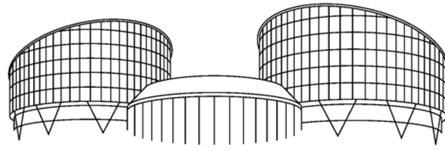

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF I.S. v. GREECE

(Application no. 19165/20)

JUDGMENT

Art 8 • Positive obligations • Family life • Domestic authorities' failure to take all necessary measures to enforce the applicant's right to have contact and to establish a relationship with his daughters • No real follow-up on orders for counselling, psychiatric evaluations and social welfare reports

STRASBOURG

23 May 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of I.S. v. Greece,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 19165/20) 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, Mr I.S. ("the applicant"), on 14 April 2020;

the decision to give notice to the Greek Government ("the Government") of the complaint under Article 8 of the Convention;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by G.S., the applicant's ex-wife and the children's mother, who was granted leave to intervene by the President of the Section pursuant to Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court;

Having deliberated in private on 2 May 2023,

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

INTRODUCTION

1. The application concerns the applicant's loss of contact with his children, despite domestic decisions granting him contact rights, and the alleged failure of the authorities to conduct a psychological report and social welfare report. The applicant submitted multiple complaints to various domestic authorities to no avail. He complained of a violation of his right to family life under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1976 and lives in Athens. He was represented by Mr Andreas Anagnostakis and Mr Andreas Alexios Anagnostakis, lawyers practising in Athens.

3. The Government were represented by their Agent's delegate, Mrs O. Patsopoulou, Senior Advisor at the State Legal Council.

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

I. BACKGROUND OF THE CASE

5. The applicant married G.S. in June 2007. In December 2007 their first daughter, A., was born and in June 2011 their second daughter, K., was born.

6. The relationship between the applicant and G.S. ended in January 2012 when they moved into separate houses. Their marriage was dissolved by decision no. 4599/2013 of 27 August 2013 of the Athens Multi-Member Court of First Instance, which held that the marriage had been dissolved for reasons relating to the applicant. This was upheld by decision no. 3938/2015 of 31 August 2015 of the Athens Court of Appeal. The applicant was also found guilty of domestic violence against G.S. concerning an incident that took place on 29 December 2011 (decision no. 563/2022 of the Court of Cassation).

II. JUDICIAL PROCEEDINGS CONCERNING CUSTODY

7. By decision no. 8168/2012 of the Athens One-Member Court of First Instance, the applicant obtained temporary custody of the children, who stayed with him in their family home. The mother was granted contact rights, as at the time she was facing health issues which did not allow her to have custody of her children.

8. Following her treatment, G.S. lodged an application for interim measures with the Athens One-Member Court of First Instance, requesting that decision no. 8168/2012 be amended and that custody of the children be awarded to her. By decision no. 14327/2013 of 3 December 2013, the court temporarily awarded custody to her. The children have thus been living with their mother since 11 December 2013.

9. By decision no. 363/2017 of 19 April 2017, the Athens One-Member Court of First Instance awarded permanent custody of the children to G.S. That decision was upheld by decision no. 257/2019 of 14 January 2019 of the Athens One-Member Court of Appeal, which held that awarding custody to the father would be problematic. On the one hand, the children had adapted well to living with their mother and, on the other hand, they refused to meet with their father during contact hours. Despite the applicant's obvious feelings of love and interest towards his daughters, a change in their living environment would not be in their best interests, also taking into account the above-mentioned factors. The applicant lodged an appeal on points of law against that decision with the Court of Cassation, which was dismissed on 2 April 2021 by decision no. 426/2021 (after the lodging of the present application with the Court).

III. JUDICIAL PROCEEDINGS CONCERNING THE APPLICANT'S CONTACT RIGHTS

10. On 20 December 2013 the applicant lodged an application for interim measures with the Athens One-Member Court of First Instance, requesting that he be given contact rights with his children. On 25 April 2014 the court issued judgment no. 4849/2014, which stated that, despite an incident in September 2013 where it was probable that the applicant had caused bodily harm to his older daughter, resulting in bruises, he still loved his children and should therefore have regular contact with them. It thus granted the applicant contact rights two to three days per week, in addition to certain days during the Christmas, Easter and summer holidays, without however allowing the children to stay overnight at their father's place.

11. The applicant then lodged a further application for interim measures with the Athens One-Member Court of First Instance, requesting that the above-mentioned decision be amended. On 30 December 2015 the court delivered judgment no. 10569/2015, by which it held that the applicant would have contact with his children, then aged eight and four and a half, in accordance with the following schedule: every Thursday from 5 p.m. to 8 p.m., every first weekend of the month (including a night at the applicant's place of residence), the second and fourth Sunday of each month, as well as part of the Christmas, Easter and summer holidays. When the children would stay overnight at their father's house, contact would take place with his mother or sister present. In addition, the applicant would pick up the children from the police station in Kifissia in order to avoid tensions between him and their mother.

12. According to the evidence in the case file, the applicant's contact with the children did not go smoothly. From January 2016, shortly after judgment no. 10569/2015 was delivered, he would show up at Kifissia police station, but the children would refuse to go with him and contact would be terminated. The police recorded the incidents in their incident log. That situation lasted from January 2016 to July 2019.

13. On 29 February 2016 the applicant lodged an application with the Athens One-Member Court of First Instance, requesting that his contact schedule with his children be set definitively. By decisions no. 420/2017 and 3551/2017 of 2 May 2017, the court ordered that a further hearing be held following the completion of a social welfare report and report by a child psychiatrist of the two minor children by a court-appointed expert.

14. Following the completion of the reports by the social worker and child psychiatrist (see paragraphs 18 and 21 below), the One-Member Court of First Instance held a further hearing on 12 October 2020 and on 8 January 2021 delivered its judgment no. 152/2021 (after the lodging of the present application). The court noted that contact between the applicant and the children had not taken place in accordance with judgment no. 10569/2015

owing to the hostilities between the parents. G.S. kept calling the children during contact hours on the mobile telephones she had given them, and the applicant was trying to impede that communication. The court noted that the children were not accepting contact with their father, though it considered that the children's behaviour was undoubtedly influenced by the behaviour of both parents. It held that for the children's benefit, the applicant's contact should be gradually reinstated and that both parents should work towards that goal. For the first trimester following the decision, the children should not stay overnight at the applicant's house and for the period after that, the schedule would be as follows: every first and third weekend of the month from Friday afternoon until Sunday afternoon, a week during the Christmas and Easter holidays and thirty days during the summer holidays. The pick-up and drop-off of the children would take place at the mother's home on the island of Tinos. In addition, telephone contact could take place every afternoon. If G.S. obstructed the applicant's contact with his children, for each occasion she would face a penalty of 250 euros (EUR) and one month imprisonment. According to the applicant, that judgment was not enforced. Both the applicant and G.S. appealed against that judgment; no decision appears to have been issued yet on their appeals.

IV. REPORTS DRAWN UP BY THE SOCIAL WORKER AND CHILD PSYCHIATRIST

A. Procedural matters

15. Following decisions no. 420/2017 and 3551/2017 of 2 May 2017 ordering a social welfare report and report by a child psychiatrist, on 11 December 2017 G.S. lodged two applications with the courts, requesting that the above-mentioned decisions be revoked, as the existing material was, in her view, sufficient. In addition, she claimed that her older daughter could be traumatised further by the conducting of the reports. On 6 February 2018 the applicant lodged an application requesting that G.S. be ordered to cooperate in the conducting of the reports, as well as for further time to be given for their completion. The relevant requests were refused by decision no. 7647/2018 of 16 July 2018 of the One-Member Court of First Instance. On 2 April 2018 the applicant complained to the Three-Member Council of Administration of the Athens Court of First Instance about G.S.'s lack of cooperation and attempts to cancel the ordered reports.

16. On 6 December 2018 G.S. requested the replacement of the expert appointed by decisions no. 420/2017 and 3551/2017. Her application was rejected by decisions no. 2755/2019 and 2757/2019 of 9 May 2019. On 19 March 2019 the applicant requested that the report conducted be supplemented with a new one and that additional time be given for its

completion. His request was rejected by decision no. 2757/2019 of 9 May 2019 of the One-Member Court of First Instance.

B. Social welfare report

17. The social welfare report ordered by decision no. 420/2017 of 2 May 2017 of the One-Member Court of First Instance was not initially conducted for reasons relating to G.S. In particular, under various pretexts, she refused to cooperate in the conducting of the report and then sent an extrajudicial document claiming that she had applied to the courts to revoke the relevant order for its drawing up and that they therefore should wait. In that document, it was clear that G.S. had moved from Kifissia municipality to Oropos municipality and that the social services of Kifissia municipality therefore no longer had local jurisdiction. They informed the Athens Court of First Instance and the public prosecutor's office, which transferred the file to the social services of Oropos municipality.

18. On 21 November 2019 a social worker from Oropos municipality submitted social welfare report no. 96. G.S. had insisted on the social worker visiting her parents' home, even though she had moved in the meantime to Tinos, as she was visiting that house regularly with her children. A visit took place in the presence of G.S.'s mother, the two children and a couple of family friends who were visiting. G.S. told the story of her meeting the applicant and the circumstances surrounding their divorce. The social worker concluded her report by stating that she was aware of the hostilities between G.S. and the applicant, which also affected their children, that the home of G.S.' parents was in excellent condition and that the report should be completed by the relevant social services of Tinos municipality.

19. Following receipt of the relevant file on 9 December 2019, two days later the Tinos public prosecutor ordered social services to conduct a social welfare report. In a report dated 29 May 2020, the social worker described that he had encountered many difficulties in its drawing up as the mother had refused to cooperate and that eventually she and her own mother had impeded him from having private conversations with the two children. The visit took place at G.S.'s declared home; however, the social worker verified that the mother and the children lived elsewhere on the island. From the brief conversation he had with the youngest daughter, as well as with G.S., the social worker concluded that: (a) both children were affected by the parents' dispute and should be monitored by mental health professionals, especially the older child, who was clearly upset during his visit; (b) living with their mother covered the children's needs, yet the mother's emotional maturity should be examined by professionals; (c) the children's relationship with their father had been seriously hurt, so meetings should no longer take place at police stations and should be attended by professionals; and (d) the

move to Tinos, which was by then an established situation, could be to the children's benefit.

C. Reports by the child psychiatrist

20. On 12 December 2018 the court-appointed expert child psychiatrist, Ms E.C., submitted her reports, nos. 384 and 385/2018. In the decisions appointing her, she was requested to express her view on (a) what the general psychological situation was of the children and how that was assessed in view of their age, maturity and personal and social circumstances; (b) what the exact reasons were why the children completely refused to communicate with their father and whether that refusal came from them, because of their personal and family experiences during and after the end of their parents' marriage, or for other reasons that needed to be specified with precision; and (c) whether having Kifissia police station as the place of pick-up and drop-off of the children was in the best interests of the children and responded to their true wishes, or whether a different place would work better to smoothen communication between the father and the children.

21. The expert submitted that she had called meetings with the parties on seven occasions between November 2017 and December 2018. Neither G.S. nor her technical advisors had ever shown up, nor had she sent the children, so the expert had never met them and could not express a view on their maturity or the reasons behind their refusal to meet the applicant. From the documents submitted by the applicant and the two meetings with him, the expert was able to conclude that he was friendly and cooperative; that he was anxious to regain contact with his children, whom he had taken very good care of when he had had custody of them; and that he seemed genuinely worried about their physical and mental health. From the evidence before her, she could not discern any indication that the applicant was responsible for the children's refusal to have contact with him, whereas the mother's behaviour indicated that she was behind it. Furthermore, G.S.'s absence from the proceedings created questions about her interest in properly taking care of the children, as she had acted in such a way as to cancel the requested expert's report instead of cooperating for the benefit of her children. As regards the choice of police station as the place of drop-off and pick-up, she reported that in her professional view, it was a poor choice as in the children's minds the police station was the place that "bad people were taken" and this created feelings of stress and insecurity in them.

22. Lastly, the expert concluded that G.S. should be examined by a psychiatrist for possible mental disorders and personality disorder. Moreover, the psychiatrist's report on the children that had been ordered by the courts and had never been done should be conducted, and the applicant's contact with his daughters should be urgently reinstated.

23. The applicant's technical advisor made similar conclusions, highlighting G.S.'s unwillingness to cooperate for the needs of the report, which indicated her lack of cooperation in general and the applicant's wish to find a solution and have his relationship with his children reinstated.

24. Following the social welfare report conducted by Tinos social services, on 27 August 2020 the prosecutor requested a psychological and psychiatric evaluation of G.S and the two children. Despite multiple efforts by the competent services, these examinations were not conducted owing to the persistent refusal of G.S., who even refused to reveal her real address. On 4 November 2020 the prosecutor reminded G.S. that in the event of non-compliance with the order, she risked being prosecuted under Article 169 of the Criminal Code. Following delivery of judgment no. 152/2021 of the One-Member Court of First Instance, which settled the issue of the applicant's contact rights (see paragraph 14 above), the prosecutor revoked the order for a psychiatric evaluation of G.S. and the children.

V. PROCEEDINGS FOLLOWING G.S.'S MOVE TO TINOS ISLAND

25. In mid-July 2019 G.S. and the children moved to the island of Tinos. On 2 September 2019 she lodged a request for a provisional order with the president of the Court of First Instance, seeking to amend decision no. 10569/2015 of the One-Member Court of First Instance with regard to the place of pick-up and drop-off of the children. In particular, she asked that the applicant collect his children from Tinos police station. The president of the court granted the request and retained the same schedule as that set by decision no. 10569/2015 of the One-Member Court of First Instance, pending a decision under the interim measures procedure.

26. On 12 February 2020 the One-Member Court of First Instance delivered judgment no. 1059/2020. The court held that G.S. had custody of the girls and therefore had the right to choose their place of residence. In addition, she had found a job and the cost of living on Tinos was lower, and the girls had been attending school and had continued all their activities. They had made new friends and had a support network on the island, which also gave them a sense of acceptance and calm. The applicant could afford to travel to the island, so his contact rights had not been hindered by the children's move there. The court confirmed the above-mentioned provisional order of the president of 2 September 2019 and designated Tinos police station as the place of drop-off and pick-up of the children, in accordance with the schedule set by decision no. 10569/2015 of the One-Member Court of First Instance.

27. Moreover, according to a document sent by Tinos police station, during 2019, G.S. appeared with her children fourteen times at the police station, that is, on 12 September, 19 September, 22 September, 3 October, 5 October, 10 October, 31 October, 7 November, 10 November,

14 November, 21 November, 24 November, 12 December and 15 December, in order for the applicant to pick up his children. The applicant appeared only once, on 5 October 2019. That day, the children refused to go with him. Each time, the police recorded the relevant incident in their incident log, as required by law, as the police at Kifissia police station had also done while G.S. was still living in Athens.

28. The applicant also submitted that on 24 July 2020 he had sent a mobile telephone to G.S. to give to their children, along with an extrajudicial document informing her that he would be calling them every Wednesday and Saturday from 5 p.m. to 6 p.m. His telephone calls were never answered.

VI. ACTION TAKEN BY THE AUTHORITIES

A. The public prosecutor

29. By an application dated 20 January 2014, the applicant requested assistance from the public prosecutor, submitting that G.S. had lodged an urgent request for custody of the children and requesting maintenance, falsely claiming that he had abused his children. Following this, file no. 640/2013 was created.

30. On 6 March 2014 the public prosecutor invited both parents before him to resolve their differences, where they expressed their views and worries regarding their children's safety. The mother's representative reported that their older daughter refused to have contact with her father. The applicant reported that since the mother had obtained custody of the children, they had alienated themselves from him. The public prosecutor made strict recommendations to the mother to not impede the applicant's contact with their children in the context of the relevant judicial decision. G.S. seemed to agree and mentioned that their older daughter A. had been receiving counselling from the counsellor at the nursery she had been attending.

31. On 1 February 2016 G.S. attended the public prosecutor's office, where she received advice on how to communicate with the father and on whether a third party during his contact with their children could be a social worker.

32. On 2 March 2016 the applicant lodged a further application with the public prosecutor's office, in which he reported that his contact with his children had up to then been taking place regularly on the basis of decision no. 10569/2015 of the One-Member Court of First Instance, but that in the incident log the police had reported that the children refused to have contact with him. He further sought advice as on 18 February 2016 he had been unable to pick up his daughters and their mother had refused to leave them with his mother and sister.

33. On 7 March 2016 the public prosecutor ordered that the social services of Kifissia municipality provide counselling to G.S. On 21 March 2016,

however, G.S. provided the public prosecutor with documents proving that she had already been receiving counselling privately, so the order dated 7 March 2016 was revoked. On 28 March 2016 the public prosecutor ordered that the applicant receive counselling from Gonis, an organisation for parental equality.

34. On 9 September 2016 the applicant lodged an application with the public prosecutor's office, in which he protested against the recording in the incident log of his children's refusal to go with him on the days he exercised his right to contact with them and requesting the appointment of a child psychiatrist to verify the reasons behind this refusal. For his latter request, the prosecutor referred him to the relevant courts competent to order such an expert report.

35. On 14 June 2018 the applicant lodged a further application with the public prosecutor's office, reporting that his ex-wife was obstructing his contact with his children in breach of decision no. 10569/2015 of the One-Member Court of First Instance. He also requested that the competent social services investigate the reasons behind the children's refusal to meet with him.

36. On 9 July 2018 the public prosecutor again called G.S. to his office in order to make strict recommendations for her not to obstruct the applicant's contact with their children. Yet, only her representative attended, to whom the prosecutor made the recommendations and requested that G.S. be informed. The representative reported that the children's refusal to have contact with their father was genuine and resulted from his behaviour towards the mother, such as acts of domestic violence for which the applicant had been convicted, shouting and punishment of the children when they had lived together, and violence towards their eldest daughter. She also stated that the mother was trying to reinstate the children's relationship with their father.

37. On 7 January 2019 the applicant requested a copy of the report that the organisation Gonis had drawn up for him (see paragraph 33 above).

38. In January and February 2019 the applicant complained to the public prosecutor about the non-completion of the social welfare report. He received a reply that the report had been ordered by the courts, which were being informed of progress.

39. On 20 November 2019 the applicant lodged a further application with the public prosecutor's office, requesting the prosecutor's intervention for the children's safety. He stated that he did not know the children's place of residence and did not believe that the address given in the village of Pyrgos on Tinos was accurate. The public prosecutor considered that the children's place of residence, the village of Pyrgos on Tinos, had been indicated in various documents that the applicant had had in his possession. On 4 December 2019 the Athens public prosecutor's office therefore sent copies of the file relating to the applicant's family to the Syros public prosecutor, as he had local jurisdiction.

40. On 23 February 2021 the applicant informed the public prosecutor for minors that G.S. kept moving the children so as to avoid the social welfare report being drawn up on the living conditions of the children. That request was rejected three days later and after communication with G.S.'s lawyer for lack of jurisdiction, as G.S. was living with the children on Tinos.

41. On 13 July 2021 the applicant requested the Syros public prosecutor to order the competent police station to locate G.S.'s actual place of residence and to recommend that she facilitate his communication with his daughters. On 28 July 2021 he received a reply that the police would make recommendations to G.S. regarding the applicant's communication. A similar request by the applicant dated 27 December 2021 was rejected by the public prosecutor on the grounds that no such assistance would be provided as no criminal act had been reported.

42. The Syros public prosecutor, who was supervising the execution of judgment no. 152/2021, was informed by the police that the mother and the children had appeared on 26, 28 and 29 April 2022 but the father had not. He then ordered a preliminary investigation concerning the breach of judgment no. 152/2021.

B. Other domestic authorities

43. On 19 June 2018 the applicant submitted a document to Kifissia police station, which had been designated as the place of pick-up and drop-off of the children, describing his inability to exercise his contact rights and requesting to be allowed to have contact with his children at least at the police station without G.S. and her mother being present. He further requested that all appropriate measures be taken to enforce his contact rights. He did not receive a reply.

44. On 6 November 2019 the applicant submitted a request to the Minister for the Protection of Citizens, asking that the competent authorities take all necessary measures to ensure that his contact rights, as regulated by the courts, be enforced.

45. On 7 November 2019 he submitted a similar request to the Cyclades Police Headquarters, also adding that he would like mental health professionals to be present during pick-up and drop-off of the children. They replied to him by email that he should address his request to the public prosecutor's office, or else the social services of Tinos municipality and the police station, which would then send his request to the public prosecutor.

46. On 20 November 2019 the applicant submitted a request to the Greek Ombudsman, describing his alienation from his children and requesting assistance so that he be able to exercise his contact rights with his daughters, then aged 12 and 7 and a half respectively. On 30 January 2020 the Greek Ombudsman replied that whether the cohabiting parent was complying with a decision granting the other parent contact rights was ultimately an issue that

could be judged by the courts pursuant to Article 169A of the Criminal Code. Even in cases in which the children refused to see the parent, judges were competent to clarify whether their refusal came from them or whether it had been influenced by the cohabiting parent, as it was common knowledge that children could easily be influenced by the parent with whom they were living. As regards the suitability of G.S. to have custody of the children, the Greek Ombudsman replied that he could not intervene as the issue was pending before the Court of Cassation.

47. On 25 November 2019 the applicant submitted a similar request to the Minister of Justice, Transparency and Human Rights in which he stated that he received no reply. According to G.S.'s submissions, that request was transferred to the Syros public prosecutor's office and the applicant was informed on 17 January 2020.

48. On 24 December 2019 the applicant submitted a request to the Oropos municipality, referring to older requests he had submitted in February to October 2019 for completion of the social welfare report and its transfer to the courts. He never received a reply to any of those requests. He had submitted a similar request to Kifissia municipality in April 2019 to which he had received a reply that despite their best efforts, they had not managed to conduct the social welfare report.

49. From July 2021 the applicant submitted various requests to the social services of Tinos municipality and the Cyclades Police Headquarters, arguing that he was still unaware of the children's actual place of residence and requesting assistance with his communication with them, without receiving any reply.

RELEVANT LEGAL FRAMEWORK

50. The relevant domestic law may be found in *Fourkiotis v. Greece* (no. 74758/11, §§ 39-42, 16 June 2016).

51. In addition, the following provisions of the Civil Code (as in force at the time the domestic decisions were delivered and replaced on 16 September 2021 by Law no. 4800/2021) are pertinent:

Article 1518
Custody of a person

"Custody of a child shall include, in particular, his or her upbringing, supervision, earning, education, as well as determination of his or her place of residence ..."

Article 1520
Personal communication

"The parent who does not live with the child shall have the right of personal communication with him or her. The parents shall not have the right to impede the child's communication with his or her ascendants except for serious reasons. In the

cases referred to in the preceding paragraphs, the [details] relevant to the method of communication shall be determined by the court."

Article 1532
Consequences of improper exercise of custody

"If the father or mother violates the duties imposed on them by their role of custody of the child or the administration of his or her property, or if they exercise this role improperly or are unable to fulfil it, the court may, if requested by the other parent, the child's closest relatives, the public prosecutor or of its own motion, order any appropriate measure.

The court may, in particular, deprive one of the parents of the exercise of parental care in whole or in part and award it exclusively to the other parent or, if the latter also falls under the conditions of the previous paragraph, entrust actual care of the child or even custody in whole or in part to a third party or appoint a guardian.

In extremely urgent cases, if the conditions of the first paragraph are met and there is an imminent danger to the physical or mental health of the child, the public prosecutor shall order any appropriate measure for his or her protection, until the decision is issued by the court, to which he must address within thirty days."

52. In addition, by Law no. 4714/2020 of 31 July 2020, Article 1519 of the Civil Code was changed as follows:

"A change of the child's place of residence, which substantially affects the right of communication of the parent with whom the child does not reside, requires the prior agreement of the parents or a prior final court decision at the request of either parent. The court may order any appropriate means."

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

"1. Anyone who has not complied with a provisional order or provision of a civil court decision or prosecutorial order, concerning ... the exercise of parental care, communication with the child ... shall be punished by imprisonment of up to three (3) years or a fine ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

54. The applicant complained that the non-enforcement of the domestic decisions granting him contact rights with his children constituted a breach of his right to respect for his family life enshrined 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 arguments

55. The Government submitted that there were various domestic remedies that the applicant had not made use of. In particular, judgment no. 10569/2015 had provided that G.S. had to tolerate the applicant’s contact with his children or else she would be temporarily imprisoned for a month and would have to pay EUR 300 each time she breached the order. However, the applicant, despite the numerous sets of judicial proceedings he had initiated against the mother of his children, had never addressed the Athens One-Member Court of First Instance to complain about the non-enforcement of judgment no. 10569/2015 and requested that G.S. be imprisoned for a month or, in order to use less coercive measures, be ordered to pay EUR 300, as per the operative part of that judgment. Moreover, there had been the possibility offered by Article 1532 of the Civil Code, which provided that if the father or mother exercised their duties improperly, the courts could order any appropriate measure, such as to remove, fully or partially, parental responsibility from the parent and award it to the other parent. However, the applicant had never applied to the courts to request that Article 1532 of the Civil Code be implemented. As a last resort, he could have made use of the possibilities offered by criminal law, namely until 30 June 2019 the possibility offered by Article 232A of the Criminal Code and, for the period after, the possibility offered by Article 169A for the breach of the decisions.

56. The Government also argued that the applicant had lacked victim status at the time of lodging his application with the Court, namely on 14 April 2020. At that time, judgment no. 10569/2015 of the Athens One-Member Court of First Instance had been replaced by judgment no. 1059/2020 of the same court as regards the place of pick-up and drop-off of the children. In addition, the social welfare report and psychological report ordered by that court had been completed. In the Government’s view, the application should therefore be rejected as incompatible *ratione personae* with the provisions of the Convention.

57. The Government further argued that the application had been lodged prematurely. It had been lodged on 14 April 2020, even though the hearing for the final determination of the applicant’s contact schedule with his children had been scheduled for 12 October 2020. Moreover, the hearing of the applicant’s appeal on points of law on the award of custody of his children to G.S. had been scheduled for 16 November 2020. Following those hearings, decision no. 152/2021 of the One-Member Court of First Instance and decision no. 426/2021 of the Court of Cassation had been issued respectively.

Those two decisions had definitively resolved the issues of custody and contact rights. The applicant should therefore have waited for the outcome of those proceedings before lodging his application with the Court, as he had already been aware of the hearings scheduled before the courts.

2. The applicant's arguments

58. The applicant, relying on the Court's case-law, submitted that the remedies mentioned by the Government were coercive measures considered, in general, to be inappropriate and ineffective for the enforcement of the decision granting him contact rights. In addition, they were very time-consuming and thus ineffective in cases such as his, in which time had been of the essence so that the children would not become completely alienated from him. G.S. could have also used against him the initiation of any similar proceedings as an additional argument to estrange him from his children. In any event, none of those remedies would have enabled him to restore communication with his children, which was what he had requested. Providing the relevant documents, the applicant also submitted that in the past he had lodged criminal complaints against G.S. for breaching his contact rights pursuant to older decisions, but had later withdrawn them for the benefit of his children.

59. As regards his alleged lack of victim status, the applicant argued that his complaint concerned the continuous lack of communication with his children, despite the decisions granting him the relevant right. The change of the place of pick-up and drop-off of the children by a subsequent decision did not therefore affect his complaint.

60. Lastly, as regards the Government's objection that his application was premature, the applicant repeated that his complaint before the Court concerned the non-enforcement of judgment no. 10569/2015 of the Athens One-Member Court of First Instance. Against that decision, no remedies had been available; the main actions lodged by him concerning the final determination of his contact rights and of custody were not relevant to his complaint of non-enforcement.

3. The Court's assessment

61. The general principles concerning the requirement to exhaust domestic remedies have been summarised in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-69, *Reports of Judgments and Decisions* 1996-IV.

62. Turning to the circumstances of the present case, the Court notes that it has already considered the remedies provided for by Article 950 § 2 of the Code of Civil Procedure and Article 1532 of the Civil Code to be ineffective in situations similar to that of the applicant (see *Fourkiotis v. Greece*,

no. 74758/11, § 68, 16 June 2016). In this regard, the Court repeats that in cases concerning childcare, the effectiveness of a measure is to be judged by the swiftness of its implementation. Proceedings relating to the award of parental responsibility or contact rights of the non-cohabiting parent, including the enforcement of a final decision, require urgent handling as the passage of time can have irremediable consequences for relations between the child and parent with whom the child does not live (ibid.). In the Court's view, the same considerations apply in respect of the former Article 232A, now 169A of the Criminal Code. In any event, even assuming that the complaints had been successful in the applicant's favour, they would have resulted in the mother being fined or even, at worst, her imprisonment. The Court considers 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 (ibid., § 69).

63. As regards the remedy provided for by Article 1532 of the Civil Code, the Court notes that it refers to improper exercise of custody by one parent, and provides for the possibility of any suitable measure, such as the award of custody to the other parent. It further notes that the Government did not provide any examples of such a remedy being successful owing to the cohabiting parent impeding contact of the other parent. Moreover, the proceedings concerning the custody had not yet ended, as the case was pending before the Court of Cassation, before which the applicant put forward all the arguments relating to his inability to exercise his contact rights with his children. The Court therefore considers that the remedy provided for by Article 1532 of the Civil Code would not have provided any redress to him.

64. In addition, the Court notes that the applicant complained before it about a continuous situation, rather than a specific decision of the domestic authorities. Given that, in such circumstances, the only effective remedy would have been the one capable of addressing a continuing situation, the Court finds that the remedies mentioned by the Government are not appropriate for such situations and that, consequently, the applicant did not have to resort to them. To hold otherwise in the circumstances of this particular case would amount to excessive formalism and a burden on him, especially having regard to the importance from the viewpoint of Article 8 of the time factor in the determination of similar family matters (see *K.B. and Others v. Croatia*, no. 36216/13, § 126, 14 March 2017). It follows that the Government's objection of non-exhaustion of domestic remedies should be rejected.

65. Concerning the applicant's victim status, the Court notes that the applicant's complaint refers to the question of the implementation of the right to contact in accordance with the conditions laid down by the court. Moreover, domestic decisions on parents' contact rights with their children are, in general, not definitive and can be amended at any time depending on

events related to the disputed situation. The evolution of the domestic procedure is therefore the consequence of such non-final nature of the decisions relating to the right to contact. Furthermore, the Court notes that the applicant has not been able to fully exercise his right of contact at least since 2016 and that he lodged his application in 2019 after approaching the domestic courts on several occasions, complaining about a situation which has allegedly persisted since 2015 and which has not yet ended to date. It follows that this objection should be dismissed (see *A.T. v. Italy*, no. 40910/19, § 47, 24 June 2021).

66. Lastly, as regards the Government's objection that the application is premature, the Court notes that the main proceedings concerning the final determination of the contact schedule and the award of parental responsibility are not related to the applicant's complaint that he was unable to exercise his contact rights in accordance with the contact schedule defined by the domestic courts and that, therefore, this part of the Government's objection should be rejected (see *Fourkiotis*, cited above, § 47).

67. 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

68. The applicant submitted that the State had failed to comply with its positive obligation to secure his right to respect for his family life by failing to enforce judgment no. 10569/2015 granting him contact rights and judgments nos. 3551/2017 and 420/2017 ordering the social welfare report and child psychiatrist's report.

69. He had been unable to exercise his contact rights since 26 January 2016. Since then, G.S. had manipulated the children, who had been at an age easily affected by their mother's views and had refused to see him. Moreover, after G.S.'s move to Tinos, decisions had imposed impossible contact conditions on him as he had been requested to go to the island three times per week, regardless of the difficulties and ferry timetables. If he had got the morning ferry, he could not work, and if he had got the afternoon ferry, he would arrive after the end of contact hours.

70. The authorities had taken no action to facilitate contact between him and the children and to help with their relationship, despite the fact that he had addressed multiple requests to various authorities. On the contrary, they had tolerated for years the mother's opposition to any relationship between him and the children. G.S. continued to behave in the same way to date, while the authorities remained inert and no adequate measure likely to effectively promote the resumption of meetings had been established.

71. The measures ordered by the public prosecutor, such as counselling or recommendations to G.S., had been automatic and stereotypical, inappropriate for fulfilling the authorities' obligation to intervene to restore communication with his children. The authorities had ordered them, without a personalised examination of the situation, and had not supervised their execution. The recommendations had been addressed to her lawyer, as G.S. had failed to appear, whereas in respect of counselling, the authorities had never verified the credentials of the doctor or the content of the private counselling G.S. had said she had been receiving.

72. The applicant further highlighted that the authorities had done nothing or very little to conduct the social welfare report and child psychological report ordered by judgments nos. 3551/2017 and 420/2017. Even when they had been partially completed, the authorities had never followed up on their conclusions, which had included a recommendation for a complete social welfare report on the children's actual place of residence on Tinos and a psychological evaluation of the mother (see paragraphs 18 and 22 above). Faced with obstructions and a total lack of cooperation on the part of the mother of his children, the authorities had taken no action and the judgments in favour of the applicant had remained ineffective before they got revoked at G.S.'s request, almost a year after the measures had been ordered.

73. Lastly, the applicant complained that the police had kept recording in their incident log that his children refused to see him. However, in his view, the refusal had been caused by the mother's actions. The recording of the children's refusal had served as a pretext for G.S. who could attribute the refusal as having come from them and prevent the imposition of the penalties provided for by Article 169A of the Criminal Code, Article 1532 of the Civil Code and Articles 947 and 950 of the Code of Civil Procedure.

74. In reply to the third party's comments (see paragraphs 80-83 below), the applicant contended that G.S.'s intervention should be declared inadmissible as, in his view, she had not confined herself to the legal and factual aspects of the case in order to assist and enlighten the Court, but had included characterisations and was driven by feelings of revenge against him. He also submitted that G.S.'s request to intervene had not been lodged in time and therefore should not be accepted. As regards the content of the intervention, the applicant submitted, relying mostly on the social welfare report dated 29 May 2020, that all of G.S.'s statements were misleading and should not be taken into account, as proved by all the documents adduced by him and the Government. He also submitted that any subsequent information from the social services of Tinos municipality was unreliable, as G.S. had been in a romantic relationship with the deputy mayor, who was its head. Contrary to G.S.'s submissions, the applicant had gone numerous times to meet his daughters for contact, who had every time refused to go with him because they had been influenced by their mother.

2. *The Government's submissions*

75. The Government argued that the authorities had taken all the necessary measures to comply with their positive obligation under Article 8 of the Convention to ensure that the family ties between the applicant and his children be maintained. In particular, they had put in place a complete system of judicial protection which, on the one hand, intended to regulate the exercise of parental responsibility, including custody and contact rights of parents with their children, and, on the other hand, served as a way of remedying parents' communication with their children, when family disputes made it difficult.

76. As regards the applicant's contact with his children, the Government submitted that at the time of delivery of judgment no. 10569/2015 and for a short period afterwards, the applicant had been exercising his contact rights as regulated by that judgment. The children's refusal to go with him could not be attributed to his alienation from them, as from the evidence in the case file it was clear that his daughters, especially the eldest, had already refused to have contact with him from the beginning of 2014.

77. The authorities had done everything in their power to restore communication between the applicant and his children. In particular, already on 6 March 2014 the Athens public prosecutor for minors had called on both parents to find a compromise in order to facilitate the applicant's communication with his children. He had further ordered psychological counselling for both parents in early 2016 and later that year had referred the applicant to the courts when he had requested the appointment of a child psychologist in order to find out the reasons behind the children's refusal to have contact with him, as the public prosecutor could not request a judicial expert's opinion. The applicant had mentioned to the public prosecutor that his ex-wife had first impeded his communication with his children in June 2018, and the latter had acted promptly by calling G.S. to his office for recommendations in July 2018. Lastly, when the authorities had been apprised of the mother's move to another municipality, they had immediately transferred the file to the competent social services, which had managed to submit a social welfare report even though the mother had again moved to a new place. The same considerations also applied to the appointed child psychologist, who had managed to submit her reports despite the mother's persistent refusal to cooperate.

78. Lastly, as regards the decisions ordering a social welfare report and child psychiatrist's report, they had both been enforced before the applicant had lodged the present application with the Court and the relevant conclusions had been submitted to the courts. In view of the above, the Government submitted that the authorities had made every possible effort, in the context of their competencies, to secure the applicant's contact with his children, also having regard to the fact that the positive obligations arising from Article 8 of the Convention were obligations of means and not result.

79. The Government further submitted that the authorities had not been in a position to know all the details of the family dispute so as to direct their actions accordingly. The courts involved highlighted that the two parents had been completely unable to communicate with each other and had entered into a fierce dispute. In those circumstances, even though social workers and experts in mental health tried to assist, any attempt by the authorities was very difficult to achieve. While it was true that the applicant had addressed multiple authorities, several of them had lacked jurisdiction fully or in part. Thus, following G.S.'s move to Tinos, he should have addressed the Tinos public prosecutor's office.

3. The third party's comments

80. The children's mother, G.S., first submitted that the applicant was not entitled to complain about the non-execution of decision no. 10569/2015 as that decision had been superseded by others. Moreover, numerous proceedings were still pending before the national courts. She further argued that the applicant had tried to mislead the Court by presenting the authorities as inactive in order to conceal his true intentions, which were to take money from her family. She contested the applicant's submissions that the authorities had not assisted him and maintained that, in her view, the applicant had not really wished to maintain contact with his daughters and had been violent towards her and their elder daughter.

81. In particular, G.S. submitted that the social services of Oropos municipality had conducted a social welfare report at her home and concluded that it was a luxurious art-filled mansion with a swimming pool, that the children's living conditions were ideal and above average and that they were well-behaved children with views of their own. In addition, G.S. submitted that the applicant was trying to mislead the Court by stating that he had never received a reply to his request dated 25 November 2019 to the Ministry of Justice. The relevant department, however, had transferred the request to the Syros public prosecutor's office for their urgent action and the applicant had been informed. The Syros public prosecutor had taken various measures to supervise execution of the order granting the applicant contact rights, including requesting on 21 April 2020 to be informed whether the applicant and the children had appeared at Tinos police station for contact. The reply given by the police on 5 May 2022 had been that the applicant had not appeared between 25 April and 5 May, whereas she and her daughters had been present on 26, 27 and 28 April 2022.

82. As regards the psychiatric report of 12 December 2018, G.S. submitted that it could in no way be considered reliable, given that the expert had never met the children or her, and that the domestic courts had rightly not paid attention to it. She further submitted that the same conclusions should be drawn about the opinions of the applicant's technical advisor, who had been indicted for defamation and making a false medical declaration for issuing a

medical certificate about G.S.'s mental health without having met her. However, G.S. and her daughters had been through many psychiatric evaluations done in accordance with the rules governing medical science, all of which had concluded that they were mentally well.

83. G.S. concluded that the applicant's violent behaviour, lack of interest and the fact that he had not shown up to Tinos police station to have contact as per the court's orders were the reason he did not have a relationship with his daughters. The children had been living for four years on Tinos Island, had excellent living conditions and were performing well in all school and after-school activities. Contrary to the applicant's allegations, her place of residence was known to the authorities, as proven by the document issued by Tinos municipality. The applicant had engaged judicial and administrative authorities while misleading them, but ultimately the domestic authorities had dismissed his complaints and revoked the relevant orders, after a thorough investigation in which his false statements had been revealed. Nevertheless, the applicant had still insisted on requesting the authorities to proceed with actions no longer based on valid orders.

4. The Court's assessment

84. The Court notes that the present case concerns the non-enforcement of judicial decisions whereby the applicant was granted contact rights. As a result, he was unable to see his children or establish regular and meaningful contact with them. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning the enforcement of contact rights are summarised in the case of *Ribić v. Croatia* (no. 27148/12, §§ 88-89 and 92-95, 2 April 2015, and the cases cited therein). Therefore, in the present case, the Court's task consists of examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to maintain the relationship between the applicant and his daughters (see *Bondavalli v. Italy*, no. 35532/12, § 75, 17 November 2015) and to examine the way they intervened to facilitate contact between them, as defined by the relevant domestic decisions (see *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A). The adequacy of the measures is to be judged by the swiftness of their implementation, as the passage of time could have irremediable consequences for relations between the applicant and his children and may result in a *de facto* determination of the matter (see *A.T. v. Italy*, cited above, § 69).

85. The Court observes that at least since January 2016 the applicant has not been able to have contact with his children, despite the domestic decisions granting him that right. For as long as the place of pick-up and drop-off was designated as Kifissia police station, the children appeared there but refused to go with him (see paragraph 12 above). After G.S. moved permanently to the island of Tinos, the applicant could not follow the contact schedule, which

had remained unchanged since they all lived in Athens, and did not appear regularly at the police station, where G.S. appeared to drop off the children (see paragraph 27 above). From the evidence in the case file, it seems that the applicant went to Tinos police station once, but the children refused to go with him, so he left without contact taking place.

86. The domestic courts tried to establish the reasons behind the children's refusal to have contact with the applicant. In particular, decision no. 3551/2017 ordering a psychiatric evaluation of the children included a question whether their refusal to go with their father came from them or whether they had been influenced by G.S., who was living with them. Given G.S.'s persistent refusal to meet with the expert, that question was not answered by the latter, who nevertheless concluded that G.S.'s lack of cooperation with the evaluation was a strong indication that she was influencing the children (see paragraph 21 above). Following the completion of the social welfare report and psychological report, the Athens One-Member Court of First Instance delivered judgment no. 152/2021 (see paragraph 14 above). The Court takes note of its conclusion that the children's behaviour had been influenced by both parents, as well as of the fact that it could not be clearly determined whether the children's refusal to meet with their father was genuine or resulted from the mother's behaviour.

87. The Court further notes that the applicant had alerted the authorities to the difficulties he encountered in his contact with the children already since the beginning of 2016 (see, for example, paragraphs 32, 34 and 35 above concerning the relevant requests to the public prosecutor in 2016 and 2018 and paragraph 13 above concerning the decision dated 2 May 2017 ordering a psychiatrist's report on the reasons behind the children's refusal to meet with their father). In addition, the police recorded the fact that the applicant's daughters refused to go with him every time they appeared at the police station for pick-up (see paragraph 12 above).

88. In reply to the applicant's complaints to various authorities, the domestic courts and the public prosecutor ordered on multiple occasions counselling, psychiatric evaluations, social welfare reports and recommendations in respect of G.S. and the children (see paragraphs 13 and 29 to 42 above). Yet, in the Court's view, there was no real follow-up on the orders which were not or only partially completed.

89. In particular, the interview for the purpose of the social welfare report ordered on 2 May 2017 did not take place at the mother's and children's place of residence, but at G.S.'s parents' home. The Court cannot agree with G.S. that this report was fully completed, given that the recommendation of the social worker from Oropos municipality included in the report dated 21 November 2019 was to complete the social welfare report at the actual place where the children were living (see paragraph 18 above). After the lodging of the present application, the Syros public prosecutor ordered a new social welfare report (see paragraph 19 above). However, not even this report

was conducted at the children's actual place of residence, which the mother refused to reveal, despite the fact that the applicant tried to draw the prosecutor's attention to that matter (see paragraph 39 above). Nevertheless, none of the competent domestic authorities followed up on this issue and there is no evidence in the case file that the public prosecutor took any action in order to reveal G.S.'s actual place of residence following the social worker's conclusion. Contrary to the mother's assertions that her place of residence was known to the authorities, the social worker made it clear in his report that the mother did not want to reveal exactly where she and the children were staying or to allow the assessment for the social welfare report to take place at their actual place of residence.

90. The same considerations apply to the psychological evaluation of the children ordered by the domestic courts on 2 May 2017. Despite the multiple appointments made by the court-appointed expert, G.S. never met with him nor took the children to meet him. The psychological reports were therefore conducted without them being interviewed and were submitted on 12 December 2018 (see paragraph 20 above). Even so, the domestic courts did not consider it relevant to order completion of the report or to follow up on the psychiatric expert's conclusion that G.S.'s psychological maturity should be evaluated (see paragraph 22 above). Even the additional psychological and psychiatric report ordered by the Syros public prosecutor was revoked without being completed (see paragraph 24 above). The Court takes notes of G.S.'s submissions that the applicant's technical advisor had been indicted for issuing a medical certificate without examining her or the children. However, the Court's conclusions are based on the report submitted by the court-appointed expert and not by the applicant's technical advisor.

91. The Court further notes that G.S. moved in mid-July 2019 to the island of Tinos without the applicant's prior knowledge or consent. It takes note of the court's conclusion that G.S. had custody of the children and therefore had the right to decide on their place of residence (see paragraph 26 above). At the time, new Article 1519 of the Civil Code, which required, before a change in place of residence that affected contact rights, the other parent's agreement or a final domestic decision, was not yet in force (see paragraph 52 above). Yet, the Court cannot but notice that G.S.'s move to an island with their children seriously affected the modalities of the applicant's right to contact. However, the domestic courts by their provisional order and judgment no. 1059/2020 kept the same contact schedule for the applicant, which required him to go to the island of Tinos approximately two to three times per week. According to the information provided by the applicant, which was not refuted by the Government, if he had adhered to that contact schedule, he would have had to go to the island approximately twice per week, without the ferry timetable allowing him to make it on time for contact with his children (see paragraph 11 above as to the contact schedule and paragraph 69 above

for the applicant's argument in this regard). That added difficulty could not possibly have facilitated his contact with his daughters.

92. The Court reiterates that it is not for it to substitute its assessment for that of the competent national authorities as to the measures which should have been taken, since those authorities are in principle better placed to carry out such an assessment, in particular because they are in direct contact with the context of the case and the parties involved (see *Reigado Ramos v. Portugal*, no. 73229/01, § 53, 22 November 2005). However, in the present case, it cannot ignore the facts set out above (see paragraphs 85 to 91 above). In particular, it notes that the applicant has continuously tried to establish contact with his daughters since 2016, that their contact stopped taking place and that, despite the various decisions and recommendations of the domestic courts and the public prosecutor, the authorities have not found a solution to allow him to regularly exercise his right to contact. The prosecutor's recommendations to G.S.'s representative on 9 July 2018 or his warning of 4 November 2020 (see paragraphs 36 and 24 above) had no effect on G.S., who continued to prevent the applicant from exercising his contact rights and impeded the carrying out of the reports that would shed light to the living circumstances and psychological state of the children. This behaviour has continued to date despite the new judgments delivered in 2020 and 2021 which defined a new contact schedule for the applicant. It follows that the authorities tolerated G.S.'s behaviour, who resisted complying with their orders without facing any consequences, to the point that they were deprived of their effect.

93. Admittedly, the authorities faced a very difficult situation which stemmed in particular from the tensions existing between the parents of the children, as highlighted by the Government. However lack of cooperation between the separated parents cannot exempt the competent authorities from implementing all the means likely to allow the maintenance of the family bond (see *Nicolò Santilli v. Italy*, no. 51930/10, § 74, 17 December 2013; *Lombardo v. Italy*, no. 25704/11, § 91, 29 January 2013; and *Zavřel v. the Czech Republic*, no. 14044/05, § 52, 18 January 2007).

94. The Court also takes note of the Government's argument that the applicant's inability to regularly see his children was the result of the children's strong resistance already persisting since 2014. In this regard, the Court finds it important to reiterate that while its case-law requires children's views to be taken into account, those views are not necessarily immutable and their objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child (see, *mutatis mutandis*, *Raw and Others v. France*, no. 10131/11, § 94, 7 March 2013). The right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination being carried out to determine their best interests (see

C. v. Finland, no. 18249/02, §§ 57-59, 9 May 2006); such interests normally dictate that the child's ties with his or her family must be maintained, except in cases where this would harm his or her health and development (see, for example, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010). What is more, if a court based a decision on the views of children who are palpably unable to form and articulate an opinion as to their wishes – for example, because of conflicting loyalties and/or their exposure to the alienating behaviour of one parent – such a decision could run counter to Article 8 of the Convention (see *K.B. v. Croatia*, cited above § 143, with further references).

95. Lastly, with regard to the swiftness of the proceedings, the Court observes that judgment no. 152/2021, which *inter alia*, examined whether the children's refusal to go with their father was genuine, was delivered on 8 January 2021. However, contact had already ceased in January 2016, and the applicant had brought the issue to the authorities' attention in February 2016 when he asked for the definite regulation of his contact rights. While a part of the delay was attributed to the fact that G.S. refused to cooperate with the relevant authorities in the carrying out of the social welfare report and psychological report, the Court still considers the delay excessive. It recalls in this regard, that the passage of time can have irremediable consequences for relations between the applicant and his children and may result in a *de facto* determination of the matter (see *Improta v. Italy*, no. 66396/14, § 45, 4 May 2017, and *T.C. v. Italy*, no. 54032/18, § 58, 19 May 2022).

96. Having regard to the facts of the case, including the passage of time, the best interests of the children, the criteria laid down in its own case-law and the parties' submissions, the Court, notwithstanding the State's margin of appreciation, concludes that the Greek authorities have failed to take all the necessary measures which could reasonably be required of them to enforce the applicant's right to have contact and to establish a relationship with his daughters.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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."

99. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government replied that the requested amount was excessive and that the mere finding of a violation would constitute sufficient compensation for the applicant's alleged violation.

101. The Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court considers it reasonable to award the sum of EUR 7,500 under that head, plus any tax that may be chargeable.

102. The Court also notes that the applicant did not submit any claims for costs and expenses incurred before the domestic courts and the Court and thus makes no award under that head.

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, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 23 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President