



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

## SECOND SECTION

### CASE OF BAŠKYS v. LITHUANIA

*(Application no. 47410/20)*

## JUDGMENT

Art 8 • Positive obligations • Family life • Domestic courts' decisions establishing child's residence with mother, reasoned and correctly referring to Court's case-law • Applicant able to put forward arguments on residence and contact rights, having access to all relevant information • Possibility of amending residence order if circumstances change • Authorities' obligation to provide assistance to applicant in highly conflictual proceedings fulfilled, notwithstanding mother's lack of cooperation resulting in limited contact between father and child

STRASBOURG

22 November 2022

**FINAL**

**22/02/2023**

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



**In the case of Baškys v. Lithuania,**

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Branko Lubarda,

Gilberto Felici,

Saadet Yüksel,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 47410/20) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Arūnas Baškys (“the applicant”), on 20 October 2020;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning the applicant’s right to be in contact with his son and the court decisions that the child should reside with his mother, under Article 8 of the Convention;

the parties’ observations;

Having deliberated in private on 18 October 2022,

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

## INTRODUCTION

1. The case concerns the applicant’s complaints that the court decisions that his son was to reside with the child’s mother, and the State authorities’ actions regarding the applicant’s contact with his son, were in breach of Article 8 of the Convention.

## THE FACTS

2. The applicant was born in 1979. It appears from his latest observations that he currently lives in Lithuania (see paragraph 35 below). The applicant was represented by Ms D. Balčiūnienė, a lawyer practising in Joniškis.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

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

5. On 25 May 2013 the applicant and A.B. got married in Lithuania. On 18 July 2013 a son, Ar.B., was born to them.

6. It appears from the court decisions that between October 2013 and February 2014 the family lived in the United Kingdom, where their relationship became tense. On 5 February 2014 A.B. returned with the child to Lithuania, to stay.

7. On 21 October 2016 the Kaunas District Court granted a request by A.B. for a divorce, the applicant having acknowledged that the marriage had disintegrated owing to the fault of both spouses, a fact which had also been noted by the court. The court established that Ar.B. should reside with his mother, and also ordered the applicant to pay child maintenance payments – 190 euros (EUR) – monthly.

8. The court also approved a friendly settlement agreement between the applicant and A.B., pursuant to which the applicant was to see his son every second weekend. In addition, the applicant and his son could communicate via Skype once a week, and the applicant could spend twenty-one days with his son during summer holidays. Once the child reached four years of age, the applicant could spend four weeks a year with him and take the child abroad for up to ten days. The child's mother was to provide the child with travel documents and clothes, and any information necessary for the child's being with the father.

9. On 15 September 2017 the Kaunas District Court, acting on an application by a bailiff, imposed a one-time fine of EUR 50 on A.B., for having, by both her actions and her failure to act, failed to execute the court's decision, and thus having denied the child's right to communicate with the father in order to maintain their connection. The bailiff noted that starting on 7 May 2017, A.B. had failed to comply with the contact order: she had failed to allow the applicant not only to communicate with the child, but also to see the child, and [even] to congratulate the child on his birthday. The bailiff pointed out that the applicant had been living in the United Kingdom. He had arrived to see the child each time as set out in the friendly settlement agreement approved by the court (see paragraph 8 above).

10. In 2018 A.B. started fresh court proceedings for amendments to the contact order (see paragraph 8 above) and for an increase in child maintenance payments. She also submitted that the child did not wish to communicate with his father. The applicant, for his part, argued that the child communicated with him willingly. In addition, the applicant did not object to a court-appointed psychological examination, which had been ordered by the Kaunas District Court in February 2018.

11. Having examined the child, and the documents in the civil case file, in report no. 103MS-124/2018 of 18 June – 5 July 2018, the child psychologist of the State Forensic Psychiatry Service (*Valstybinė teismo psichiatrijos tarnyba*) concluded that the child's understanding of the world corresponded to his age. The child could not have expressed an independent opinion about the questions that mattered in the civil proceedings because he had been too young and had suffered from a conflict of loyalties – he felt

anxiety and also felt unsafe when unrestrictedly expressing love towards his father, with whom he did not live. The child's perception that separation from his mother and being with his father was threatening to him was not normal but was a consequence of the parents' conflict and the mother's position which fostered anxiety. The mother was the main object of attachment and the boy was mirroring her position. That notwithstanding, when direct and uninterrupted communication between the child and the applicant was being observed, the child repeatedly asked to be able to communicate with his father, which showed that the child felt safe and happy with him. The psychologist recommended that contact between the child and the applicant take place without the presence of A.B. The mother's attitude, if she could be more proactive and, for example, tell their son that he was safe with the father, and that the father loved the child and would return him back to the mother, was particularly important.

12. By a ruling of 10 September 2018, the Kaunas District Court, with the participation of representatives of the childcare authorities, the applicant, his lawyer and the child's mother, granted the applicant's request for temporary protective measures and ordered that the applicant and the child were to meet and be able to communicate every second weekend. Given the fact that, as noted by the psychologists, the child showed a negative reaction towards the applicant when in the presence of the mother, the mother was to leave the child at any indoor play area in Kaunas, the father was to pick him up from there, and, during the child's time with the father, A.B. was not to disturb their communication. In addition, the applicant could communicate with the child every Tuesday and Friday via Skype, for thirty minutes, and at a designated time. The court did not specify the contact regime during the holidays, as the applicant asked the court not to rule on that because the holiday period was over.

13. By the same ruling, the court dismissed A.B.'s counterclaim that the child should only see the father every second Friday at a public institution – the Institute of Family Relations – in the presence of a psychologist. The court also dismissed A.B.'s claims that the child should not be allowed to stay with the father overnight, and that he should be able to communicate with the father for a shorter time, namely fifteen minutes. The court held that it was important to guarantee communication between the applicant and the child that was as frequent and as close as possible, and without an external person being present, who might make their communication harder. Although A.B. had claimed that it was necessary to take into account the child's opinion regarding communication with the father, the court referred to the psychological examination report (see paragraph 11 above) and considered that the child could not express an independent opinion on the questions that were important in the case. Besides, in this case to ask the child's opinion regarding his communication with the father not only ran counter to the child's interests, but would also not diminish his separation anxiety and his

emotional dependence on the mother. The court held that the mother was to not only refrain from obstructing the applicant in communicating with their son, but was to also “in all ways” encourage the child to communicate with the father. Accordingly, the mother’s unwillingness to let their son stay with the father overnight, and her wish to shorten the time for their communication via Skype, was nothing but an “unreasonable restriction on the applicant spending as much time as possible with his son”. Given that the applicant and his son’s connection had not been disrupted, A.B.’s requests were to be dismissed.

14. On 20 June 2019, during court proceedings on the merits (see paragraph 10 above), the applicant’s lawyer requested that temporary protective measures be applied and that the child be able to reside with the applicant at the applicant’s parents’ home in Lithuania from 1 to 31 July, so that they could interact. The applicant’s lawyer noted that childcare specialists could come to the home and the applicant and the child would visit a psychologist. If the child did not wish to stay with the father, or if a psychologist recommended that the child should be returned to the mother, the applicant would not object.

A.B. objected to the request for the child to stay with the father, irrespective of the duration of that stay.

The childcare authorities agreed to the child staying with the father for a period of one month, since the child had been “completely separated from the father [with whom] he was not allowed to communicate”. The authorities also noted that as of 7 June 2017, A.B. had completely failed to execute the Kaunas District Court’s decision, in that manner breaching the child’s right to communicate with the father. That abuse of maternal powers (*piktnaudžiavimas tėvų valdžia*) by A.B. had been damaging to the child.

15. On 27 June 2019 the Kaunas District Court granted the applicant’s request in part. On the basis of the parties’ observations and the childcare authorities’ explanations, the court found it “evident” that A.B. had not only failed to adhere to the contact order that had been previously agreed, but had also “viciously avoided allowing the underage son to fully communicate with [the applicant] in the future”. The court thus ordered that the child would reside with the father from 1 to 16 July 2019, as the court’s decision on the merits was to be delivered on the latter date.

16. By a decision of 16 July 2019, the Kaunas District Court granted the applicant’s request regarding the modalities of the contact with his son: the applicant could see the child every second weekend, without the parents’ meeting during the child’s transfer; the applicant could also communicate with the child via Skype twice a week, on Tuesdays and Fridays at 8 p.m. to 8.30 p.m. without A.B. being present in the room during the child and the applicant’s conversation; and he could spend a twenty-one-day holiday with the son each year, including taking the child abroad. The applicant was also

ordered to pay EUR 210 in childcare costs and A.B. was ordered not to obstruct the father and son's communication.

Subsequently, by a ruling of 22 January 2020, the Kaunas Regional Court essentially maintained the above contact order; it specified that to protect the child's emotional well-being, the transfer was to take place at a psychologist's office.

17. On the merits, the Kaunas District Court referred to experts' conclusions, witnesses' testimony, and the parents' arguments, and held that the child had had a conflict of loyalties because of both parents' conflictive behaviour. The court also noted that both parents had constantly filmed their communication with the child, whose rights could thereby be breached, despite the fact that the child had been used to it. From those recordings it was also clear that A.B. showed a dominant and demeaning attitude towards the applicant when he communicated with the child in her home. A neutral place to transfer the child to the applicant had, therefore, to be designated. The court also pointed out that A.B. had been visiting psychologists for consultations, however, it would perhaps be beneficial for her to attend such consultations not with the aim of determining how to make the child and father's relationship stronger, but in order to assess her own anxieties and fears about communication between the father and the son; otherwise, without any tangible result from those consultations, there was an impression that they had been in vain.

18. On 14 November 2019 the Kaunas District Court granted an application brought by a bailiff, and fined A.B. EUR 50 to be paid to the applicant for each day that she did not comply with a writ of execution of the Kaunas District Court issued on 1 June 2017. The court established that as of 2017 the applicant had had no opportunity to communicate with his child, despite his returning to Lithuania from the United Kingdom every second weekend in order to meet his son, for two years. Written evidence in the case confirmed that A.B. had systemically breached the applicant's right to see his son. Among other things, as confirmed by the bailiff, A.B. would not deliver the child to a children's indoor play area. As confirmed by the psychologists, even though the applicant had sought to communicate with his son, it was clear that the never-ending conflict between the parents had not only created additional tension between them, but had also been damaging to the child. The court emphasised that A.B. was to seek opportunities to create an environment for the child which would allow him to have contact with both parents. It also emphasised that the behaviour of both parents showed a lack of respect for each other, however they should nevertheless cooperate in the interests of the child.

By a ruling of 6 February 2020, the Kaunas Regional Court dismissed an appeal by A.B. and left the district court's decision unchanged.

19. In reply to a request for information by the Kaunas District Court on 9 June 2020, on 15 June 2020 the childcare authorities stated that their

specialists had been actively participating in the dispute between the applicant and A.B.: they had been involved in the court proceedings; had provided information to the bailiff regarding execution of the court decisions; taken part in the meetings with the psychologists at the bailiff's office; and provided the parents with information regarding specialists such as psychologists, and establishments which could provide assistance. They had also seen the child, at the applicant's request, in order to evaluate his "state of feeling threatened". Childcare specialists had concluded that A.B. had not shown any wish or initiative that the applicant should have even the slightest possibility of seeing his son and communicating with him. She would communicate with the childcare authorities, when it was explained to her how to behave towards the child; yet in reality she had taken no steps to make the applicant and the child's communication feasible. After almost every court hearing, with the mediation of the judge and childcare specialists, the way in which the applicant could see the child, even for a short time, would be agreed, yet A.B. had not kept her promises: she would not take the child to the indoor play area nor would she set off from home with the child before the applicant's arrival there.

20. In reply to a request by the applicant's lawyer of 17 February 2020, a psychologist stated that by a court ruling of 22 January 2020, she had been instructed to mediate when transferring the child from A.B. to the applicant, so that the parents would not meet in front of the child. The psychologist had invited A.B. to come to her office with the child before the meetings, so that it would become more familiar to him. The psychologist had also assured A.B. that no force would be used against the child should he not wish to go with the father. Despite the applicant contacting the psychologist one week before the planned transfer of the child on 1 February 2020, in order to make preparations for that meeting, and their discussing how to make the meeting interesting for the child, A.B. had not delivered the child on the set date. The psychologist had contacted A.B., who had subsequently failed to show up, claiming that the child had refused to go, on any of three other dates – 10, 13 and 15 February – which A.B. had claimed to be convenient for her. The applicant had thus gone to the psychologist's office on 15 February 2020 to no avail.

21. By a ruling of 21 April 2020, the Kaunas Regional Court dismissed appeals by the applicant and A.B. and left the Kaunas District Court's decision of 16 July 2019 (see paragraphs 16 and 17 above) unchanged. The ruling was made in proceedings in which there had been an oral hearing with the participation of the applicant, his lawyer, A.B. and the representative of a childcare institution.

22. On the merits, the Regional Court firstly referred to Article 3.174 of the Civil Code which states that the court is to resolve a child residence dispute having regard to the interests of the child and the child's wishes, and held that the place of the child's residence should remain with his mother, as



had been established by the first-instance court. A.B. had not guaranteed that the child would be raised by both parents, and childcare specialists had supported the conclusion that it would be premature to change the child's place of residence, since the mother had been the main object of his attachment and the child was fully dependent on her and had never lived without her. In addition, during the appellate court proceedings the applicant had "*de facto* confirmed" the first-instance court's conclusion that at present he was not ready for the child to live with him. There remained some uncertainty about where the child would live, what educational establishment he would attend and what living and educational conditions would be provided to him by childcare institutions in the United Kingdom. It was also unknown how the child's psychological state would be affected should he live without the person closest to him – his mother. Overall, there was no reason to conclude that changing the child's place of residence would be in his best interests as the only means to guarantee that he would be raised by both parents. The appellate court also referred to the Court's case-law in *Gineitienė v. Lithuania* (no. 20739/05, § 38, 27 July 2010), and *G.B. v. Lithuania* (no. 36137/13, § 105, 19 January 2016), to the effect that it was necessary to take a child's opinion into account. In the instant case, however, the child had been too young to express his opinion.

23. Secondly, as to the contact order, a situation that was abnormal and disturbing for the child was being created by both parents, which had been noted in a court ruling of 5 February 2016 in respect of an administrative offence, wherein the applicant had been subjected to a penalty for using swear words at A.B.'s home in front of the child; A.B. had raised her voice during that incident in front of the child without trying to hide the parents' conflict from the child. The applicant had also not followed up on the contact order and not taken care of the child during the child's sickness; he had not showed up during the child's celebrations in kindergarten. Similarly, in 2017 the applicant had once failed to return the child to A.B. on a Sunday, instead for objectively valid reasons promising to return him on Monday; he had alerted A.B. to what he was doing, yet A.B. had arrived to take the child to the police during the night, on account of which the child had been woken up and traumatised, which emotion and memory lasted to this day (see also paragraph 26 below). These actions on the part of A.B. could not be seen as beneficial to the child.

24. The Kaunas Regional Court also noted that medical data showed that the child had some development issues, but not psychological ailments, which meant that there was no reason to prevent his communication with his father, contrary to what had been suggested by A.B., and that the applicant had been unable to communicate with the child despite the fact that during the court proceedings the applicant had come to Lithuania "over one hundred times". The psychologists who had testified before the first-instance court had stated that the applicant and A.B. had disagreed on what kind of psychological

assistance they needed; the parents had also disagreed on whether the child's connection with the father should be strengthened and A.B. had insisted on participating in the applicant's contact with the child. It was obvious that it was not the applicant, but A.B., who had manipulated the child, and made communication between the child and the applicant impossible in any way. In addition, the execution of the court decision regarding the contact order had been complicated not by the applicant but by A.B. manipulating "legal theory, the child's emotions, and his attachment to the mother". In the light of the above, and referring to the child's interest in communicating with both parents, as established in domestic law, including by Article 4 § 1 of the Law on the Fundamentals of the Protection of Children's Rights, and Article 3.170 and 3.179 of the Civil Code (see *Z.J. v. Lithuania*, no. 60092/12, §§ 69 and 70, 29 April 2014), as well as the childcare authorities' conclusions received by the court on 20 February 2020, the appellate court held that the child and father's contact order would not be implemented if the child was taken [for a contact visit] from the child's home. A neutral place was necessary, and an indoor play area would be appropriate for the age of the child, who was seven years old and was about to go to school. The office of the psychologist who had been involved in the case was on the fifth floor and A.B. stated that she was not able to carry the child there.

25. By rulings of 25 June 2020 and 27 July 2020, the Supreme Court refused to accept for examination an appeal on points of law by the applicant; it had raised no important legal issues, and there had been no breaches of substantive or procedural legal norms by the lower courts.

26. As stated by the Government in their observations of 10 September 2021, and not contested by the applicant in his observations of 28 October 2021, the applicant and his son had met on the following occasions. On 28 January 2017 the applicant had stayed with his son at the applicant's parents' house in Lithuania. Following the procedure for communication that had been established, the child was to be returned to his mother on 29 January 2017. Having regard to the fact that the applicant refused to return the child on that day and fearing that the applicant might take the child abroad, A.B. had called the police (see also paragraph 23 above). From 25 April to 7 May 2017, the applicant and the child had stayed at the applicant's parents' house. Following the procedure for communication that had been established, the child was to be returned to his mother on 2 May 2017; the applicant had returned the child on 7 May 2017, stating that the child had been unwell. The applicant and the child had also met at the Institute of Family Relations on 15 December 2017, and on 12 and 15 January and 23 March 2018, in the presence of a psychologist. The applicant had also visited his son on 27 January 2018 at the child's residence; on 3 September 2018 the applicant had played with his son in a courtyard; on 5 September 2018 the applicant had gone to his son's judo training class, without their having communicated directly; and on 15 April 2019 the applicant had visited his son in a hospital.

27. In their observations of 30 November 2021, the Government added that the applicant had met his son on 3 August 2021 and on 25 October 2021.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

28. The domestic law and practice in childcare and child custody cases has been set out in *Z.J. v. Lithuania* (cited above, §§ 68-70); *G.B. v. Lithuania* (cited above, §§ 54-63); *Gineitienė* (cited above, §§ 25-28); and *Manic v. Lithuania* (no. 46600/11, § 67, 13 January 2015).

## THE LAW

### ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

29. The applicant was dissatisfied with the decisions of the domestic courts which fixed the mother's home as his son's place of residence. He also complained that he had not had effective contact rights. The applicant relied on Article 8 of the Convention which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his ... 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 ... for the protection of the rights and freedoms of others.”

#### **A. Admissibility**

30. The Government contended that the applicant's complaints were manifestly ill-founded.

31. Regarding the applicant's complaint about lack of contact with his son, the Government also submitted that, if the applicant was of the view that the Lithuanian authorities had failed to duly perform their duties, he could have initiated administrative proceedings to challenge their actions or failure to act. He could also have initiated separate proceedings for redress against the State, if he considered that the State authorities had failed to act in a timely manner in his case thus causing him damage. He could not therefore be considered as having exhausted domestic remedies.

32. The applicant disagreed.

33. The Court finds that the Government's objection about exhaustion of the domestic remedies is intrinsically linked to the merits of the applicant's complaint, and thus joins it to the merits.

34. The Court also notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicant**

35. The applicant disputed the domestic courts' conclusion that the change of his son's residence to that of the applicant would not have been in the best interests of the child. In his observations of 28 October 2021, the applicant stated that "at present" he had returned to live in Lithuania. However, three years of court proceedings proved that A.B. had manipulated the child. The applicant appeared to imply that any new proceedings concerning the child's place of residence would be futile, given the child's emotions and attachment to his mother.

36. The applicant also complained that the Lithuanian authorities had not ensured that A.B. would allow the child and the applicant to communicate in accordance with the established procedures for communication, despite the forensic experts' findings regarding the child's inner conflict of loyalties (see paragraph 11 above). He also contended that the authorities had not developed any coherent child support strategy. Although they had made recommendations to A.B., they had not effectively monitored the implementation of those recommendations. However, the applicant agreed that in court the childcare authorities had supported his interests. The applicant lastly submitted that given the clear fact that A.B. had not followed any court-established procedure for communication, the only way to protect the child was to remove him from the damaging custody of A.B. and to establish his place of residence with the father.

#### **(b) The Government**

37. The Government did not contest the argument that the domestic courts' decisions establishing the applicant's son's place of residence with his mother and not with the applicant had interfered with the applicant's right to respect for his family life (they referred to *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII). However, having regard to the criteria established in the Court's case-law regarding the positive obligations inherent in effective respect for family life, and regarding the justifications for interference listed in Article 8 § 2, the Government maintained that in the decisions at issue the margin of appreciation granted to the Contracting States, which is rather wide in the sphere of family law, had not been overstepped. The Lithuanian courts' decisions were in accordance with the domestic law and served to protect the interests of the applicant's child. Moreover, the interference complained of was necessary in a democratic society within the meaning of Article 8 § 2. The child's well-being was one of the main principles guiding the Lithuanian courts in this case and a drastic change of the child's place of residence would have been traumatising.

Lastly, the applicant was not precluded from applying to court for a change of the child's place of residence in the future.

38. Regarding the applicant's right to be in contact with his son, the Government submitted that contact had been prevented because of a lack of cooperation between the parents. However, support had been provided to the applicant by the State throughout the proceedings. A.B. had been subjected to a penalty, but the State authorities' possibilities of applying coercion when ensuring communication between the father and the son had been limited.

## 2. *The Court's assessment*

39. The general principles on custody and contact rights have been summarised in the case of *Khusnutdinov and X v. Russia* (no. 76598/12, §§ 76-83, 18 December 2018).

40. The Court notes that the applicant's grievance was twofold: firstly, he complained about the domestic courts' decisions that the child's place of residence would remain the child's mother's home. Secondly, he was dissatisfied with the way in which the State authorities had implemented their positive obligations inasmuch as they concerned the applicant's right to maintain contact with his son. The Court will examine these grievances in sequence.

### (a) **Whether the case should be examined from the standpoint of the State's negative or positive obligations**

41. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention.

In the instance case, the Court considers – and this was acknowledged by the Government – that the court decisions establishing that the applicant's son should live with his mother amounted to an interference with the applicant's right to respect for his family life, as guaranteed by Article 8 (see *G.B. v. Lithuania*, cited above, § 87).

Further, in relation to the State's positive obligations, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action. This also applies to cases where contact disputes concerning children arise between parents (see, *mutatis mutandis*, *Manic*, cited above, § 101 *in fine*; *Stankūnaitė v. Lithuania*, no. 67068/11, § 113, 29 October 2019, and *Khusnutdinov and X*, cited above, § 78). It is thus in the light of the State's positive obligations under Article 8 of the Convention that the Court will examine whether the difficulties in enforcing the court decisions for protective measures regarding the contact

between the applicant and his son amounted to a breach of the applicant's right to respect for his family life.

**(b) As to the issue of residence**

42. An interference into the mutual enjoyment by the parent and child of each other's company entails a violation of Article 8 unless it was "in accordance with the law", had an aim or aims that was or were legitimate under Article 8 § 2, and was "necessary in a democratic society" for the aforesaid aim or aims (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 202, 10 September 2019).

*(i) In accordance with the law*

43. The Court observes that, as regards the issue of the child's residence, the interference had a basis in national law, namely Article 3.174 of the Civil Code (see paragraph 22 above).

*(ii) Legitimate aim*

44. In the Court's view, the relevant legal measures are clearly designed to protect children and there is nothing to suggest that they were applied in the present case for any other purpose. The interference in question – intended as it was to safeguard the development of Ar.B. – had, therefore, for the purposes of paragraph 2 of Article 8, the legitimate aims attributed to it by the Government (see also *Z.J. v. Lithuania*, cited above, § 95, and *G.B. v. Lithuania*, cited above, § 90).

It therefore remains to be examined whether the refusal to make a residence order in the applicant's favour can be considered "necessary in a democratic society".

*(iii) Necessary in a democratic society*

45. Regarding the applicant's case, the Court notes that in 2016 the applicant had agreed that his and A.B.'s son was to reside with the child's mother (see paragraphs 7 and 8 above). It also appears that the applicant's claim concerning that residence agreement was brought about by the circumstances that, because of the parents' ongoing conflict and hostility, the contact arrangement, which had been previously approved by the court on the basis of the applicant and A.B.'s friendly settlement agreement, had not been complied with (see paragraphs 8 and 14 above).

46. Be that as it may, on the basis of the materials in its possession, the Court finds that the Lithuanian courts had reached reasoned decisions for why the child was to remain living with his mother. Those decisions were based on the findings by the forensic experts, who had examined the child and the family situation, and referred to the conflict of loyalties from which the child suffered (see paragraphs 11 and 22 above). Notwithstanding deficient

behaviour on the part of the child's mother, the fact remained that the child was closely attached to her and had never lived apart from her. It was unclear how the child's psychological state would be affected should he be separated from his mother. As for the applicant, there remained uncertainty as to where the child would live should he be transferred to his father's custody. The applicant had himself confirmed in court that he had not been ready for the child to live with him (see paragraph 22 above). It is worth noting that in reaching their decisions, the Lithuanian courts correctly referred to the Court's case-law (*ibid.*).

47. The Court has also consistently held that, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by that provision (see *Buscemi v. Italy*, no. 29569/95, § 58, ECHR 1999-VI, and *Elsholz*, cited above, § 52). In the instant case, the Court notes that the applicant, in person or through his lawyer, was present at a number of hearings where the protective measures and the merits of A.B.'s civil claim and the applicant's counterclaims were considered by the Kaunas City District Court and the Kaunas Regional Court (see paragraphs 12, 14, 21 and 22 above). Thus, he had the opportunity to submit requests and evidence, present his arguments and comment on the other participants' submissions before the courts, both in writing and orally, and he also had the right to appeal. That being the case, the Court cannot but conclude that the applicant was thus placed in a position enabling him to put forward all of his arguments to support his claims – both as regards the residence and the contact rights, and he also had access to all relevant information relied on by the courts (see, *mutatis mutandis*, *G.B. v. Lithuania*, cited above, § 105).

48. The Court has already had occasion to note that, should the circumstances change, a parent retains the possibility of applying to court so that the residence order can be changed (see *Z.J. v. Lithuania*, cited above, § 105).

**(c) As to the issue of contact**

49. The Court considers that the authorities, faced with the tense relationship between the parents, had a difficult task. Both the applicant and his former wife continued to submit a number of claims and counterclaims against each other (see paragraphs 10 and 14 above). The child's mother even sought the involvement of the police, accusing the applicant of not returning the child in a timely fashion, despite the fact that this was obviously unnecessary (see paragraphs 23 and 26 above). The parents' behaviour was therefore far from constructive, this fact being acknowledged by the authorities, namely the psychologists and the courts (see paragraphs 17, 18 *in fine*, 23 and 24 above).

50. Notwithstanding this fact, the Court has had occasion to hold that lack of cooperation between separated parents is not a factor which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 176, 27 September 2011).

51. In the instant case, the Court finds that the Lithuanian authorities' obligation to provide assistance in these highly conflictual proceedings was fulfilled. In fact, childcare authorities, court-appointed psychologists and the domestic courts alerted and warned both parents a number of times that their own anxieties and interests should not triumph over the interests of the child (see paragraphs 11, 13, 17, 18, 23 and 24 above). The court-appointed psychologist saw and examined the child, and later the services of a psychologist were placed at the applicant's disposal; that psychologist had been actively involved in the attempts for the applicant to be in contact with his son (see paragraphs 11 and 20 above). The psychologist's subsequent conclusion that physical force was not a measure to be used in a situation where the child would not wish to go with his father is tantamount to the Court's position that any obligation to apply coercion to facilitate the reunion of a parent and children must be limited (see *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A, and *Z.J. v. Lithuania*, cited above, § 98, with further references). The court also instructed a psychologist to mediate during the child's transfer to the applicant from A.B., yet in the face of A.B.'s uncooperative behaviour, the psychologists were powerless (see paragraphs 20 and 24 above). The childcare authorities likewise regularly assisted the courts and the applicant by answering the applicant's queries, and making suggestions about how to enforce the court orders for contact between the applicant and his son; they had assisted the child's mother by explaining to her how to behave with the child; similarly, those authorities had not objected to the child's residence with the father for a one-month period (see paragraphs 12, 14, 19 and 24 above; contrast *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 112, ECHR 2000-I). In fact, the applicant himself acknowledged that the childcare authorities had supported his side of the dispute in court (see paragraph 36 above). As for the courts, they showed sensitivity to the applicant's situation by rejecting A.B.'s claims for the restriction of the applicant's contact with his son on the pretence that it would be damaging to the child, and instead urged A.B. not only to refrain from obstructing that contact but also to actively foster it (see paragraph 13 above). Likewise, the courts emphasised the need for contact which was direct and undisturbed by the child's mother, and essentially granted all the requests by the applicant inasmuch as the modalities of his contact with the child were concerned, and also ordered that the child's transfer was to take place in a



neutral environment, which was much more beneficial for the child's meetings with his father (see paragraphs 12, 13 and 16 above).

52. On the facts, the Court acknowledges that despite the applicant's over one hundred visits to Lithuania, his contact with the child had been very limited (see paragraphs 24 and 26 above). While finding this fact regretful, the Court notes that *de jure* at no stage of the court proceedings was the applicant prohibited from being in contact with his son (see *Elsholz*, cited above, § 49, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I). Lastly, and although this may be of little comfort to the applicant, on the application by a bailiff, A.B. was fined twice for failure to comply with the contact order (see paragraphs 9 and 18 above). The State thus did not remain a passive bystander.

53. In the light of the foregoing, the Court finds that, on the facts of the case, the Lithuanian authorities may not be reproached for having failed to perform their duty to assist the applicant, notwithstanding A.B.'s lack of cooperation. The Government's objection as to the applicant's failure to exhaust domestic remedies (see paragraph 31 above) must therefore be dismissed.

**(d) Conclusion**

54. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 8 of the Convention.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY**

1. *Decides* to join to the merits the preliminary objection concerning the exhaustion of domestic remedies and dismisses it;
2. *Declares* the application admissible;
3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 22 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Registrar

Jon Fridrik Kjølbro  
President