



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

SECOND SECTION

CASE OF **BÎZDÎGA v. THE REPUBLIC OF MOLDOVA**

(Application no. 15646/18)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Domestic courts' refusal to examine the merits of the applicant's request for the transfer of custody of his son • No genuine examination of admissibility of custody claims or reasons provided • Applicant deprived of any possibility of asserting custodial rights when new factual circumstances arose and of a determination of those rights as explicitly provided for under domestic law • Disproportionate restriction of applicant's right of access to a court impairing its essence

Art 8 • Family life • Restriction of applicant's contact rights with son, established by decision-making process which, in case circumstances, was not reasonable, fair and sufficiently expedient • Domestic authorities' failure to consider applicant's alleged history of domestic violence, a relevant and mandatory factor to be weighed in assessment • No indication from records or child protection authority's decision of any autonomous and comprehensive risk assessment or any measures in order to maintain applicant's contact with son without jeopardising child's and mother's safety

STRASBOURG

17 October 2023

FINAL

17/01/2024

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

In the case of Bîzdîga v. the Republic of Moldova,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Pauliine Koskelo,

Frédéric Krenç,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 15646/18) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan and Romanian national, Mr Vadim Bîzdîga (“the applicant”), on 20 March 2018;

the decision to give notice to the Moldovan Government (“the Government”) of the complaints concerning access to a court and visiting rights (Articles 6 and 8 of the Convention) and to declare the remainder of the application inadmissible;

the decision of the Romanian Government not to intervene in the case;

the parties’ observations;

Having deliberated in private on 26 September 2023,

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

INTRODUCTION

1. The present case concerns alleged disproportionate limitation of the applicant’s visiting rights, established in a deficient procedure, as well as the limitation of the applicant’s right of access to a court in proceedings concerning custody rights. The applicant complains of a violation of his rights under Articles 6 and 8 of the Convention.

THE FACTS

2. The applicant was born in 1989 and lives in Trinca. He was represented by Mr A. Cebotari, a lawyer practising in Chişinău.

3. The Government were represented by their Agent at the time, Mr O. Rotari.

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

5. The applicant and C. were married in 2014 and in March 2015 they had a child. In November 2015 C. (“the mother”) left the common residence together with the child.

6. On 3 March 2016 the Hâncești District Court issued a protection order against the applicant in respect of C. for a period of ninety days, relying on several incidents of psychological violence at the hands of the applicant after October 2015, as well as statements made by him in court. The court dismissed the allegations of physical violence, namely slaps to the face, and a request to prevent the applicant from having contact with the child. The court ordered the applicant to refrain from having any contact with C. and that he stay away from her residence and university.

7. On 17 June 2016 a court granted their divorce, awarded C. custody of the child and rejected a counter-claim lodged by the applicant for custody. It concluded that both parents were fit to care for the child but that in view of the child's age, it was in his best interests to stay with the mother. Although in those proceedings C. had raised the issue of domestic violence and the protection order against the applicant, the court did not provide an assessment of these elements when giving the decision on the child's custody. The applicant appealed but subsequently withdrew his appeal; the above-mentioned judgment became final when the Chișinău Court of Appeal accepted the applicant's withdrawal of the appeal on 14 March 2017.

I. PROCEEDINGS CONCERNING THE CONTACT SCHEDULE

8. In September 2016 the applicant sought a contact arrangement with his son, arguing that his repeated attempts to see and take the child had been rejected by C. and her parents.

9. In reply, on 4 October 2016 the Hâncești Child Protection Department ("the child protection authority") approved a contact schedule with a duration of one year, according to which the applicant could see his child for two hours a week at the child's place of residence.

10. According to a record, provided by the Government to the Court, of a meeting of 4 October 2016, the child protection authority took note of C.'s submissions over the telephone and a complaint lodged by her on 10 August 2016 alleging that the applicant's repeated violent behaviour had been witnessed by the child. The record cited an undated domestic violence protection order issued by the Hâncești District Court against the applicant and a psychological report which found that C. had experienced trauma from physical and psychological violence, including threats by the applicant of death and of child abduction. At the meeting, a specialist emphasised the applicant's violent and aggressive behaviour, which posed a risk to the child and the mother, and recommended that for safety reasons, visits should take place at the mother's residence and the contact arrangement should be limited to one year.

11. On 18 October 2016 the applicant appealed against this arrangement, seeking to be granted more time with his child, notably seven hours twice per week while the mother was attending classes and every second weekend. He

argued that he had not been invited to be heard by the child protection authority and that only C.'s opinion had been sought.

12. In reply, on 31 October 2016 the child protection authority extended the contact schedule to a total of four hours per week at the mother's residence for a period of one year. The decision cited a written statement by C. that the applicant had been harassing her psychologically by not coming to the agreed visits, which had prevented her from scheduling other activities in the interests of the child.

13. According to the record of the meeting of 31 October 2016, provided by the Government to the Court, the child protection authority considered the following factors: the age of the child, the fact that he was being breastfed and the applicant's violent behaviour, which posed a risk to the mother and to the child. The authority relied on the legal and medical documents from its previous meeting concerning domestic violence (see paragraph 10 above) as well as on the child's involvement in other activities when approving a visiting schedule of four hours per week.

14. On 18 November 2016 the applicant initiated court proceedings against the child protection authority, seeking an extended contact schedule. He argued that the established schedule had been issued without his involvement, that was not proportionate to the amount of time that C. was allowed to have with the child and that he should be allowed to see the child outside the mother's residence.

15. On 5 April 2017 the Buiucani District Court dismissed the applicant's complaints. It found that he had not been restricted in his visiting rights and that from October 2016 to February 2017 he had not complied with the terms of the approved schedule. As evidence, the court cited C.'s complaints (see paragraph 21 below).

16. The applicant appealed against that judgment on 10 April 2017.

17. In the absence of any progress in the proceedings, on 22 June 2017 the applicant sought information about the status of the case and was informed by the Chişinău Court of Appeal that the file had never reached it. On 7 July 2017 he complained to the Superior Council of Magistrates about the failure of the first-instance court to send the case file to the appellate court within the legal time-limit. On 22 December 2017 the Disciplinary Board of the Superior Council of Magistrates confirmed the delay but refused to impose any disciplinary sanction, citing the judge's heavy workload. On 30 August 2017 the applicant requested the acceleration of the proceedings.

18. In a reasoned appeal lodged by the applicant on 21 September 2017, he complained of the lack of a fair decision-making process on the part of the child protection authority, which had not invited him to express his views, but relied on C.'s allegations of psychological harassment. He also referred to the prosecutor's decision of 19 August 2016 to discontinue the criminal investigation in respect of him, which was subsequently upheld by the Chişinău Court of Appeal on 22 December 2016. The applicant indicated that

the court had failed to respond to his request for a more extensive contact arrangement. He relied directly on Article 8 of the Convention and referred to circumstances in which the existing schedule had not been respected (see paragraphs 22-24 below).

19. On 1 November 2017 the Chişinău Court of Appeal dismissed the applicant's appeal and upheld the conclusion and reasoning of the first-instance court. The court noted that the schedule had been issued for a period of one year and that four hours per week was an adequate contact arrangement in respect of a child aged one and a half, who had a specific daily programme on account of his age. The court dismissed, as unsubstantiated, the applicant's allegations that C. had failed to comply with the terms of the schedule. The court concluded that the child protection authority had decided on the matter on the basis of the applicant's request and the child's best interests, given his age, and that by not inviting the applicant to the meeting, the authority had not disregarded any procedural safeguard.

20. In an appeal on points of law, the applicant reiterated the same arguments as before (see paragraph 18 above), noting that the procedural delays in the examination of the case had rendered its solution irrelevant since the validity of the schedule had expired on 31 October 2017. The appeal on points of law was dismissed with final effect by the Supreme Court of Justice on 27 December 2017.

II. ENFORCEMENT OF THE CONTACT SCHEDULE

21. The Government submitted copies of C.'s complaints to the child protection authority reporting the applicant's alleged failure to appear for scheduled visits on various dates from September 2016 to February 2017.

22. On 11 May 2017 at the applicant's request, a judicial bailiff drew up a report attesting to the applicant's inability to have a scheduled meeting with the child, as nobody had answered the door or the telephone on the day and time of the scheduled visit.

23. On 22 May 2017 the applicant complained to the police that during his scheduled visit with his child on 16 May 2017, C. had called the police and informed them that the visit was outside the approved schedule. According to the applicant, C. had shown the police the initial schedule and deliberately withheld information of its amendment on 31 October 2016. He argued that such actions had prevented him from exercising his contact rights and had caused the police to intervene.

24. On 22 May 2017 the applicant complained to the child protection authority that he had been unable to have scheduled visits on 13 April, 11 May and 16 May 2017 and about his being obliged to meet the child exclusively outside the gates of the child's maternal grandparents' house or in the car when the weather was bad. He also noted that the child's paternal

grandparents had been issued a contact schedule which overlapped with his visiting schedule, thereby reducing his visiting time.

III. PROCEEDINGS CONCERNING CHANGE OF CUSTODY

25. On 4 December 2017 the applicant initiated court proceedings seeking custody of the child. The title on his statement of claim read “for the establishment of the child’s residence”. He relied directly on the legal provisions which entitled a non-custodial parent to seek custody of the child if the contact schedule was not respected (Article 64 § 3 of the Family Code). He noted that after the expiry of the first contact schedule on 31 October 2017, the child protection authority had refused to issue another schedule on the grounds that C. was not in the country.

26. On 8 December 2017 the Hâncești District Court rejected the applicant’s complaints, refusing to examine them on the merits. It noted that the residence of the child had already been established with the mother by a final judgment of 17 June 2016. Relying on the identity of the parties, the subject matter and the legal grounds in the two sets of proceedings, the court ruled that a fresh examination of the matter would amount to a violation of the principle of legal certainty.

27. The applicant appealed against that decision, noting that his complaints, based on Article 64 § 3 of the Family Code, had resulted from the mother’s failure to abide by the terms of the established contact schedule.

28. On 22 March 2018 the Chișinău Court of Appeal upheld the Hâncești District Court’s decision with final effect, reiterating its reasons.

IV. SUBSEQUENT PROCEEDINGS

29. The initial contact arrangements expired on 31 October 2017 and subsequently, on 6 November 2017, the applicant sought a new contact arrangement. The child protection authority refused to establish an arrangement owing to the fact that the mother and child were absent from the territory of the Republic of Moldova. The applicant appealed against that decision and, by a final judgment of 6 February 2019, the child protection authority was ordered to establish a contact arrangement.

30. On 14 May 2019 the child protection authority issued a new contact arrangement, which was valid for two years. The applicant appealed against it, arguing that it provided for an unreasonably limited amount of time with his son. On 14 December 2022 the Supreme Court of Justice dismissed the applicant’s claims with final effect.

RELEVANT LEGAL FRAMEWORK

31. The relevant parts of the Family Code of the Republic of Moldova, enacted by Law no. 1316 of 26 October 2000, read as follows:

Article 64. Exercise of parental rights when parents live separately

“(1) The parent who lives with the child shall not be entitled to prevent the child’s contact with the other parent who lives separately, except when his or her behaviour is detrimental to the child’s best interests or poses a danger to the child’s physical and psychological integrity.

(2) The parents shall be entitled to reach an agreement relating to the exercise of parental rights by the parent who lives separately from the child. Any related disputes shall be settled by the child protection authority, the decision of which may be appealed against in court. ...

(3) If a court’s judgment is not enforced, the measures provided in the Code of Civil Procedure shall be imposed on the parent responsible for the non-enforcement. If the court’s judgment is repeatedly disrespected, the parent who lives separately from the child may request, and the court may decide, to transfer the child to that parent, after considering the child’s best interests and [his or her] opinion.”

32. The relevant parts of the Code of Civil Procedure of the Republic of Moldova, enacted by Law no. 225 of 30 May 2003, read as follows:

Article 166. Form and content of a statement of claim

“(6) The statement of claim or a document exercising any form of appeal shall be considered valid, even if it is named incorrectly.”

Article 169. Refusal to consider a statement of claim

“(1) The judge shall refuse to consider a statement of claim if:

...

(b) there is a final court judgment in respect of a dispute between the same parties on the same subject matter and based on the same grounds ...

(3) The refusal of a judge to consider a statement of claim shall exclude the possibility of the same plaintiff re-lodging the same claim against the same respondent on the same subject matter and grounds.”

33. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS 210) was adopted in Istanbul on 11 May 2011 and entered into force in respect of the Republic of Moldova on 1 May 2022. The Convention requires that incidents of violence covered by it be taken into account in the determination of custody and visitation rights of children (Article 31). Its Explanatory Report states:

“175. This provision aims at ensuring that judicial authorities do not issue contact orders without taking into account incidents of violence covered by the scope of this Convention. It concerns judicial orders governing the contact between children and their parents and other persons having family ties with children. In addition to other factors, incidents of violence against the non-abusive carer as much as against the child

itself must be taken into account when decisions on custody and the extent of visitation rights or contact are taken.

176. Paragraph 2 addresses the complex issue of guaranteeing the rights and safety of victims and witnesses while taking into account the parental rights of the perpetrator. In particular in cases of domestic violence, issues regarding common children are often the only ties that remain between victim and perpetrator. For many victims and their children, complying with contact orders can present a serious safety risk because it often means meeting the perpetrator face-to-face. Hence, this paragraph lays out the obligation to ensure that victims and their children remain safe from any further harm.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that he had been denied access to a court because his application to have his child’s custody transferred to him had not been decided on by the national courts, in breach of Article 6 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

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

A. The parties’ submissions

36. The applicant submitted that the courts’ refusal to determine the merits of his application for the transfer of custody had been contrary to domestic law. Irrespective of the title on the statement of claim, the document had clearly relied on Article 64 § 3 of the Family Code and its content had clearly referred to the situation as it had developed after the delivery of the initial judgment in respect of custody and which, therefore, had not been determined by that judgment. Moreover, under Article 166 of the Code of Civil Procedure, an incorrect title on a document did not in itself invalidate the procedural request.

37. The Government acknowledged that the applicant should have had access to a court to be given a decision in respect of his application under Article 64 § 3 of the Family Code. However, the courts’ refusal to deliver a decision on the merits had resulted from a procedural error on the applicant’s part, as, in the statement of claim, he had erroneously entitled his action “for the determination of the child’s place of residence” rather than “for the modification of the child’s place of residence”. According to the Government, the courts had rightfully refused to re-examine “the determination” of the child’s place of residence, as that claim had already been examined in a court judgment of 17 June 2016, which had become final on 14 March 2017 (see

paragraph 7 above). However, the Government contended that the refusal had not precluded the applicant from submitting his statement of claim again after correcting the title.

B. The Court's assessment

38. The Court reiterates that the right to a fair hearing must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights. Everyone has the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way, Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, is one particular aspect (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 192, 25 June 2019, with further references).

39. The right of access to a court under Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (see *Grzęda v. Poland* [GC], no. 43572/18, § 298, 15 March 2022, with further references).

40. The right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access, by its very nature, calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. That being stated, those limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. In addition, such limitations will not be compatible with Article 6 § 1 if they do 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 achieved (see *Nicolae Virgiliu Tănase* cited above, § 195, with further references; see also *Grzęda*, cited above, § 343, with further references).

41. It has not been disputed by the parties that the applicant's right of access to a court was limited by the domestic courts' refusal to examine the merits of his application for the transfer of custody over his son.

42. The Court is now called to examine whether the limitation pursued a legitimate aim and notes that it has been argued that the limitation pursued the aim of the good administration of justice and protection of the principle of legal certainty.

43. While it is ready to accept that the limitation might pursue these two aims, the Court notes the differences inherent in the two arguments. On the one hand, the domestic courts relied exclusively on the principle of legal certainty, which prevented any repeated dispute between the same parties on the same subject matter and based on the same grounds. In the event of such a scenario, the courts' decisions would have precluded the applicant from

lodging his claim again and having them determined on the merits. On the other hand, the Government further argued that correcting the title of the applicant's claims would have contributed to a good administration of justice and that the courts' decisions had not curtailed the essence of his right of access because after such correction, the applicant could have submitted his statement of claim again.

44. The Court observes that there is nothing in the domestic courts' decisions (see paragraphs 26 and 28 above) to indicate, as the Government argued, that the applicant merely had to change the title on his statement of claim and submit it again. The Code of Civil Procedure explicitly prohibits the repeated submission of claims which had already been dismissed for the same reasons, as those of the applicant (see paragraph 32 above), and the Government did not submit any information to the contrary.

45. For that reason, the Court will assume that the applicant was precluded from lodging his claims again and will look only at whether the impugned decisions were proportionate to the aim of upholding the principle of legal certainty.

46. The Court reiterates that it is for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A; *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports of Judgments and Decisions* 1998-II; and *Nusret Kaya and Others v. Turkey*, nos. 43750/06 and 4 others, § 38, ECHR 2014 (extracts)). It follows that the Court cannot call into question the findings of the domestic authorities on alleged errors of domestic law unless they are arbitrary or manifestly unreasonable (see, to that effect, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, §§ 85-86, ECHR 2007-I). Moreover, the mere fact that an action is held inadmissible on procedural grounds does not mean denial of access to a court, provided that the applicant's submissions have been the subject of a genuine examination and the court stated adequate and sufficient reasons for such decision (see, for example, *Obermeier v. Austria*, 28 June 1990, § 68, Series A no. 179, and *Konkurrenten.no AS v. Norway* (dec.), no. 47341/15, §§ 46-48, 5 November 2019).

47. The Court finds that the national courts made a decision concluding on the identity of the three above-mentioned factors, namely the parties, subject matter and grounds; however without responding to the applicant's legal argument under Article 64 § 3 of the Family Code, which entitled him to seek the transfer of the child to him if the custodial parent failed to comply with the terms of the contact arrangements – circumstances which occurred after the initial judgments on custody rights and contact rights had already been delivered and, therefore, could not have been determined by those judgments. The Government did not dispute this fact and the domestic courts did not provide for another interpretation of that provision; the courts simply omitted to consider that legal ground altogether.

48. The Court observes, however, that in this case the national courts have not genuinely examined the admissibility of the applicant's custody claims and have not provided reasons for rejecting those claims; as a result they deprived him once and for all of any possibility of asserting his custodial rights when new factual circumstances arose and when a determination of those rights was explicitly provided for under domestic law.

49. The Court therefore considers that the applicant suffered a disproportionate restriction on his right of access to a court and that, accordingly, the essence of his right to a court was impaired.

There has therefore been a violation of Article 6 § 1 of the Convention with regard to the right of access to a tribunal.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. The applicant complained that the 2016 contact arrangement in respect of his child had been disproportionately reduced in a procedure which had lacked procedural safeguards, in breach of Article 8 of the Convention, which reads as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

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

A. The parties' submissions

52. The applicant argued that the contact arrangement of 2016 had provided for an unreasonably limited amount of time with his son - four hours per week - and that it had been established by the child protection authority on the basis of C.'s submissions, without his being given the opportunity to respond. Moreover, the undue delay in the court proceedings in respect of the contact arrangement had deprived them of purpose, as a judgment had not been reached before the expiry of that arrangement. He argued that the allegations of domestic violence had been unsubstantiated and had thus resulted in the discontinuation of the criminal investigation in respect of him. He submitted that the records of the child protection authority's meetings, submitted by the Government in the proceedings before the Court (see paragraphs 10 and 13 above), had never been presented to him previously or discussed in the domestic court proceedings.

53. The Government submitted that the limitation on the applicant's contact rights had been proportionate in view of the allegations of a history of domestic violence – in respect of which they referred to the protection order of 3 March 2016 and the criminal investigation into charges of domestic violence in respect of the applicant – as well as his disinterest in visiting the child and the child's age. The Government provided copies of the records from the child protection authorities' meetings on 4 and 30 October 2016 and the report evaluating the psychological trauma experienced by C., which had substantiated the above-mentioned reasons for limiting the applicant's contact rights. They argued that the decision-making process had provided for all the necessary safeguards, as the applicant had submitted his views to the child protection authority along with his request for a contact arrangement and after the expiry of the one-year arrangement, he had been able to seek another contact arrangement.

B. The Court's assessment

54. The Court notes that the applicant's allegations are limited to the contact arrangement which was valid from 30 October 2016 to 31 October 2017. Although in 2020 the applicant argued in his submissions that he had not seen his child in the last two years, he has not submitted any additional information, complaints or comments concerning any subsequent contact arrangements or exercise of his visiting rights (see paragraphs 29-30 above). Accordingly, the Court will not examine the contact arrangement concerning the period after 31 October 2017.

55. The Court observes that it has not been disputed by the parties that the decisions restricting the applicant's contact rights constituted an interference with his right to family life under Article 8. Nor was there any dispute that the interference in question had a basis in national law and pursued legitimate aims within the meaning of paragraph 2 of Article 8.

56. In determining whether the interference was "necessary in a democratic society", the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V (extracts), *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts), and *Katsikeros v. Greece*, no. 2303/19, § 52, 21 July 2022).

57. According to the Court's well-established case-law, it must further be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their

power of appreciation (see, *inter alia*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Görgülü v. Germany*, no. 74969/01, § 41, 26 February 2004; *Sommerfeld*, cited above, § 62; and *Katsikeros*, cited above, § 53).

58. The margin of appreciation to be accorded to the relevant national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I).

59. Turning to the present case, the Court notes that the domestic courts set a restrictive contact schedule between the applicant and his son. In particular, the limitations concerned the hours he was allowed to spend with him and the location where the contact would take place. As regards the reasons adduced by the domestic authorities and courts for these limitations, they referred essentially to the child's young age (one year and a half at the material time). They also took into consideration the allegation that the applicant had initially failed to comply with the contact arrangement, which he disputed.

60. At the same time, the Government submitted that another reason for the limitations had been the history of domestic violence, as indicated in the records of the meetings of the child protection authority (see paragraphs 10 and 13 above), the protection order of 3 March 2016 and the criminal investigation into charges of domestic violence in respect of the applicant. The applicant, however, disputed that those documents had ever been presented or discussed in the domestic court proceedings.

61. In the Court's view, the reasons adduced by the domestic courts were relevant. In particular, they based their findings on the child's best interests as specified in the circumstances of the case. In their reasoning, they attached great importance to the child's very young age, the temporary nature of the arrangement and the applicant's failure to respect the arrangement made by the child protection authority (see, in this regard, *Giorgioni v. Italy*, no. 43299/12, § 81, 15 September 2016; compare *Gobec v. Slovenia*, no. 7233/04, § 144, 3 October 2013, and *Katsikeros*, cited above, §§ 56-57).

62. The Court reiterates that the State's positive obligation to prevent the risk of recurrent violence in the context of domestic abuse includes (a) an obligation to respond "immediately" to complaints of domestic violence and to process them with special diligence; (b) to undertake an "autonomous",

“proactive” and “comprehensive” risk assessment of the treatment contrary to Article 3; and (c) once a risk to a victim of domestic violence has been identified, to take, as quickly as possible, preventive and protective operational measures that are adequate and proportionate to the risk. A proper preventive response often requires coordination between multiple authorities (*Kurt v. Austria* [GC], no. 62903/15, § 190, 15 June 2021). As the Court has held, where several persons are affected by domestic violence, be it directly or indirectly, any risk assessment must be apt to systematically identify and address all the potential victims. In conducting their assessment, the authorities should keep in mind the possibility that the outcome could be a different level of risk for each of them (*ibidem*, § 173). Furthermore, the Istanbul Convention requires that incidents of domestic violence be taken into account in the determination of custody and visitation rights of children, in order to ensure that any arrangements are in the best interests of the child and, in particular, that the safety of the parent and of the child are protected (see paragraph 33 above; *I.M. and Others v. Italy*, no. 25426/20, §§ 73 and 137, 10 November 2022, with further references to GREVIO). In the context of proceedings concerning the custody and visitation rights regarding children, where the primary focus must be on the best interests of the child, an assessment of any risks of violence or other forms of ill-treatment therefore has to form an integral part of such proceedings. For this reason, in the present case the alleged history of domestic violence was a relevant and mandatory factor to be weighed in the assessment of domestic authorities when deciding on contact rights. Despite references in the child protection authority’s decision of 30 October 2016 to C.’s feeling psychologically harassed and in the applicant’s appeal to the discontinuation of the criminal proceedings against him, the decisions of the child protection authority and the courts’ judgments do not appear to have given consideration to an assessment of the relevant risks.

63. While the records of the child protection authority’s meetings appear to show that the domestic violence context had been taken into consideration, the Government have failed to provide any evidence that these documents were assessed by the domestic courts. Even so, neither the records nor the child protection authority’s decisions reflect any autonomous and comprehensive risk assessment or any measures, such as supervised contact or other forms of contact, which might have been adequate in order to maintain the applicant’s contact with his child without jeopardising the child’s and the mother’s safety, if relevant. There is no reference in the courts’ judgments to any such considerations either and no reasons in that respect were provided to uphold or reject the allegations made.

64. While the limitations imposed on the applicant’s contact with his son were not so extreme to the extent that they would impede him from gradually forming a solid relationship with his son (see also *Katsikeros*, cited above, § 57), the Court considers that it cannot satisfactorily assess whether the

reasons relied on by the domestic courts were “sufficient” for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *Sommerfeld*, cited above, § 66).

65. Although Article 8 of the Convention contains no explicit procedural requirements, the decision-making process must be fair and such as to ensure due respect for the interests safeguarded by this provision (see *Z.J. v. Lithuania*, no. 60092/12, § 100, 29 April 2014). The parents ought to be sufficiently involved in this process, seen as a whole, and provided with the requisite protection of their interests and they should be fully able to present their case. The domestic courts must conduct an in-depth examination of the entire family situation and of a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and make a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child, as this consideration is in every case of crucial importance. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (see *Petrov and X v. Russia*, no. 23608/16, §§ 98-102, 23 October 2018).

66. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see *W. v. the United Kingdom*, 8 July 1987, § 64, Series A no. 121). In this connection, the applicant has argued that his meaningful participation in the proceedings before the child protection authority had been hindered, as he had never been invited to any meetings or given the opportunity to respond to C.’s views. The Court observes, however, that the applicant was involved in the court proceedings in person and was advised by counsel. Although in those proceedings the applicant was placed in a position enabling him to put forward all of his arguments in favour of obtaining a more extended contact arrangement, the Government did not submit any evidence that the applicant had had access to the records of the child protection authority’s meetings and the psychological reports or that these documents had been assessed by the domestic courts. Even if the courts do not appear to have explicitly relied on those documents or reasons, they upheld entirely the reasoning of the child protection authority, which – from the records of its meetings– appear to have relied on the domestic violence allegations.

67. The Court agrees that the allegations of domestic violence, on account of their gravity and their implications for the child’s best interests, the mother’s safety and the applicant’s contact rights, were central to the determination of the contact rights. For this reason, it was required that these

allegations be addressed in a proper decision-making process concerning parental contact, which should have been fair and should have involved the applicant to a degree sufficient to provide him with the requisite protection of his interests (compare *Širvinskas*, cited above, § 96, and *Krasicki*, cited above, § 86). While these allegations appear to have been directly accessible to the domestic courts (see paragraph 62 above), it is striking that there is nothing in the file to show that the courts considered and duly assessed this reason.

68. As regards the length of the domestic proceedings, they lasted a total of thirteen months, namely from November 2016 until December 2017, for all three levels of jurisdiction, which cannot be considered unreasonable as such. While a contact schedule was in place for most of that time, until October 2017, the Court notes that by the time the final judgment was delivered, the contested contact arrangement had expired, which deprived the proceedings of any purpose. The Court observes that despite the overall short duration of the proceedings, the Government did not provide any explanation for the delay in examining the applicant's appeal (more than six months), which appears not to have been due to his conduct or to the complexity of the case, but rather to the courts' own conduct (see paragraph 16 above). Given that an effective respect for family life requires that future relations between parent and child be determined solely in the light of all the relevant considerations and not by the mere passage of time, the Court finds that the applicant's contact rights had not been dealt with speedily and with the exceptional diligence required by the nature of the case (see *Petrov and X*, cited above, § 102, and *Ribić v. Croatia*, no. 27148/12, § 92, 2 April 2015).

69. Having regard to the foregoing, the Court is not satisfied that the decision-making process, as a result of which the applicant's contact rights were limited, was reasonable, fair and sufficiently expedient in the circumstances of the case. The Court therefore concludes that the domestic authorities failed to discharge their procedural obligations under Article 8 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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.”

72. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,011.55 in respect of costs and expenses, including EUR 4,000 for legal fees and EUR 11.55 for postal services. The applicant submitted a contract signed with his legal representative and a detailed description and confirmation of partial payment for legal services.

73. The Government submitted that the claims were excessive and not in line with awards granted by the Court in similar cases.

74. In the light of the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 5,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,900 (five thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President