



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

THIRD SECTION

CASE OF MAKHMUDOVA v. RUSSIA

(Application no. 61984/17)

JUDGMENT

Art 8 • Respect for family life • Positive obligations • Failure of Russian authorities to ensure enforcement of order of return of the applicant's children to Estonia under the Hague Convention after removal by father • Delays in enforcement attempts • Failure to ensure preliminary measures to prepare the children and regular contact between them and the applicant pending proceedings • Children's unwillingness to go to the applicant • Absence of effective coordination between authorities • Enforcement measures inadequate and ineffective

STRASBOURG

1 December 2020

FINAL

01/03/2021

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

In the case of Makhmudova v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

María Elósegui,

Darian Pavli,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 61984/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Ms Aminat Makhmudova (“the applicant”), on 15 August 2017;

the decision to give notice of the application to the Russian Government (“the Government”);

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

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

the comments submitted by the Estonian Government, who made use of their right to intervene in the proceedings as a third party under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court,

Having deliberated in private on 10 November 2020,

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

INTRODUCTION

1. The case concerns the failure of the Russian authorities to enforce the judgment of the Russian courts ordering the return of the applicant’s children to Estonia under the Hague Convention on the Civil Aspects of International Child Abduction.

THE FACTS

2. The applicant was born in 1987 and lives in Haabneeme, Estonia. She was represented by Ms O.V. Sadchikova, a lawyer practising in Stavropol.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE CIRCUMSTANCES OF THE CASE

A. Background of the case

5. On 12 October 2006 the applicant married a Russian national, Mr A.

6. On 27 September 2010 and 8 March 2014 she gave birth to two sons. The children hold Russian and Estonian nationality.

7. The children lived in Estonia with the applicant and visited A. in the Republic of Dagestan, Russia, during the spring and the summer. Subsequently A. was granted an Estonian residence permit and lived partly in Estonia and partly in Russia.

8. In August 2015 the applicant informed A. of her intention to divorce him. A. threatened to take the children from her. She hid the children's passports.

9. However, at the beginning of 2016 A. obtained new passports for the children from the Estonian Department of the Police and the Border Guard Service.

10. On 4 February 2016, when the applicant was at work, A. took the elder son from home and the younger son from kindergarten and, in a vehicle driven by his brother, crossed the border of Estonia and Russia together with the children; he drove to St Petersburg and flew from there to Makhachkala, Republic of Dagestan.

B. Proceedings in Estonia

11. On 9 February 2016 the applicant lodged an application with the Estonian Ministry of Justice for assistance in securing the return of the children, in accordance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"), to which both Estonia and Russia are parties.

12. On 11 February 2016 the Harju County Court, as a first measure to legally protect the applicant, partially suspended the joint parental responsibility for the children (that is to say A. was formally deprived of the right to determine his children's place of residence). The applicant was granted the right to determine the children's place of residence, and A. was ordered not to take the children out of Estonia. A. was furthermore ordered to immediately return the children to Estonia.

13. On 5 July 2016 the Harju County Court dissolved the applicant's and A.'s marriage. The children's residence was determined as being with the applicant. A. was granted contact rights.

C. Proceedings in Russia

14. On 4 March 2016 the applicant went to Dagestan to try to resolve the conflict peacefully, but without success.

15. A mediation process conducted by the Federal Institute of Mediation in Moscow did not yield any results either.

1. Proceedings for the children's return to Estonia under the Hague Convention

16. The applicant lodged an application with the Pyatigorsk Town Court of Stavropol Region ("the Town Court"), seeking the children's return to Estonia on the basis of the Hague Convention.

17. On 20 July 2016 the Town Court allowed the applicant's application and ordered the children's immediate return to the place of their habitual residence in Estonia. Under the judgment, A. was obliged to hand over the children's Russian and Estonian passports to the applicant within a week of the judgment becoming final.

18. On 20 January 2017 the Stavropol Regional Court ("the Regional Court") upheld the above judgment on appeal.

2. Enforcement of the return order

19. The judgment was not complied with by A. voluntarily.

20. On 17 March 2017 the applicant submitted a writ of enforcement to the Federal Bailiffs Service and communicated to the bailiffs the addresses at which the children might be found.

21. On 3 April 2017 the Inter-district Bailiffs Service for Special Enforcement Proceedings of the Directorate of the Federal Bailiffs Service for the Republic of Dagestan ("the Inter-district Bailiffs Service") instituted enforcement proceedings.

22. On 10 April 2017 A. was served with a request to comply with the judgment of 20 July 2016 (*требование об исполнении решения суда*). He responded that he had not been impeding the transfer of the children to the applicant. By a letter of the same date a bailiff, M., informed the applicant that she needed to appear on 22 May 2017 in Makhachkala in order to be present at the enforcement of the above-mentioned judgment.

23. On 18 May 2017 an execution fee in the amount of 5,000 Russian roubles (RUB)¹ was imposed on A., which the latter paid.

¹ Approximately 80 euros (EUR) at the time of the events in question.

(a) Enforcement attempt of 22 May 2017

24. On 22 May 2017 the applicant, accompanied by her lawyer, travelled from Haabneeme to Makhachkala,² however, the enforcement could not take place as A. had left, taking the children with him, for Rostov-on-Don.³

25. On 24 May 2017 the applicant lodged a complaint with the head of the Inter-district Bailiffs Service in respect of the bailiff's actions, alleging that the enforcement proceedings had been handled inefficiently and that the bailiff and the persons participating in the attempts to enforce the judgment of 20 July 2016 had sabotaged the execution of that judgment. However, it was found that the actions of the bailiff had not breached the law.

26. On 21 June 2017 the applicant lodged a request with M. (as the bailiff in charge of the enforcement proceedings) for the recovery from A. of the expenses incurred by her in connection with the failed attempt to enforce the judgment. On 12 July 2017 her request was dismissed.

27. The applicant then lodged a claim against the Inter-district Bailiffs Service and A. for the reimbursement of the expenses that she had incurred as a result of the failed attempt on 22 May 2017 to enforce the judgment.

28. On 20 December 2017 the Kirovskiy District Court of Makhachkala dismissed the applicant's claim. Following the communication of the present application to the Russian Government, on 13 March 2018 the Supreme Court of the Republic of Dagestan quashed the above judgment on appeal, ruled the bailiff's decision of 12 July 2017 unlawful and obliged him to issue a lawful order granting the applicant's claim against A. (see paragraph 27 above). The Kirovskiy District Court established the following:

“The respondent, A., who had been informed in advance of the time and the place of the enforcement [of the] handover of the two children to [the applicant] for [the purpose of their then moving to] her place of residence in Estonia, evaded participation in the enforcement action. According to the explanation [that he gave], on 22 May 2017 he left his home for Rostov-on-Don to seek [medical] treatment for the children, but no evidence confirming the need to travel to Rostov-on-Don on that day was presented. ...”

29. Meanwhile, on 18 June 2017 the bailiff informed the applicant that the children's place of residence in Makhachkala had been identified, and enquired as to when the applicant would arrive in Makhachkala for the carrying out of the enforcement action.

30. On 19 June 2017 an administrative fine in the amount of RUB 2,500⁴ was imposed on A. under Article 17.14 § 1 of the Code of Administrative Offences for his failure to comply with the judgment of 20 July 2016.

² The distance between Haabneeme and Makhachkala is approximately 2,800 km.

³ The distance between Makhachkala and Rostov-on-Don is approximately 900 km.

⁴ Approximately EUR 40 at the time of the events in question.

31. On 21 June 2017 the applicant lodged a request with the Inter-district Bailiffs Service for the enforcement to be carried out without her participation and for the children to be transferred to Moscow. She undertook to cover all travel expenses for the children and two accompanying adults. The applicant's request was dismissed on an unspecified date.

32. On 12 July 2017 the applicant lodged a complaint with the Federal Bailiffs Service regarding the undue length of time that the judgment of 20 July 2016 had gone unenforced.

33. On 27 July 2017 she lodged a request for the head of the Federal Bailiffs Service to ensure that the enforcement proceedings would be conducted by an external enforcement team (*группа принудительного исполнения*), with the involvement of bailiffs from the Federal Bailiffs Service.

34. On the same date the applicant lodged (with the head of the Inter-district Bailiffs Service) a challenge against the decisions of the bailiffs of the Inter-district Bailiffs Service, who, she alleged, had been deliberately sabotaging the enforcement proceedings.

(b) Transfer of the enforcement proceedings to the Department for the Undertaking of Especially Important Enforcement Proceedings, and the enforcement attempt of 7 November 2017

35. In the meantime, on 7 September 2017 the enforcement proceedings were transferred to the Federal Bailiffs Service's department for the Undertaking of Especially Important Enforcement proceedings (*Управление по исполнению особо важных исполнительных производств при Директоре Федеральной службы судебных приставов*).

36. On 8 September 2017 A. was temporarily barred from leaving the territory of the Russian Federation.

37. On 14 September 2017 various enquiries were sent to the Department of the Interior of the Republic of Dagestan, the Dagestan State Pedagogical University and the Dagestan Department for Supervision and Control in the Sphere of Education.

38. On 7 November 2017 the Inter-district Bailiffs Service made another attempt to enforce the judgment with the participation of A., the applicant and her representative, the Dagestan childcare authority and a psychologist. In the course of the enforcement action it proved impossible to hand the children over because they refused to go to the applicant.

39. According to a report drawn up by the above-mentioned psychologist following the attempt at enforcement, the children spent over two hours with the applicant but did not display any positive emotional attitude towards her. According to the report, the forcible transfer of the children could have caused them serious psychological trauma. The

applicant was recommended to undergo psychological counselling aimed at finding ways of interacting and establishing contact with the children; it was also recommended that she find ways to spend time with them over a period of two months, before the next enforcement attempt was made.

(c) Subsequent attempts to enforce the judgment

40. On 22 May and 18 June 2019 the applicant again travelled to Makhachkala to attend enforcement proceedings, which again yielded no result, as the children refused to go to the applicant. According to the applicant, on the first occasion the applicant and her representative were subjected to “violent actions” by local officials.

41. To date the judgment of 20 July 2016 remains unenforced.

3. Subsequent developments

42. In 2019 the applicant lodged a request with the Town Court for the modification of the method of enforcement prescribed by the judgment of 20 July 2016. She noted that A. had not voluntarily complied with the judgment in question for over three and a half years and had prevented all contact between her and the children, aside from a few brief meetings with the children during the attempts to enforce the judgment and a few telephone conversations arranged with the help of relatives. She furthermore noted that the attempts by the bailiffs to enforce the judgment of 20 July 2016 had been fruitless: either A. had hidden the children or the latter had refused to go to the applicant. Accordingly, she lodged a request with the Town Court, asking it to oblige the bailiffs to arrange for (i) the safe removal of the children and their documents from A., regardless of the children’s wishes, not later than 1 August 2019, (ii) the children’s transportation from Makhachkala to St Petersburg with an accompanying adult and their handover to the applicant, (iii) the provision to the applicant and the children of three weeks’ psychological family adaptation counselling at a health resort in St Petersburg, (iv) A. to have contact with the children during their stay in St Petersburg on either Saturday or Sunday each week for four hours from 2 p.m. until 6 p.m. in the presence of the applicant, (v) the applicant and the children to leave for Estonia on 23 August 2019.

43. On 9 August 2019 the Town Court refused the applicant’s request. The Town Court considered that A. had not been inactive in the enforcement proceedings. It noted in that respect that (i) enforcement actions had been carried out on 22 May and 7 November 2017 and 22 May and 18 June 2019, with the participation of the applicant, A., the childcare authority, a psychologist and a paediatrician; (ii) A. had appeared at the time and the place of the enforcement action with the children; (iii) A. had not exercised any pressure on either the applicant or the children; and (iv) the

children had refused to go to the applicant. The Court furthermore noted the report prepared by the psychologist who had participated in the enforcement action on 7 November 2017, which stated that, at the material time, the forcible transfer of the children to the applicant would have caused serious psychological trauma to the former (see paragraph 39 above). The Town Court furthermore deemed that the applicant's request had been prompted by her dissatisfaction with the non-enforcement of the judgment of 20 July 2016 and had been aimed at altering the judgment itself, which was not permitted by law. Lastly, it noted that the children had spent over three and a half years in Russia since their removal from Estonia, which exceeded the one-year time-limit provided by Article 12 of the Hague Convention for children's adaptation to and integration into a new environment, as well as the reasonable time-limits for the enforcement of a judgment ordering the returning of a child to his or her home.

44. The applicant appealed, challenging the Town Court's conclusion that A. had not been inactive in the enforcement proceedings. She relied, in particular, on the fact that on 18 May 2017 an execution fee in the amount of RUB 5,000 had been imposed on A. by M., the bailiff, for his failure to comply with the judgment of 20 July 2016, as well as on the fact that on 18 June 2019 K., the psychologist who had participated in the enforcement action on that date had noted in her report that A. had been preventing the applicant from communicating with the children. The applicant furthermore argued that the Town Court's decision had amounted to the nullification of the judgment of 20 July 2016 and the legalisation of A.'s failure to comply with it.

45. On 5 December 2020 the Regional Court dismissed the applicant's appeal, upholding the Town Court's 9 August 2019 judgment, and endorsing its reasoning

II. RELEVANT LEGAL FRAMEWORK

A. International law

1. 1980 Hague Convention on the Civil Aspects of International Child Abduction

46. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction entered into force between Russia and Estonia on 1 December 2011. For the relevant provisions of the Hague Convention see *Rinau v. Lithuania* (no. 10926/09, §§ 145-49, 14 January 2020).

2. 1989 Convention on the Rights of the Child

47. For the relevant provisions of the Convention on the Rights of the Child of 20 November 1989 see *X v. Latvia* ([GC], no. 27853/09, §§ 37-40, ECHR 2013).

B. Domestic law

1. The Federal Law On Enforcement Proceedings of 2 October 2007 ("the Enforcement Proceedings Act")

48. Section 109.3 of the Enforcement Proceedings Act provides as follows:

"1. The removal of a child and his or her [subsequent] transfer must be carried out with the participation of the childcare authority, as well as of the person to whom the child is to be transferred. If necessary, the bailiff shall also arrange for the participation in the enforcement proceedings of a representative of the local department of the Interior, a child psychologist, a doctor, a teacher, an interpreter and other specialists.

...

3. Compliance with the requirement of an enforcement order [that, *inter alia*,] sets out child contact arrangements shall require the bailiff to secure unhindered contact between the [person in whose favour the judgment was made] and the child, in accordance with the schedule determined by the court.

4. When executing an enforcement order [that, *inter alia*,] specifies child contact arrangements, the bailiff must establish that the respondent is not hindering contact between [the person in whose favour the judgment was made] and the child. After establishing that there is no such hindrance, the bailiff shall terminate the enforcement proceedings, in accordance with Section 47(1)(1) of this Federal Law. In the event that it is necessary to repeat the enforcement action and to apply coercive measures, the decision of the bailiff to terminate the enforcement proceedings shall be set aside, at the request of [the person in whose favour the judgment was made], by the senior bailiff or his deputy.

5. The provisions of this section apply to the execution of enforcement documents ordering the return of a child unlawfully removed to or retained in the Russian Federation or ensuring the exercise of access rights in respect of such a child on the basis of an international treaty [to which] the Russian Federation [is a signatory]. The bailiff shall keep the central authority [that has been assigned with responsibility for securing compliance by the State with obligations under an international treaty] informed of the progress of the enforcement proceedings by sending copies of decisions issued within the framework of the enforcement proceedings within a day of the delivery of such decisions."

49. If a respondent fails to fulfil the obligations contained in the writ of execution within the time-limit established for doing so voluntarily, the bailiff shall recover an execution fee from the respondent and establish a new time-limit for the execution of those obligations (Section 105 (1)).

50. If the respondent does not fulfil the obligations within the newly established time-limit, the bailiff shall draw up an administrative-offence report, in accordance with the Code of Administrative Offences, and set a new time-limit for the respondent to fulfil the obligations contained in the writ of execution (Section 105 (2)).

51. In the event of a breach by the respondent of the law on enforcement proceedings, the respondent shall, under Russian law, be held administratively or criminally liable (Section 113).

*2. The Code of Administrative Offences of the Russian Federation
(which took effect on 4 May 2011)*

52. The Code of Administrative Offences establishes penalties in respect of a parent who prevents a minor from communicating with his or her other parent (provided that such communication is not contrary to the interests of the child) or deliberately conceals a minor's whereabouts, or fails to comply with a court judgment determining a minor's place of residence. Such behaviour may be punished by an administrative fine ranging from RUB 2,000 to 3,000 and up to RUB 5,000 or by administrative arrest for up to five days in the event of a repeated offence (Article 5.35 §§ 2 and 3).

53. The failure of a respondent to comply with an obligation in kind within the time-limit set by a bailiff after the imposition of an obligation to pay an execution fee may be punished by the imposition of an administrative fine of between RUB 1,000 and 2,000 (Article 17.15 § 1).

3. Family Code of the Russian Federation

54. Judgments in cases involving the issue of the upbringing of children are enforced by a bailiff in accordance with the procedure laid down by the civil procedural legislation. If one of the parents (or another person in whose charge the child is) obstructs the enforcement of the court judgment, the measures stipulated by the civil procedural legislation will be applied to him or her (Article 79 § 1).

55. Where compulsory enforcement of a judgment involves taking away a child and placing him or her in the charge of another person, the relevant childcare authority and the person(s) into whose charge the child is placed must be involved. If necessary, a representative of the department of the interior, a child psychologist, a doctor, a teacher, an interpreter and other specialists can also be involved. In the event that it is impossible to enforce a judgment ordering the transfer of a child without infringing upon the child's interests, the latter may be temporarily placed, on the basis of a judicial order, in an institution for orphans and children left without parental care (Article 79 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant complained that the failure of the Russian authorities to secure the enforcement of the judgment of 20 July 2016 ordering the return of her children to Estonia had violated her right to respect for her family life provided by Article 8 of the Convention, which reads as follows:

Article 8

“1. Everyone has the right to respect for his private and family life ...

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

57. The Government considered that the application was manifestly ill-founded, for the reasons set out below (see paragraph 60 below).

58. The Court considers 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 parties' submissions

(a) The applicant

59. The applicant submitted that the reason for the prolonged non-enforcement of the judgment aimed at reuniting her with her children had been the general ineffectiveness and inconsistency of the enforcement actions, starting from April 2017. The enforcement could have been completed only by the taking of resolute and professional measures by those involved in the enforcement proceedings, including the bailiffs, the police, childcare authorities and psychologists; those measures had not been taken. Consequently, some four years later the judgment of 20 July 2016 remained unenforced, and it could be that the family bond that the applicant had hoped to repair with her sons following their return to Estonia would remain broken forever.

(b) The Government

60. The Government considered that there had been no violation of the applicant's right to respect for her family life under Article 8 of the Convention. The applicant had not been deprived of her parental responsibility, and A. had not impeded her contact with the children. The domestic authorities had taken all the measures necessary to secure the enforcement of the judgment of 20 July 2016. However, in the course of the enforcement proceedings it had proved impossible to hand the children over to the applicant owing to their refusal to go to their mother. Despite the psychologist's recommendation that the applicant should first restore her bond with her sons in order to make the enforcement possible (see paragraph 39 above), the applicant had not shown any willingness to do so; she had not asked either A. or his parents for such an opportunity, even though A. had had no objections. The Government concluded that, while the domestic authorities had met all of their obligations in trying to have the judgment enforced, there had been circumstances excluding the possibility of the immediate return of the children to Estonia.

(c) The third party

61. The Government of Estonia submitted that as long as the return order remained in force the presumption remained that the children's return to Estonia was also in those children's own interests (see *M.A. v. Austria*, no. 4097/13, § 136, 15 January 2015). They furthermore stressed, referring to Article 11 of the Hague Convention, that the enforcement of the return order required urgent handling (see *Maire v. Portugal*, no. 48206/99, § 74, ECHR 2003-VII) and that, in the event of manifestly unlawful behaviour on the part of the children's father, the use of sanctions should not have been ruled out (see *Shaw v. Hungary*, no. 6457/09, § 76, 26 July 2011). The Estonian Government noted that the Russian Government had not submitted any evidence that steps had been taken to enforce the return order, but instead had tried to explain the reasons for it being impossible to secure the children's return. Those submissions had been contrary to the Russian courts' judgments ordering the return of the children, which had been in force and could not have been amended in the course of the enforcement proceedings. The children's unwillingness to return to their mother could not be considered as constituting legal grounds for accepting their non-return (see *Bianchi v. Switzerland*, no. 7548/04, 22 June 2006, and *Raw and Others v. France*, no. 10131/11, 7 March 2013). That unwillingness was attributable to the domestic authorities, whose passive attitude had caused the break in contact between the applicant and the children and the resulting alienation between them. Neither could the psychologist's report referred to by the Russian Government have constituted a basis for the failure to return the children. In the course of enforcement proceedings the

implementing authorities (representing the executive branch of the State) had not been authorised to disregard the court judgments or to amend the court resolutions. The Estonian Government concluded that the failure on the part the domestic authorities to undertake adequate and efficient steps to enforce the return order had helped the “abductor” parent to benefit from his illegal actions, which had amounted to a violation of Article 8 of the Convention (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, ECHR 2003-V; *V.P. v. Russia*, no. 61362/12, 23 October 2014; and *M.R. and L.R. v. Estonia* (dec.), no. 13420/12, 15 May 2012).

2. The Court’s assessment

(a) General principles concerning the enforcement of return orders

62. The essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in an effective “respect” for family life. However, the boundaries between the State’s positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; in both contexts the State enjoys a certain margin of appreciation (see *Oller Kamińska v. Poland*, no. 28481/12, § 82, 18 January 2018, with further references).

63. The State’s positive obligations under Article 8 of the Convention include a parent’s right to have measures taken with a view to being reunited with his or her child and an obligation in respect of the national authorities to take such measures (*ibid.*, § 83, with further references).

64. However, the national authorities’ obligation to take such measures is not absolute, since the reunion of a parent with a child who has lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned are always important ingredients. While national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights and freedoms of all concerned – and more particularly the best interests of the child and his or her rights – must be taken into account under Article 8 of the Convention. In a situation where contact between parent and child might jeopardise such interests or infringe such rights, the national authorities are under a duty to ensure that a fair balance is struck between them (see *M.A. v. Austria*, cited above, § 106, with further references).

65. Coercive measures against children are not desirable in this sensitive area or might even be ruled out as not being in the best interests of the child. However, the use of sanctions must not be ruled out in the event of unlawful behaviour on the part of the parent with whom the children live (see *M.K. v. Greece*, no. 51312/16, § 77, 1 February 2018; *M.A. v. Austria*, cited above, § 107 ; and *P.P. v. Poland*, no. 8677/03, § 92, 8 January 2008).

66. The Convention must be applied in accordance with the principles of international law – in particular with those principles relating to the international protection of human rights. In the area of international child abduction, the positive obligations that Article 8 of the Convention lays on the Contracting States must be interpreted in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and of the Convention on the Rights of the Child of 20 November 1989, which attach paramount importance to the best interests of the child (see the above-cited cases of *Oller Kamińska*, § 84, *M.A. v. Austria*, § 108, with further references; and also *Vladimir Ushakov v. Russia*, no. 15122/17, §§ 76-105, 18 June 2019).

67. In cases of this kind the adequacy of a measure is to be judged by the swiftness of its implementation. Proceedings relating to an award of parental responsibility – including the enforcement of the final decision – require urgent handling, because the passage of time can have irremediable consequences for relations between the child and the non-resident parent. The Hague Convention recognises this fact because it provides for a whole series of measures to ensure the immediate return of children removed to or wrongfully retained in any Contracting State. Article 11 of the Hague Convention requires the judicial or administrative authorities concerned to act expeditiously in proceedings for the return of children, and any failure to act for more than six weeks may give rise to a request for a statement of reasons for the delay (see *M.A. v. Austria*, cited above, § 109, with further references).

68. A change in the relevant facts may exceptionally justify the non-enforcement of a final return order. However, the Court must be satisfied that the change of relevant facts was not brought about by the State's failure to take all measures that could reasonably be expected to facilitate the execution of the return order (see *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 63, 24 April 2003).

(b) Application of these principles to the present case

69. The Court notes at the outset that the relationship between the applicant and her sons amounted to “family life” within the meaning of Article 8 § 1 of the Convention, and none of the parties has asserted otherwise.

70. By the judgment of 20 July 2016 the Pyatigorsk Town Court of Stavropol Region ordered the children's immediate return from Russia,

where they had been wrongfully removed by their father, to the place of their habitual residence in Estonia. The judgment became final on 20 January 2017.

71. Faced with the father's reluctance to comply with the judgment of 20 July 2016 voluntarily, on 17 March 2017 the applicant lodged an application with the Inter-district Bailiffs Service for the institution of enforcement proceedings, and on 3 April 2017 the Inter-district Bailiffs Service instituted such proceedings. However, some four years later the judgment of 20 July 2016 remains unenforced.

72. The Court's task will therefore comprise an assessment of whether the domestic authorities have taken, within the framework of the enforcement proceedings, swift and adequate measures to secure the applicant's family rights, as recognised by the judicial decisions. In order to do so, it will have regard to the way in which the domestic authorities organised and handled the enforcement proceedings.

73. The first attempt to enforce the return order was made shortly after the institution of the enforcement proceedings, on 22 May 2017. However, the enforcement could not take place, as on the day of the enforcement the father had left Makhachkala for Rostov-on-Don, together with the children. The next enforcement attempt took place almost six months later, on 7 November 2017, following the transfer of the enforcement material from the Inter-district Bailiffs Service to the Federal Bailiffs Service's Department for the Undertaking of Especially Important Enforcement Proceedings. No explanation was provided by the Government for that delay. The Court notes that in return proceedings, far shorter delays give rise to concern. The second attempt failed because the children, aged seven and three years old at the material time, refused to go to the applicant.

74. Subsequently, the enforcement proceedings suffered an even longer delay of a year and a half (for which the Government provided no explanation either): further attempts to enforce the judgment took place on 22 May and 18 June 2019 – after the communication of the present application to the Russian Government. Those attempts also failed, owing to the children's refusal to go to the applicant.

75. The Court observes that none of the four attempts to enforce the judgment of 20 July 2016 was preceded by any preliminary measures with a view to preparing the children and to making the transfer smooth and psychologically comfortable for them, even though the psychologist participating in the enforcement attempt of 7 November 2017 had expressly noted in her report that in order to avoid causing serious psychological trauma to the children their transfer from their father to the applicant required preliminary preparatory measures (see paragraph 39 above).

76. Moreover, the Court is mindful of the fact that the distance of 2,800 km between the applicant's place of residence in Estonia and the place of the enforcement proceedings in Russia required that the applicant

incur significant expenses in order to be able to participate in them; accordingly, it was necessary that the bailiffs undertake careful preparatory measures. However, no indication that any such measures were in fact undertaken can be found in the case file.

77. It is a matter of concern to the Court that in the proceedings pursued by the applicant in 2019, by which she sought to alter the method of the enforcement of the judgment of 20 July 2016, the Town Court justified the failure of the domestic authorities to secure the return of the children to Estonia by citing the latter's unwillingness to go to the applicant. The Court considers that the children's reluctance to return to Estonia had been understandable given their young age and the fact that they had been in the sole care of their father for one year and nine months until the enforcement attempt of 7 November 2017. However, that reluctance had been due mainly to the fact that the domestic authorities in charge of the enforcement proceedings had failed to take any of the measures that could reasonably have been expected of them in order to be able to enforce the order for the children's return in a timely manner or, at the least, to ensure regular contact between the children and the applicant during the pending proceedings so as to prevent irreparable damage to their relationship and to preserve the prospects of a successful enforcement of the judgment in the applicant's favour. The Court reiterates in this regard that it is in the nature of return proceedings that a considerable lapse of time may compromise the position of the non-resident parent irretrievably. The Court considers, therefore, that the children's unwillingness to go to the applicant could not, in the circumstances of the present case, serve as legal grounds for justifying the non-enforcement of the return order.

78. The Court is also struck by the fact that the conclusions reached in the Town Court's judgment – which noted the passage of a considerable amount of time since the children's removal from Estonia, their adaptation to and integration into a new environment in Russia, and the expiration of the reasonable time-limits for the enforcement of the judgment ordering the children's return – went beyond simply rejecting the applicant's request for an alteration of the method of enforcement of the judgment of 20 July 2016 (see paragraph 42 above). The Court agrees with the applicant that those conclusions had the effect of nullifying the judgment in question and implying that any subsequent enforcement measures would be futile. The Court considers that the undue length of the children's stay in Russia was brought about by the State's failure to undertake all measures that could reasonably be expected to facilitate the enforcement of the return order and thus does not justify the non-enforcement of the final return order.

79. Despite an explicit request made by the Court for the Government to provide a comprehensive account of all the measures available to the Russian authorities – including measures available to the bailiffs, the police, welfare authorities and so on – to secure the enforcement of judgments in

circumstances similar to those pertaining in the present case, the Government failed to do so. This allows the Court to draw inferences and to come to a conclusion regarding the absence of an effective coordination between the domestic authorities in their efforts to implement judicial decisions involving the return of the applicant's children under the Hague Convention.

80. The foregoing considerations are sufficient to enable the Court to conclude that the measures taken by the Russian authorities in order to enforce the judgment of the Pyatigorsk Town Court of Stavropol Region of 20 July 2016 and to reunite the applicant with her children were not adequate and effective.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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.”

A. Damage

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

84. The Government considered that the applicant's claim for non-pecuniary damage was excessive, unreasonable and not corresponding to the Court's case-law.

85. In the light of its findings on the merits of the case, and given that the decision in the applicant's favour has remained unenforced until the present date, making an assessment on an equitable basis the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

86. The applicant also claimed EUR 4,106.39 for costs and expenses. That amount related to legal fees, travel and postal expenses incurred in connection with the applicant's participation in the proceedings before the Russian courts, in the enforcement proceedings and in the proceedings before the Court. The applicant produced a very detailed description of her costs, together with supporting documents.

87. The Government considered that the applicant had failed to demonstrate that her legal fees expenses had actually been incurred, that her

postal expenses had not been strictly “necessary” (in that the applicant could have used State postal services instead of a more expensive special international courier service), and that her travel expenses had nothing to do with the instant case. They concluded that the applicant’s claims for costs and expenses should be rejected in their entirety.

88. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000, covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

89. 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* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
4. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

MAKHMUDOVA v. RUSSIA JUDGMENT

Done in English, and notified in writing on 1 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President