



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

THIRD SECTION

CASE OF TAPAYEVA AND OTHERS v. RUSSIA

(Application no. 24757/18)

JUDGMENT

Art 8 • Art 14 (+ Art 8) • Family life • Discrimination • Failure of domestic authorities to take reasonable and timely measures to reunite widow and her children kidnapped by father-in law, against the background of regional gender stereotypes and patrilineal practices

STRASBOURG

23 November 2021

FINAL

23/02/2022

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

In the case of Tapayeva and Others v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Anja Seibert-Fohr,

Andreas Zünd,

Frédéric Krenc, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 24757/18) 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 a Russian national, Ms Luisa Abuyevna Tapayeva (“the first applicant”), on behalf of herself and her four daughters Ms Makka Chingiskhanovna Akhmadova, Ms Markha Chingiskhanovna Akhmadova, Ms Amina Chingiskhanovna Akhmadova and Ms Zulikhan Chingiskhanovna Akhmadova (“the second, third, fourth and fifth applicants”), on 23 May 2018;

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

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

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

the comments submitted by non-governmental organisations the Centre for Peacebuilding and Community Development (working name Peacebuilding UK (“PBUK”)) and the Equal Rights Trust (“the Trust”), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The present case concerns the failure of the Russian authorities to assist the first applicant in being reunited with her daughters, second to fifth applicants, the absence of an effective domestic remedy in this regard, and gender-based discrimination at the origin of this failure.

THE FACTS

2. The applicants were born in 1988, 2008, 2009, 2011 and 2013, respectively, and live in Goyty, a village in the Urus-Martan District of the

Chechen Republic. The applicants were represented by lawyers from Stichting Justice Initiative, a non-governmental organisation (NGO) based in Utrecht, the Netherlands, in collaboration with another NGO, Astreya.

3. The Government were represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Vinogradov.

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. In 2008 the first applicant married Ch.A. The couple settled with Ch.A.'s parents in the village of Goyty.

6. In 2008, 2009, 2011 and 2013 the first applicant gave birth to their four daughters, the second, third, fourth and fifth applicants.

7. On 8 June 2015 Ch.A. died on duty.

8. On 28 June 2015 the applicants moved in with the first applicant's parents in the same village of Goyty.

9. The girls maintained contact with their paternal grandparents by spending weekends with them. Starting from 2016 the paternal grandparents did not seek any contact with the children.

10. On 10 April 2016 the first applicant's father-in-law B.A., assisted by unknown persons, kidnapped the children. The first applicant was prevented from communicating with her daughters. She has hardly seen them since then.

B. First judgment determining the children's residence as being with the first applicant and its enforcement

11. On 29 June 2016 the first applicant applied to the Urus-Martan Town Court ("the Town Court") for a residence order in respect of the children, having indicated that the children had been kidnapped by their paternal grandfather. In response, B.A. instituted proceedings to determine the children's residence as being with him.

12. On the same day the Town Court decided that the children should reside with their mother and their paternal grandfather, at the latter's place of residence.

13. The first applicant appealed, submitting that the above judgment had been unenforceable in practice since she had not been residing, and had been unwilling to reside, at her father-in-law's place of residence.

14. On 15 September 2016 the Supreme Court of the Chechen Republic ("the Supreme Court") quashed the judgment of 29 June 2016 on appeal and

determined the children's place of residence as being with the first applicant.

15. On 28 October 2016 the first applicant applied to the Urus-Martan District Bailiffs' Service ("the District Bailiffs' Service") for the enforcement of the judgment of 15 September 2016.

16. On 3 November 2016 a bailiff from the District Bailiffs' Service refused to institute enforcement proceedings and returned the writ of execution to the first applicant. The relevant decision stated that the writ of execution submitted by the first applicant did not meet the relevant requirements of the domestic legislation on the enforcement of court decisions, and, more specifically, the operative part of the judgment of 15 September 2016 did not contain any requirements as regards there being an obligation on the defendant to transfer to the claimant property or monetary sums, or to perform certain actions or abstain from performing them.

17. Following the first applicant's complaint, on 14 November 2016 the chief bailiff of the Chechen Republic set aside the decision of 3 November 2016 as unlawful.

18. On 24 November 2016 the enforcement proceedings were instituted. They were subsequently discontinued on 27 February 2017, resumed on 2 March 2017 and discontinued again on 4 April 2017 due to the children's refusal to move to their mother's place of residence.

19. On 6 March 2017 the first applicant further challenged the decision of 3 November 2016 in administrative proceedings.

20. On 30 March 2017 the Town Court found unlawful the bailiff's failure to act in the enforcement proceedings against B.A.

21. On 23 May 2017 the Supreme Court quashed the above judgment and dismissed the first applicant's claim as lodged outside the statutory time-limit.

22. Later in May 2017 and December 2018 the first applicant complained to the Prosecutor's Office of the Urus-Martan District of the Chechen Republic ("the Prosecutor's Office") about the lengthy non-enforcement of the judgment of 15 September 2016.

23. In June 2017 the Prosecutor's Office lodged a submission (*представление*) with the head of the Federal Bailiffs' Service for the Chechen Republic, making representation against the conduct of the enforcement proceedings without notification and participation of the first applicant. Disciplinary sanctions were applied to the bailiff in charge of the enforcement proceedings. The case file contains no reply to the applicant's complaint of December 2018.

24. Meanwhile, on 26 October 2018 the first applicant once again requested the District Bailiffs' Service to institute the enforcement proceedings.

25. On 7 November 2018 her request was refused on the ground that the enforcement document did not oblige B.A. to carry out or to abstain from certain actions.

26. On 7 December 2018 the chief bailiff of the District Bailiffs' Service found the above decision lawful and dismissed the first applicant's complaint.

27. On 5 February 2019 the first applicant instituted administrative proceeding before the Town Court challenging the inactivity of the District Bailiffs' Service and requested to transfer the enforcement proceedings to the department dealing with complex enforcement proceedings (*отдел сложных исполнительных производств*).

28. On 6 March 2019 the Town Court dismissed the first applicant's claim, referring, in particular, to the judgment of 6 April 2018, upheld on appeal on 12 July 2018 (see paragraphs 44-45 below).

29. On 25 March 2019 the first applicant challenged the above judgment before the Supreme Court. The outcome of the applicant's appeal is unknown.

C. Second judgment determining the children's residence as being with the first applicant and its enforcement

30. Meanwhile, the first applicant brought proceedings against B.A. seeking that the children be taken away from him and handed over to her. She explained that the bailiffs could not enforce the judgment of 15 September 2016 in the absence of a specific indication that the children had to be taken away from B.A.

31. On 5 June 2017 the Town Court granted her claim. In taking this decision the Town Court took into account that the first applicant was not deprived of parental authority, that she wished to raise and educate her children and did not evade from doing so, that she lived in her parents' house suitable for raising children and had a stable income (salary and state pension for loss of breadwinner).

32. On 26 September 2017 the Supreme Court upheld the judgment of 5 June 2017 following an appeal by B.A. The Supreme Court noted that on 15 September 2016 it had granted the first applicant residence order in respect of her children, that the children had still not been handed over to her, that the first applicant had been deprived of the opportunity to maintain contact with them and to participate in their upbringing, and that the bailiffs' service had practically withdrawn from the enforcement of that judgment having relied on the absence of the term "removal of the children [from B.A.]" in the writ of enforcement, which generated new proceedings on the subject. The Supreme Court further endorsed the judgment of 5 June 2017 having noted the absence of any circumstances outweighing the first

applicant's right, as the children's mother, to take priority over any other person in raising and educating them.

33. Meanwhile, on 17 July 2017 a bailiff of the District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 5 June 2017.

34. On 19 July 2017 the bailiff summonsed B.A. to appear at the District Bailiffs' Service at 10 a.m. on 24 July 2017. B.A., however, did not appear before the bailiff.

35. It follows from the case file that on 9 August, 16 October and 10 November 2017 the bailiff visited B.A.'s place of residence, but the enforcement could not take place since the latter had not been at home on the first occasion, and on the following occasions the children and their paternal grandparents had been visiting their relatives outside the Urus-Martan District. The first applicant submitted, however, that none of the parties was informed of the above enforcement measures. Besides, she submitted documents proving that on the above dates the children had attended school in the village as per usual.

36. On 6 November 2017 the first applicant instituted administrative proceeding before the Town Court challenging the inactivity of the District Bailiffs' Service.

37. On 23 November 2017 a judge of the Supreme Court ordered the suspension of the enforcement proceedings pending the outcome of the cassation procedure (see below).

38. On the same day, following the first applicant's request, the enforcement proceedings were transferred from the District Bailiffs' Service to the Grozny Inter-district Department of Bailiffs ("the Inter-district Department of Bailiffs").

39. On 24 November 2017 a bailiff of the Inter-district Department of Bailiffs suspended the enforcement proceedings.

40. In view of the above decision, on 1 December 2017 the Town Court suspended the administrative proceedings initiated by the first applicant.

41. On 5 April 2018 the Town Court resumed the administrative proceedings instituted by the first applicant and dismissed her claim on the ground of the quashing of the judgment of 5 June 2017 and the appeal decision of 26 September 2017 by the Presidium of the Supreme Court (see below).

D. Quashing of the second judgment determining the children's place of residence as being with the first applicant in cassation procedure and subsequent proceedings

42. On 23 October 2017 B.A. applied to the Presidium of the Supreme Court for review of the final judgment of 5 June 2017, as upheld on appeal on 26 September 2017, under the cassation procedure. In his cassation

application B.A. stated that as the family elder he wanted his granddaughters to be raised and educated in his home where they could get proper moral upbringing. He also raised the point that no one in the first applicant's family was religious, that the first applicant avoided the involvement of local administration and religious council and that the children would not get proper moral and spiritual formation in her family.

43. On 8 February 2018 the Presidium of the Supreme Court quashed the judgment of 5 June 2017 and the appeal decision of 26 September 2017 in cassation procedure, on the ground of substantial violations of substantive and procedural legal provisions, and referred the case for fresh examination by a different bench of the Town Court. The Presidium of the Supreme Court held, in particular, that in taking their decisions the first and second-instance courts had failed to consider the following circumstances in order to determine what would be in the children's best interests: who provided better care to the children, social behaviour of the parties, psychological climate at the parties' places of residence, availability of timely medical assistance at their places of residence, the children's habitual circle of contacts (friends, teachers, affection not only to parents and siblings, but also to grandparents living with the children), convenience of location of schools, sports clubs and other extracurricular activities attended by the children, the possibility of each party to make the children benefit from such extracurricular activities, as well as the purpose of the institution of the proceedings in question by the plaintiff. The Presidium of the Supreme Court further noted that the childcare authority had given contradictory opinions regarding the issue of the children's residence with the parties (favourable to the first applicant in the proceedings before the first-instance court and favourable to the defendant in the proceedings before the appeal court).

44. On 6 April 2018 the Town Court decided that the children should reside with B.A. and determined the terms of the first applicant's contact with the children.

45. On 12 July 2018 the Supreme Court upheld the above judgment on appeal, except for the part concerning the first applicant's contact with her daughters, which was quashed.

46. The first applicant brought a cassation appeal before the Supreme Court of Russia requesting to quash the decision of the Presidium of the Supreme Court of 8 February 2018.

47. On 12 October 2018 a judge of the Supreme Court of Russia refused to refer the case for consideration by the Civil Chamber of that Court. The judge noted, in particular, that in its decision of 8 February 2018 the Presidium of the Supreme Court of the Chechen Republic did not deal with the merits of the case, which were subsequently dealt with by the judgment of the Town Court of 6 April 2018 and the appeal decision of the Supreme Court of the Chechen Republic of 12 July 2018 rejecting the first

applicant's claim for return of her daughters from B.A. to her. The judge further noted that it was open to the first applicant to challenge those new judgments in accordance with the procedure provided for in the domestic law.¹

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

48. Under the Constitution, the State guarantees the equality of rights and freedoms regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, or any other circumstance. Any restriction on the human rights of citizens on social, racial, national, linguistic or religious grounds is forbidden. Men and women enjoy equal rights and freedoms and have equal possibilities to exercise them (Article 19 §§ 2 and 3).

B. Family Code of the Russian Federation

49. Under the Code, a child has the right to live and to be brought up in a family in so far as it is possible; the right to know his parents; the right to enjoy their care and the right to live with them, except where it is contrary to the child's interests (Article 54 § 2).

50. Parents are entitled, and have an obligation, to raise and educate their children. Parents are obliged to take care of their children's health and their physical, psychological and moral development. Parents have a right to take priority over any other person in raising and educating their children (Article 63 § 1).

51. Parents are entitled to seek the return of their child from any person who retains him or her without any legal basis. In the event of a dispute, parents are entitled to apply to a court. A court may reject the application after taking into account the child's opinion if it establishes that returning the child to the parents is contrary to his or her interests (Article 68 § 1).

52. A child is entitled to express her or his opinion on all family matters concerning him or her, including in the course of any judicial proceedings. The opinion of a child over ten years old must be taken into account, except where it is contrary to his or her interests (Article 57).

53. A court may deprive a parent of parental authority at the request of the other parent, a guardian, a prosecutor or social services if, among other reasons, the parent mistreats the child by resorting to physical or psychological violence or sexual abuse (Articles 69 and 70 § 1).

¹ First tier cassation before the Presidium of the Supreme Court of the Chechen Republic and thereafter second tier cassation before the Civil Chamber of the Supreme Court of Russia.

54. A court may restrict a parent's parental authority and remove the child from the parent's care in the interests of the child at the request of a close relative, social services, an educational institution or a prosecutor. Parental authority may be restricted in cases where the parent represents a danger to the child (Article 73).

C. Code of Civil Procedure of the Russian Federation

55. For the relevant provisions of domestic law on reviews of judgments delivered by courts of first instance, see *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 29-45, 12 May 2015).

D. The Federal Law on Enforcement Proceedings of 2 October 2007 ("the Enforcement Proceedings Act 2007")

56. For the relevant provisions of domestic law, see *Pakhomova v. Russia* (no. 22935/11, §§ 91-99, 24 October 2013).

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

57. For the relevant provisions of domestic law, see *Pakhomova* (cited above, §§ 100-03).

III. RELEVANT INTERNATIONAL MATERIAL

58. The Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention"), which Russia ratified on 23 January 1981, provides as follows:

Article 1

"For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2

"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

...

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.”

Article 3

“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

Article 5

“States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...”

Article 16

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

...

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount ...”

59. The United Nations Committee on the Elimination of Discrimination against Women (“the CEDAW Committee”) – the UN expert body that monitors compliance with the CEDAW Convention – in its concluding observations on the periodic reports submitted by the Russian Federation (CEDAW/C/RUS/CO/7), adopted in 2010, urged the State party “to put in place without delay a comprehensive strategy, including the review and formulation of legislation and the establishment of goals and timetables, to modify or eliminate traditional practices and stereotypes that discriminate against women” (§ 21).

60. In its concluding observations on the eighth periodic report of the Russian Federation (CEDAW/C/RUS/CO/8), adopted in 2015, the CEDAW Committee noted that it is “deeply concerned at the regulation of family relations in the northern Caucasus, where the concept of “ownership” of the father over his children continues to reign, leading in practice to situations in which women lose any contact with their children after divorce” (§ 45). It recommended the State party to “take the legislative measures necessary to eliminate the concept of “ownership” of the father over his children in the northern Caucasus, and ensure equal parental rights to women in all cases” (§ 46 (d)).

61. The 2011 Human Rights Watch’s Report “You Dress According to Their Rules” documenting, in particular, gender discrimination against women in the Chechen Republic, states:

“... Kadyrov [the leader of the Chechen Republic] made numerous public statements, including on Chechen television, which appears to be under his control, regarding the need for women to adhere to “modesty laws,” by, among other things, wearing a headscarf and following men’s orders. He has described women as men’s “property” and publicly condoned honor killings. Other Chechen officials have echoed his views in their own public remarks.”

62. The 2017 Human Rights Watch’s Report “In Chechnya, a Ruthless Strongman Orders Family Reunification” states:

“Chechnya’s strongman, Ramzan Kadyrov, launched a program in June to reunite families divided by divorce. Ostensibly concerned with rising divorce rates and the impact of such break ups on children, Kadyrov created local councils “for harmonising marriage and family relations.” Made up of public officials and Muslim religious authorities, the councils draw up lists of divorced couples in their districts and approach the spouses, suggesting reconciliation.

...

The real reason [for enthusiastic support of Kadyrov’s initiative on family reunifications by many Chechen women] may not be obvious to those outside Chechnya: embracing this new “family reunification” program is the only way these women, their female friends and relatives, can get access to the children they lost to divorce. Chechen traditional laws, often upheld by local authorities even when they run contrary to Russia’s laws and international human rights obligations, stipulate that children belong with the father and his family.”

63. In a report presented to the Parliamentary Assembly of the Council of Europe (PACE), the rapporteur on human rights violations in the Northern Caucasus for the PACE Committee for Legal Affairs and Human Rights, Dick Marty, critically assessed the human rights situation in the region, based on his trip to Chechnya, Ingushetia, and Dagestan in spring 2010. With regard to women’s rights, Marty wrote:

“10. Where the relationship between religious practices and the rights of women is concerned, we heard reports of degrading treatment suffered by women following the introduction of rules directly dictated by the regime run by the current president of the Chechen Republic. Women caught without headscarves in the street have been

publicly humiliated on local television. The Chechen courts now apply rules drawn from Sharia law, in contravention of Russian law. As a result, for example, a woman who is widowed may have any children over 12 years of age and her property taken away from her by her deceased husband's family. The prevailing attitudes towards women cannot be justified by putting them down to tradition and culture. This is an intolerable situation, often exacerbated by the behavior and statements of the local authorities ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The first applicant complained about the failure of the domestic authorities to assist her in being reunited with her daughters, second to fifth applicants, and that they thereby violated their right to respect for their family life under Article 8 of the Convention, which reads as follows:

"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

65. The Government pointed out that the Russian Code of Civil Procedure, as in force at the relevant time, had established a two-tier cassation appeal procedure for appealing against court decisions taken at the first two levels of jurisdiction, which had been recognised by the Court as an effective remedy in the case of *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, 12 May 2015). They thus argued that, by failing to lodge cassation appeals against the judgment of 6 April 2018 and the appeal decision of 12 July 2018, the first applicant had failed to exhaust the effective domestic remedies available to her.

66. The first applicant argued that by challenging the decision of the Presidium of the Supreme Court of the Chechen Republic of 8 February 2018 quashing the judgments in her favour before the Supreme Court of Russia (see paragraph 46 above) she had complied with the exhaustion requirement. Furthermore, the first applicant submitted that she continues her efforts to obtain the enforcement of the judgment of 15 September 2016 by which her daughters' place of residence had been determined as being with her (see paragraphs 24-29 above).

67. The Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a

State are thus obliged to use first the remedies provided by the national legal system (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014, and *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

68. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others*, cited above, § 71, and *Akdivar and Others*, cited above, § 66). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Vučković and Others*, cited above, § 74).

69. The Court further emphasises that the application of the rule must make due allowance for the fact that it is being applied in the context of a machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically: in reviewing whether it has been observed, it is essential to have regard to the particular circumstances of each individual case. This means, amongst other things, that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (see *Akdivar and Others*, cited above, § 69).

70. Turning to the facts of the present case, the Court observes that after the first applicant's father-in-law B.A. had kidnapped her children, the second to fifth applicants, the first applicant brought proceedings against him seeking for the children to be returned to her and to have their residence determined as being with her (see paragraph 11 above). The proceedings in question resulted in the judgment of 15 September 2016 by the Supreme Court in her favour (see paragraph 14 above). She subsequently applied to the bailiffs' service for assistance in having the judgment in question enforced. The first applicant has thus afforded the Russian authorities an opportunity to redress, through their own legal system, the alleged violation of her right to respect for her and her daughters' family life.

71. The Court notes, however, that due to the bailiffs' reluctance to enforce the judgment in question in 2016-2018, with reference to the absence in the operative part of the judgment of 15 September 2016 of an indication that B.A. was to hand the children over to the first applicant (see paragraphs 16-25 above), the first applicant brought another proceedings

against B.A. seeking to obtain a judgment containing such explicit indication (see paragraph 30 above). The Supreme Court noted in this connection that “the bailiffs’ service had practically withdrawn from the enforcement of [the judgment of 15 September 2016] having relied on the absence of the term “removal of the children [from B.A.]” in the writ of enforcement, which generated new proceedings on the subject (see paragraph 32 above). The proceedings in question ended with the judgment of the Town Court of 6 April 2018 holding that the children should reside with B.A., upheld on appeal by the Supreme Court on 12 July 2018 (see paragraphs 44-45 above), which the first applicant had failed to further pursue by lodging cassation appeals.

72. The new proceedings having been prompted by the impossibility for the first applicant to obtain the enforcement of the initial child residence judgment, rather than by any change of factual circumstances, the Court considers that the first applicant was not required to pursue them for the purposes of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. To hold otherwise in the circumstances of this particular case would amount to excessive formalism and burden on the first applicant, especially having regard to the importance from the viewpoint of Article 8 of the time factor in determination of similar family matters. The Court therefore rejects the Government’s objection of non-exhaustion.

73. This complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The Court, therefore, declares it admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

74. The applicants submitted that the State had failed to comply with its positive obligation to secure their right to respect for their family life by failing to enforce the judgment of 15 September 2016 determining the residence of the children as being with the first applicant. The bailiffs were unwilling and/or unable to reunite the first applicant, their sole parent, with her daughters. As a result, the girls continue to reside with their paternal grandfather B.A. and the latter prevents any contact between them and the first applicant since April 2016. Instead of submitting to the Town Court a request for clarification of the judgment of 15 September 2016 the bailiffs preferred to refuse the institution of the enforcement proceedings, which left the first applicant no other choice but to bring another proceedings against B.A. asking the Town Court to oblige him to hand her daughters over to her. This protracted the prospects of the applicants’ being reunited and

eventually ended up in a judgment determining the children's place of residence with their paternal grandfather in the absence of any exceptional reasons which would allow to disregard the priority of the parents over any other person in raising and educating their children (see paragraph 50 above).

(b) The Government

75. The Government argued that the domestic authorities had taken all the necessary measures to comply with their positive obligation under Article 8 of the Convention to provide for maintaining the family tie between the applicants. They made submissions in respect of the proceedings by which the children's place of residence was determined with their paternal grandfather. They stated in this connection that the first applicant was not deprived of her parental authority in respect of the children, that if her communication with the children was impeded she was entitled to lodge a claim with a court for determining her contact rights, that she was also entitled to receive information about the children from educational, childcare, medical and social protection bodies. No submissions were made regarding the failure of the domestic authorities to enforce the judgment of 15 September 2016 by which the residence of the children was determined as being with their mother, the first applicant.

2. The Court's assessment

76. The general principles relevant for the Court's assessment have been summarised in *Gubasheva and Ferzauli v. Russia* (no. 38433/17, §§ 43-44, 5 May 2020), and *Y.I. v. Russia* (no. 68868/14, §§ 75-78, 25 February 2020).

77. The Court notes, firstly, that it was common ground between the parties that the tie between the applicants constituted "family life" for the purposes of Article 8 of the Convention. The Court further notes that, separated from her daughters since April 2016 (see paragraph 10 above), in June 2016 the first applicant applied to the domestic authorities for assistance in being reunited with them. The Court will therefore have to determine whether, in the particular circumstances of the case, the national authorities took all the necessary measures which could reasonably have been expected of them to facilitate the applicants' reunion and whether the measures taken complied with the urgency requirement warranted by the nature of the relations at stake.

78. The Court observes that on 15 September 2016 the Supreme Court of the Chechen Republic granted the first applicant a residence order in respect of her daughters, second to fifth applicants, then aged eight, six, five and three, respectively. Unable to recover the children from their paternal grandfather, who refused to comply with the above judgment voluntarily, on

28 October 2016 the first applicant applied to the District Bailiffs' Service for institution of the enforcement proceedings.

79. The enforcement proceeding were instituted almost a month later, on 24 November 2016, following the first applicant's complaint about the initial refusal to institute the enforcement proceedings of 3 November 2016 on the ground of lack of indication in the writ of enforcement of actions which the B.A. was required to perform. Without applying to the Town Court for clarification of the judgment of 15 September 2016, which would appear the most appropriate and prompt way of eliminating any alleged uncertainty as to the exact measures required from the bailiffs in the enforcement proceedings (see *Pakhomova v. Russia*, no. 22935/11, § 92, 24 October 2013), in the subsequent period of five months the District Bailiffs' Service discontinued the enforcement proceedings twice – on 27 February and 4 April 2017. No account of any enforcement measures undertaken by the District Bailiffs' Service during this period was provided by the respondent Government. The Court notes in this connection that in June 2017 the Prosecutor's Office lodged a submission with the head of the Federal Bailiffs' Service for the Chechen Republic, making representation against the conduct of the enforcement proceedings without notification and participation of the first applicant, following which disciplinary sanctions were applied to the bailiff in charge of the enforcement proceedings (see paragraph 23 above).

80. Meanwhile, the first applicant pursued another set of proceedings seeking to obtain her daughters' removal from B.A., and by the judgment of 5 June 2017, upheld on appeal on 26 September 2017, the Town Court granted her claim, having found no circumstances outweighing the first applicant's right, as the children's mother, to take priority over any other person in raising and educating her four daughters. The Supreme Court of the Chechen Republic took note in its appeal decision that the bailiffs' service had "practically withdrawn from the enforcement of the judgment of 15 September 2016, having relied on the absence of the term "removal of the children [from B.A.]" in the writ of enforcement, which generated new proceedings on the subject" (see paragraph 32 above).

81. The Court further notes that on 17 July 2017 the District Bailiffs' Service instituted enforcement proceedings in respect of the judgment of 5 June 2017. The enforcement measures taken by the bailiffs in the ensuing four months' period between July and November 2017 had been limited to B.A.'s summons to appear, which he had ignored, and three visits to B.A.'s place of residence, at which he was absent (see paragraphs 34-35 above). No evidence was provided by the Government to challenge the first applicant's allegation to the effect that the parties had not been informed about these enforcement measures. No evidence of any coercive measures applied to B.A. within the enforcement period had been provided either. Later on, on 24 November 2017 the enforcement proceedings were

suspended in view of the fact that B.A. had initiated the cassation review procedure of the judgment of 5 June 2017.

82. The Court notes with serious concern that following the quashing of the judgment of 5 June 2017, as upheld on appeal on 26 September 2017, in cassation review procedure, a new judgment was taken by the Town Court on 6 April 2018 and upheld on appeal by the Supreme Court of the Chechen Republic on 12 July 2018 ordering that the children should reside with their paternal grandfather B.A. The judgment in question was taken in disregard of the legal provision securing the parents' right to take priority over any other person in raising and educating their children (see paragraph 50 above) and their right to seek the return of their children from any person who retains them without any legal basis (see paragraph 51 above), without referring to any exceptional circumstances rendering the children's residence with their sole living parent dangerous, undesirable or otherwise running contrary to their interests (see paragraphs 53-54 above), in disregard of B.A.'s unlawful retention of the children since April 2016, his obstruction of the first applicant's contact with the children, and the domestic authorities' manifest inaction and unwillingness to enforce the previous judgments in the first applicant's favour.

83. Having regard to the foregoing, the Court concludes that the Russian authorities failed to take, without delay, all the measures that could reasonably have been expected of them to assist the applicants in being reunited and thereby breached their right to respect for their family life, as guaranteed by Article 8.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicants complained that they had not had an effective remedy to protect their family life as provided in Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

86. The Government repeated their argument about the availability to the first applicant of effective domestic remedies and about her failure to have had recourse to them (see paragraph 65 above).

87. The applicants maintained their complaint, arguing that the lack of enforcement of the judgment granting the first applicant residence order in respect of her daughters had rendered the judgment in question illusory. The first applicant tried all possible avenues of recourse: she appealed to the chief bailiff at the district, republican and federal levels, attempted to have the enforcement proceedings referred from the District Bailiffs' Service to

the Inter-district Department of Bailiffs, challenged the bailiffs' refusals to institute the enforcement proceedings, but none had had any positive result.

88. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

89. Having regard to its finding with regard to Article 8 of the Convention (see paragraphs 76-84 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 13 in this case.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 8

90. Lastly, the first applicant complained that the domestic authorities' failure to assist her in being reunited with her daughters amounted to discrimination on grounds of sex. She relied on Article 14 of the Convention, taken in conjunction with Article 8. Article 14 reads as follows:

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

A. Admissibility

91. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 124, ECHR 2012 (extracts), with further references).

92. It has not been disputed between the parties that the case falls within the ambit of Article 8 of the Convention. Indeed, the Court has found that the authorities' failure to assist the first applicant in being reunited with her daughters, second to fifth applicants, amounted to a violation of their right to respect for their family life in breach of Article 8 of the Convention (see paragraphs 83-84 above). It follows that Article 14 of the Convention, taken in conjunction with Article 8, is applicable in the present case.

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

B. Merits

1. *Submissions by the parties*

(a) The first applicant

94. The first applicant submitted that she had made a *prima facie* case of sex-based discrimination, which the Government had not even tried to refute.

95. She claimed that the domestic authorities' decisions were based on a general assumption prevailing in the North Caucasus Region that it is in the best interests of children to reside with their father or – in case their father is deceased or otherwise absent – with their father's relatives, rather than with their mother. The first applicant argued that this assumption was strongly supported by the facts of the present case, as well as existing overtly discriminatory policies and practices in the region and the statements of high-ranking officials. The first applicant was the only surviving parent of the second to fifth applicants. However, she had been precluded from being reunited with her children, who have been residing with their paternal grandfather for several years now following their abduction by the latter in April 2016.

96. The customary norm that the children should reside with their paternal male relatives in the event of a divorce or the death of the father permeated official decision-making processes and was tacitly accepted both by the judiciary and bailiffs' services particularly in the Chechen Republic. The first applicant's sex and status (as a single mother – a position of no status in Chechen society – who refuses to live with her husband's parents) had thus been a decisive factor in both the enforcement proceedings and the ensuing custody litigation. As illustrated by this case, the authorities enforced this quasi-official norm via obstruction and delay of the enforcement proceedings, using various tactics. Rather than display due diligence regarding the urgency of the situation and the passage of time, the authorities took advantage of this crucial time-bound element to the detriment of the first applicant's interests, ensuring that the period of separation from her children grew longer and thus that her children grew alienated from her, decreasing the chances for effective enforcement.

97. The first applicant further argued that while the reference to her sex had not been explicit, the fact that she was a female applicant seeking to take the children away from the paternal relatives had been a decisive factor.

98. The first applicant referred to the concerns raised by the CEDAW Committee as regards the regulation of family relations in the Northern Caucasus (see paragraph 59 above) and relevant statements by high-ranking officials in the Chechen Republic (see paragraph 61 above). She further noted that the Government had previously admitted that according to

Chechen traditions, in the event of parents' separation, as a rule, a child was to be raised by the father's family (see *Elita Magomadova v. Russia*, no. 77546/14, §§ 48 and 65, 10 April 2018).

99. The first applicant further argued that while she had demonstrated a difference in treatment of women in custody cases in the Northern Caucasus, the Government had failed to show that such difference had been justified. They presented no arguments at all to refute the applicant's statements and those by third-party interveners. They did not produce any statistical information to demonstrate, for example, the number of cases in which female applicants had successfully enforced custody orders in the Northern Caucasus, nor how many enforcement proceedings had been currently pending there. Such information could have provided an accurate picture of administrative and judicial practices. For her part, the first applicant on several occasions tried to obtain statistics from the local and federal bailiffs' service, without success. The most recent attempt was denied on the ground that she had not been a party to any enforcement proceedings.

100. The first applicant concluded that there had been no reasonable or objective justification for the failure of the domestic authorities to assist her in being reunited with her daughters which amounted to a violation of Article 14 of the Convention in conjunction with Article 8 on account of overtly discriminatory customs, practices and quasi-official regional policy.

(b) The Government

101. The Government made a reference to the provisions of Article 19 of the Constitution of the Russian Federation (see paragraph 48 above) and submitted that there has been no violation of Article 14 of the Convention in conjunction with Article 8 in the present case.

(c) Third-party interveners

(i) The Centre for Peacebuilding and Community Development

102. The Centre reported on wide-spread and persistent discriminatory socio-cultural practices affecting women in the Russian Federation's North Caucasus Region in the spheres of marriage, family law and family life, divorce and custody of the children, deliberate perpetuation and elevation of these practices to the level of *de facto* policy by State agents (childcare authorities, teachers, doctors, law enforcement personnel and judges). In particular, the majority of mothers who are divorced or widowed are denied custody of their minor children, a role in their children's upbringing, regular or any at all contact with them. It is not uncommon for mothers not to see their children for years and some lose contact altogether. The denial of the right to family life happens mostly outside the formal legal system, but in the minority of cases that are brought by desperate mothers to the courts,

judges and bailiffs routinely fail to effectively uphold mothers' rights. Custody cases and their enforcement tend to drag on for years and are characterised by procedural violations, ignorance of the best practices in assessing children's needs and well-being and in deliberate unwillingness of the bailiffs' service to enforce judgments. These decisions are not based on mothers' financial or psychological fitness as parents or children's best interests, but solely on the mothers' sex and are, therefore, discriminatory. They are based on the mothers' gender because of deeply ingrained local socio-cultural practices and beliefs, according to which children "belong" only to the father's side of the family, in terms of blood and identity and also in the sense of property.

103. Crucially, these custody disputes are not about whether the father or mother is the better parent, whether one or the other performed the role of primary caregiver before the divorce, or which one of them has a closer emotional bond with the child. Due to highly restrictive gender roles which are avidly policed by the community, fathers in this region rarely play a hands-on role in child care, neither before nor after the divorce. So when the father claims custody of a child after a divorce, it is not so he can become the child's main caregiver. This task will instead be assigned to one of his female relatives. In fact, in some cases the father may not even live in the same household or even city as the child after he has taken custody of him or her, he may place the child with his parents or any other paternal relatives, sometimes causing siblings to be split up as they are "farmed out" to different homes.

104. The Centre suggested that a number of steps could be taken by the Government in order to tackle the above issues, including awareness raising among women of their rights under formal, secular law, their protection from threats, pressure and harassment, comprehensive review of the performance of the bailiffs' service in the execution of custody rulings in terms of their speediness and effectiveness, designation of a special commission for the Republics of Dagestan, Ingushetiya and the Chechen Republic to review existing custody arrangements for their compliance with the law and the parties' rights.

(ii) The Equal Rights Trust

105. The Trust submitted that achieving gender equality was not only a major goal for the Council of Europe and its Member States, it was also of primary import under international human rights law. In many contexts, gender inequality was a primary causal factor for women's continued lack of enjoyment of other fundamental rights. Whilst the systemic, structural nature of gender discrimination could make it difficult to evidence, international and European best practice acknowledged that, in order for this discrimination to be properly tackled, it needed to be identified and its perpetrators held to account. Given this crucial objective, the Trust believed

that even where a violation of Article 8 of the Convention was found, the potential application of Article 14 should be considered wherever there was a *prima facie* case of gender discrimination, such as when a decision adverse to the lone parent mother was taken in a context where the family resided in a deeply patriarchal region in which patrilineal practices prevailed.

106. The Trust further submitted that inferences were of particular importance in the context of combatting “institutional” discrimination on the part of State authorities, where discriminatory societal norms were often entrenched in the institutional framework, and direct evidence of discrimination in an individual case could not be readily available. The assessment of the existence of a *prima facie* case of discrimination required the examination of contextual evidence regarding the alleged existence of systemic gender discrimination in the North Caucasus and the prevalence of customary patrilineal practices. Such evidence would include statements by the Russian courts and official bodies, reports of United Nations’ treaty bodies and special procedures, reports by reputable non-governmental organisations, relevant evidence adduced before the Court in previous cases and any statistics or data, where available. The State could rebut a *prima facie* case of discrimination by demonstrating that the difference in treatment was based exclusively on objective factors.

2. The Court’s assessment

(a) General principles

107. In order for an issue to arise under Article 14 of the Convention there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Konstantin Markin*, cited above, § 125). Discrimination that is contrary to the Convention may also result from a *de facto* situation (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV, and *S.A.S. v. France* [GC], no. 43835/11, § 161, ECHR 2014 (extracts)).

108. Once an applicant has shown that there has been a difference in treatment it is then for the respondent Government to show that that difference in treatment could be justified (see *D.H. and Others v. the Czech Republic*, cited above, § 188, and *Volodina v. Russia*, no. 41261/17, § 111, 9 July 2019).

109. As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, in proceedings before the Court there are no procedural barriers to the

admissibility of evidence or predetermined formulae for its assessment. In cases in which the applicants allege a difference in the effect of a *de facto* situation, the Court has relied extensively on statistics produced by the parties to establish a difference in treatment between two groups – men and women – in similar situations (see *Volodina*, cited above, § 112, with further references). This does not, however, mean that indirect discrimination cannot be proved without statistical evidence (see *D.H. and Others v. the Czech Republic*, cited above, § 188).

110. Once a large-scale structural bias has been shown to exist, the applicant does not need to prove that she was also a victim of individual prejudice. If, however, there is insufficient evidence corroborating the discriminatory nature of legislation and practices or of their effects, proven bias on the part of any officials dealing with the victim's case will be required to establish a discrimination claim (see *Volodina*, cited above, § 114, 9 July 2019, with further references).

111. The advancement of gender equality is today a major goal for the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on the grounds of sex. For example, States are prevented from imposing traditions that derive from the man's primordial role and the woman's secondary role in the family (see *Konstantin Markin*, cited above, § 127, and, more recently, *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 46, 25 July 2017, with further references).

(b) Application of those principles in the present case

112. Having regard to the arguments advanced by the first applicant (see paragraphs 94-100 above), the Court notes that the alleged difference in treatment of women in custody cases in the North Caucasus Region did not result from the wording of the statutory provisions on child custody in Russian law, but rather a *de facto* policy by State agents. Accordingly, the issue to be determined in the instant case is whether the manner in which the legislation was applied in practice resulted in the first applicant's being denied, on grounds of sex, the right to family life with her children after the death of their father without objective and reasonable justification.

113. The first applicant argued that the alleged difference in treatment of women in custody cases in the North Caucasus had been strongly supported by overtly discriminatory policies and practices in the region and the statements of high-ranking officials, as well as the facts of the present case. In particular, she referred to the concerns raised by the CEDAW Committee, which noted in its concluding observations on the eighth periodic report of the Russian Federation that it is "deeply concerned at the

regulation of family relations in the northern Caucasus, where the concept of "ownership" of the father over his children continues to reign, leading in practice to situations in which women lose any contact with their children after divorce". The Committee recommended the State party to "take the legislative measures necessary to eliminate the concept of "ownership" of the father over his children in the northern Caucasus, and ensure equal parental rights to women in all cases" (see paragraph 59 above).

114. The first applicant relied on the Government's statements made in the case of *Elita Magomadova* (see paragraph 98 above), whereby they admitted that according to Chechen traditions, in the event of parents' separation, as a rule, a child was to be raised by the father's family (see *Elita Magomadova*, cited above, §§ 48 and 65). She further relied on Human Rights Watch's Reports documenting gender discrimination against women in the Chechen Republic in the sphere of family life and child rearing and pointing out that Chechen traditional laws, often upheld by local authorities even when they run contrary to Russia's laws and international human rights obligations, stipulate that children belong with the father and his family (see paragraphs 61-62 above). The rapporteur on human rights violations in the Northern Caucasus for the PACE Committee for Legal Affairs and Human Rights also reported that women who were widowed could have their children taken away from them by their deceased husbands' families and that such attitude was based on local tradition and culture often exacerbated by the behaviour and statements of the local authorities (see paragraph 63 above).

115. The Court observes that the third-party interveners – the Centre for Peacebuilding and Community Development and the Equal Rights Trust – reported the existence of systemic gender discrimination of women in the North Caucasus Region, including in the sphere of custody of the children. The latter submitted, in particular, that the North Caucasus Region had been an extremely patriarchal region with deeply ingrained local socio-cultural practices and beliefs, according to which children "belonged" only to the father's side of the family, in terms of blood and identity and also in the sense of property, that the denial of the right to family life happened mostly outside the formal legal system, but in the minority of cases that were brought to the courts, judges and bailiffs routinely failed to effectively uphold mothers' rights (see paragraphs 102-106 above).

116. Turning to the circumstances of the present case, the Court observes that the judgments rendered in favour of the first applicant as the mother of the children and their only surviving parent in line with the Family Code of the Russian Federation, which gives parents priority in custody disputes, were not enforced. The protracted non-enforcement ultimately led to a judgment which, without taking into account that the children's paternal grandfather B.A. had kidnapped the children and refused to comply with the Supreme Court's determination of their place of

residence as being with their mother, decided that the children should continue to reside with B.A. and thus retrospectively approved the latter's refusal to return the children to their mother based on his claim that, as the family elder, he wanted his granddaughters to be raised and educated in his home (see paragraphs 42 and 82 above). The authorities thus, without any valid reason, contributed to and legalised a situation in which the mother of the children, as a result of gender stereotypes and prevalence of customary patrilineal practices in the region, was deprived of her right to raise and educate her children.

117. The Court further notes that it has previously examined several cases lodged by women applicants from the Russian North Caucasus Region, in which violations of Article 8 of the Convention were found against the background of circumstances similar to the present case (see *Elita Magomadova*, and *Gubasheva and Ferzauli*, both cited above; *Zelikha Magomadova v. Russia*, no. 58724/14, 8 October 2019; *Muruzheva v. Russia*, no. 62526/15, 15 May 2018; and *Yusupova v. Russia*, no. 66157/14, 20 December 2016).

118. In the light of the foregoing, the Court finds that the manner in which the relevant legislation was applied in practice in the present case amounted to the first applicant's discrimination on grounds of sex. No objective and reasonable justification was provided by the respondent Government, whose submissions on Article 14 of the Convention were limited to a denial of a violation and a reference to the Constitution of the Russian Federation guaranteeing the enjoyment of equal rights and freedoms to men and women and equal possibilities in exercising them (see paragraph 101 above).

119. There has accordingly been a violation of Article 14 of the Convention, taken in conjunction with Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicants claimed compensation for the non-pecuniary damage sustained as a result of the alleged violations of the Convention, in an amount to be determined by the Court.

122. The Government submitted that no award should be made under that head owing to the applicants' failure to specify the exact amount claimed.

123. The Court is satisfied by the manner in which the applicants formulated their claim. It has already granted claims formulated in the same manner in many cases (see *D.N. v. Switzerland* [GC], no. 27154/95, § 60, ECHR 2001-III; *Bykov v. Russia* [GC], no. 4378/02, § 111, 10 March 2009; *Vladimir Ushakov v. Russia*, no. 15122/17, § 109, 18 June 2019; and *Gubasheva and Ferzauli*, cited above, § 64).

124. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the first applicant 16,250 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable. As to the remaining applicants, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage they may have suffered as a result of the violation of their rights under Article 8 of the Convention (see, most recently, *Thompson v. Russia*, no. 36048/17, § 78, 30 March 2021, with further reference). The Court further holds that the Government should take, as a matter of urgency, all appropriate measures to ensure respect for the applicants' family life, duly taking into account the best interests of the children.

B. Costs and expenses

125. The first applicant further claimed EUR 1,196 for costs and expenses incurred before the domestic courts and EUR 12,939.90 for those incurred before the Court. She submitted payment receipts confirming her expenses in the proceedings before the domestic courts and detailed invoice of costs and expenses before the Court including legal fees, postal and administrative costs. The first applicant requested that costs and expenses incurred in the proceedings before the Court be paid directly into the bank account of Stichting Justice Initiative.

126. The Government argued that the first applicant's claim for costs and expenses incurred in the domestic proceedings had been unrelated to the consideration of her case by the Court and that her claim for costs and expenses before the Court could not be said to have been actually incurred, as the agreement between the first applicant and her representatives stipulated that the above-mentioned amount would only be payable if the Court adopted a judgment finding a violation of her rights.

127. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 130, ECHR 2016, and *Merabishvili v. Georgia* [GC], no. 72508/13, § 370,

ECHR 2017). A representative's fees are considered to have been actually incurred if an applicant has paid them or is liable to pay them (see *Ždanoka v. Latvia*, no. 58278/00, § 122, 17 June 2004, and *Merabishvili*, cited above, § 372). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant EUR 1,196 for costs and expenses incurred in the domestic proceedings and EUR 8,000 for those incurred before the Court, the latter sum to be paid directly into the bank account of Stichting Justice Initiative, plus any tax that may be chargeable to the first applicant (compare to *Zelikha Magomadova*, cited above, §§ 124-26).

C. Default interest

128. 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 in respect of all applicants;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention in respect of the first applicant;
5. *Holds*
 - (a) that the respondent State is to pay the first 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 16,250 (sixteen thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 9,196 (nine thousand one hundred and ninety-six euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, out of which EUR 8,000 (eight

thousand euros) to be paid into the bank account of Stichting Justice Initiative;

- (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Georges Ravarani
President