and the parent who does not live with him or her; the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live (see *Prizzia v. Hungary*, no. 20255/12, §§ 36 and 37, 11 June 2013, with further references; see also *Ferrari v. Romania*, no. 1714/10, § 49, 28 April 2015).

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

38. In the present case it is common ground that the relationship between the applicant and his daughter amounted to "family life" within the meaning of Article 8 of the Convention. The applicant complained that he could not effectively exercise his right of access to his minor daughter according to the court judgment of 4 June 2009. This allegation affected the substance of the "family life" generated between the applicant and the child in so far as the mutual enjoyment by parent and child of each other's company constitutes, as noted above, a fundamental element of that concept.

39. Moreover, the applicant's allegation was supported by a detailed account of facts indicating that the alleged hindrance of access to the child was serious. In that regard the Court notes that the applicant instituted civil proceedings seeking to obtain a judicial determination of his access rights, then attempted to enforce the relevant judgment, and submitted repeated complaints to the police on account of his unsuccessful attempts to see and spend time with the child (see paragraphs 8, 11, 12 and 13 above). The fact that the mother of his child had prevented the applicant from properly exercising his access rights was subsequently confirmed by a domestic court (see paragraph 18 above).

40. The Court notes that the applicant's first attempt to enforce the judgment of 4 June 2009 took place in autumn 2009, when the mother and the child had moved to a different town. However, the State bailiffs did not make any enforcement arrangements, since the procedure for the enforcement of such a judgment was not specified by law (see paragraph 11 above).

41. It appears that the applicant subsequently reached an agreement with the mother to spend several weeks with the child per year (see paragraph 15 above). However, the existence of such a private arrangement between the parents did not negate the obligation incumbent on the authorities to enforce the judgment of 4 June 2009, especially in view of the fact that that judgment granted the applicant much more time with his daughter.

42. After an unsuccessful enforcement attempt in 2009, a new set of enforcement proceedings was opened in 2012, but these were limited to the formal notification of the mother about the judgment, of which she had already been perfectly aware. In the view of the bailiffs, this sole action constituted a full enforcement of the judgment and this interpretation of the scope of enforcement arrangements was upheld by the domestic courts (see paragraphs 13 and 14 above).

43. The Court considers that such a limited approach was not sufficient. Nothing suggests that during the enforcement proceedings the authorities ever considered arrangements for voluntary compliance with the judgment, for example, by developing a comprehensive compliance strategy. Moreover, it remains unclear to which extent the childcare and family services could have been involved in that regard and whether any family mediation could have been used (see, in that regard, *Cengiz Kılıç v. Turkey*, no. 16192/06, § 132 *in fine*, 6 December 2011 and *Kacper Nowakowski,* cited above*,* § 87). However, the absence of voluntary compliance measures significantly diminished the possibilities for cooperation with the obstructing parent. Although, admittedly, the voluntary execution is always preferable, the Court observes that the entrenched positions often taken by the parents in such cases can render such voluntary execution difficult, making it necessary, in appropriate cases, to have recourse to proportionate coercive measures.

44. However, no coercive arrangements were made either. The bailiffs had the power to impose fines and request criminal prosecution for non-compliance with the court judgment but – for unknown reasons – those powers were not used. Moreover, even after the applicant lodged a request with the police to open a criminal case, the investigation still failed to make any significant progress (paragraph 17 above). Another set of enforcement proceedings was opened on 26 May 2016 in relation to the judgment of 8 December 2015 in order to determine the scope of access rights anew (see paragraph 19 above). However, those enforcement proceedings did not involve the judgment of 4 June 2009.

45. In these circumstances the Court finds that throughout the whole of the period when the judgment of 4 June 2009 was binding for the parties, the domestic authorities failed to take necessary, sufficient and prompt measures to ensure the applicant's right of access to his minor daughter. The judgment remained unsupported by the requisite enforcement procedures for more than six years.

46. The Court furthermore considers that the failings by the domestic authorities described above, notably the inappropriate manner in which the domestic authorities disposed with the enforcement of the judgment granting access to the child, were not only the result of the inadequate attitude of the officials responsible for the enforcement of the judgment. It appears that the lack of a developed legislative and administrative framework also contributed to those failings. In particular, the available legislative and administrative framework was insufficient to facilitate the voluntary compliance arrangements involving family and childcare professionals. Nor did it envisage an appropriate range of specific measures which might have been applied, subject to the proportionality principle, to ensure coercive compliance with the court judgment granting contact rights.

47. There has accordingly been a violation of Article 8 of the Convention on account of non-enforcement of the judgment granting the applicant access to his child.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION IN THE PROCEEDINGS CONCERNING THE CHILD'S PLACE OF RESIDENCE

48. The applicant complained that in the dispute over the determination of the child's place of residence the courts had failed to assess all the relevant facts and had discriminated against him on grounds of sex, in breach of Articles 2, 6, 13 and 14 of the Convention and Article 1 of Protocol No 12.

49. The Court considers that the applicant's allegation concerning lack of an appropriate decision-making process on the issue of the child's place of residence falls to be examined solely under Article 8 of the Convention (see, for a similar approach, *M.S. v. Ukraine*, no. 2091/13, § 70, 11 July 2017, with further references). As to the applicant's allegation about his being discriminated by the courts on grounds of sex, this issue falls to be examined under Article 14, taken in conjunction with Article 8 (see, for example, *Coste v.Poland* (dec.), no. 14179/15, §§ 21-23, 13 October 2015).

50. In addition to Article 8, which has been cited above, Article 14 provides as follows:

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

51. The applicant contended that the domestic courts had failed to properly assess the evidence and examine all the relevant circumstances when determining the child's place of residence. They did not carefully examine his submissions that the mother of the child did not have an independent income and that the child was subjected to security risks in

view of the ongoing armed conflict. Furthermore, the reasoning of the courts was arbitrary and he was discriminated against on the ground of sex in that the courts had tended to give preference to the applicant's former wife when determining the child's place of residence.

52. The Government maintained that the domestic courts had satisfactorily taken the necessary steps and had adopted reasonable decisions on the merits of the dispute. In resolving the dispute the courts had not discriminated against the applicant.

53. The Court reiterates that, whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V (extracts)). The Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII, with further references).

54. The margin of appreciation to be accorded to the relevant national authorities will vary in accordance with the nature of the issues and the importance of the interest at stake. It must be borne in mind that the national authorities have the benefit of direct contact with the persons concerned. The Court has thus recognised that the authorities enjoy a wide margin of appreciation when deciding on custody (see *Buchleither v. Germany*, no. 20106/13, § 44, 28 April 2016, with further references).

55. In the present case the applicant asked the courts to change the child's place of residence to his home, arguing, *inter alia*, that the child's mother did not have an independent income with which to support herself and the child, whereas he had a stable financial situation. He also contended that, in contrast to his home city, the town where the child resided with her mother was in close proximity to the ongoing armed conflict, which could expand further and put the child in danger.

56. The domestic courts dismissed the applicant's claim, finding that it was not supported by any evidence justifying the change of the child's place of residence. They discarded as unsubstantiated the allegations relating to the applicant's favourable financial situation and they refused to accept that the general safety risk connected with the armed conflict in the East of Ukraine was directly relevant to the applicant's daughter.

57. The Court notes at the outset that since her very early age the child was constantly living with her mother, separately from the applicant, and that the first action of the applicant for changing the child's place of residence had been earlier dismissed as unfounded (see paragraph 10 above). Apparently, when introducing his second claim on the same matter after many years of the child living with her mother, the applicant had to

provide weighty reasons for changing the child's place of residence to his home. Those reasons would have to be based on the need to ensure "the best interests of the child" and would have to be substantiated by the relevant evidence. However, the domestic courts did not consider that such reasons had been established. Having regard to the wide margin of appreciation enjoyed by the domestic authorities on custody rights, the Court, on its part, finds that the domestic courts, which were better placed to assess the evidence, struck a fair balance between the competing interests, and the decision to keep the child's place of residence with her mother ensured the child's best interests (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 134 and 135, ECHR 2010). The Court also accepts that the domestic courts had sufficiently addressed the applicant's arguments which were not supported by any substantive evidence (see, in particular, paragraphs 22-25 above). There is no indication of arbitrariness or failure to respect the procedural rights of the applicant. Accordingly, the complaint under Article 8 of the Convention is manifestly ill-founded.

58. The Court further considers that, in the light of the above conclusions under Article 8, the applicant's allegation of discrimination on the ground of sex, in the circumstances of the present case, does not disclose any arguable issue under Article 14 of the Convention.

59. It follows that this part of the application must be dismissed as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

60. 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."

61. 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. ..."

A. Article 46

62. The applicant requested that the Court indicate to the Government the need to introduce general measures by adopting relevant legislation to address the issues giving rise to violation of the Convention in the present case.

63. The Government objected to that request, submitting that it was unfounded.

64. The Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I). This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States to secure the rights and freedoms guaranteed under the Convention (Article 1) (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

65. Having regard to the principles cited in the preceding paragraph and the circumstances of the present case, the Court considers that it is unnecessary to indicate any general measures at national level that could be called for in the execution of this judgment.

B. Article 41

1. Damage

66. The applicant claimed 10,051.77 Ukrainian hryvnias (UAH) in respect of pecuniary damage and 1,000,000 euros (EUR) in respect of non-pecuniary damage.

67. The Government submitted that the claims were unsubstantiated.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further considers that the applicant must have suffered anguish and distress on account of the violation found in the present case. Ruling on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage.

2. Costs and expenses

69. The applicant also claimed EUR 3,750 for the costs and expenses incurred before the domestic authorities and the Court.

70. The Government contended that the claim was excessive and unfounded.

71. 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 have been 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, in addition to the legal aid granted, the sum of EUR 1,000 for costs and expenses for the proceedings before the Court, this amount to be paid directly into the bank account of the applicant's representative, Mr M. Tarakhkalo, as requested by the applicant (see, for example, *Hristovi v. Bulgaria*, no. 42697/05, § 109, 11 October 2011, and *Singartiyski and Others v. Bulgaria*, no. 48284/07, § 54, 18 October 2011).

3. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint concerning non-enforcement of the judgment granting access to the child and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention on account of non-enforcement of the judgment granting access to the child;

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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred 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 payable to the bank account of his representative, Mr Tarakhkalo;
   (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 24 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Vincent A. De Gaetano
Registrar	President