



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

THIRD SECTION

CASE OF GIANNAKOPOULOS v. GREECE

(Application no. 20503/20)

JUDGMENT

Art 8 • Family life • Dismissal by the domestic courts of the applicant's application for custody of his children for want of jurisdiction, ruling that they were habitually resident in Germany • No indication of arbitrariness • Proportionate assessment of all relevant factors in the light of the requirements of the EU Brussels II *bis* Regulation 2201/2003 and in accordance with the children's best interests

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 December 2024

FINAL

28/04/2025

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

In the case of Giannakopoulos v. Greece,

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

Peeter Roosma, *President*,

Ioannis Ktistakis,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 20503/20) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Georgios Giannakopoulos (“the applicant”), on 14 April 2020;

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

the parties’ observations;

Having deliberated in private on 5 November 2024,

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

INTRODUCTION

1. The application concerns the rejection of the applicant’s application for custody of his children. The applicant complained that the domestic courts had misinterpreted the relevant provisions, erroneously found that his children had their habitual residence in Germany and subsequently rejected his application for want of jurisdiction. In particular, the domestic courts had disregarded

(a) the facts that the children had been taken to Germany in violation of his contact rights as determined by decision no. 590/2013 of the Rhodes one-member Court of First Instance and that the mother had been granted custody on the basis of her assurances that she would stay in Greece;

(b) decision no. 26/2015 of the Rhodes one-member Court of First Instance granting him interim custody of the children;

(c) the decisions of the German courts which had rejected the mother’s application for the above-mentioned decision no. 26/2015 to be disregarded and for the proceedings to be suspended until the Greek courts had clarified their jurisdiction; and

(d) the fact that his children had only lived in Germany for a year and their presence there could not be considered habitual residence.

THE FACTS

2. The applicant was born in 1965 and lives in Rhodes. He was represented by Mr V. Chirdaris, a lawyer practising in Athens.

3. The Government were represented by their Agent, Ms N. Marioli, President at the State Legal Council and their Agent's delegate, Ms A. Dimitrakopoulou, Senior Advisor at the State Legal Council.

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

I. PROCEEDINGS IN GREECE

5. In December 2009 the applicant married E.B., a German national. The couple, who lived in Greece, had two children, a girl born in 2010 and a boy born in 2012.

6. The couple decided to separate. On 24 July 2013, Ms E.B. lodged an application for interim orders with the Rhodes One-Member Court of First Instance, seeking interim custody of the children. The applicant also lodged an application for interim custody, or alternatively, shared custody with E.B. and contact with the children. In her submissions, E.B. confirmed that she would stay in Rhodes with the children and that she had no intention of moving to Germany.

7. By decision no. 590/2013 of 18 October 2013 of the Rhodes One-Member Court of First Instance, custody of the children was given to E.B. and a schedule was made for the applicant's contact with the children. In response to the applicant's application to have Rhodes specified as the children's place of residence, the domestic court said that there was no evidence that E.B. would leave for Germany without the applicant's consent.

8. On 12 November 2013 E.B. lodged an action with the Rhodes One-Member Court of First-Instance requesting the children's custody. The hearing was scheduled for 19 May 2014; however, she withdrew the action prior to it.

9. On 11 December 2013, E.B. travelled with the children to Germany, saying that she wanted to visit her parents for the Christmas holidays and that she would return on 13 January 2014. However, she did not return, but settled there permanently. The applicant served decision no. 590/2013 of the Rhodes One-Member Court of First Instance on the German authorities through the Rhodes Public Prosecutor's office on 2 July 2014.

10. On 24 September 2014 the applicant made a new application for interim orders. He asked for decision no. 590/2013 of the Rhodes One-Member Court of First Instance to be set aside. By decision no. 26/2015 of 14 January 2015, his application was granted and he obtained interim custody of the children. The domestic court found that there had been substantive change of circumstances because E.B. had moved to Germany with the children, which meant that she had misled the court by offering assurances

that she would stay in Greece with the children. By moving, she had obstructed the applicant's contact with his children under the schedule that had been set by the court. The applicant served that decision on E.B. in Germany. He also obtained the certificates of enforceability nos. 179/2015 and 180/2015 of 21 April 2015 of the Rhodes Court of First Instance under Articles 39 and 42 of the Brussels II *bis* Regulation 2201/2003 ("the Brussels II *bis* Regulation").

11. By an application lodged on 29 January 2015 in the Rhodes One-Member Court of First Instance, the applicant sought sole custody of the children. The proceedings were first suspended pending a decision of the Düsseldorf District Court on a request by the applicant for the return of his children under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter: "the Hague Convention"). The domestic court then issued decision no. 51/2017 rejecting the applicant's custody application as inadmissible. It held in particular that it was not competent to decide the applicant's application given that the children had been living in Germany for over a year and had adapted well to life there, and so were habitually resident in Germany, the German courts therefore having jurisdiction to hear any custody proceedings.

12. On 29 January 2015 the applicant lodged an appeal against that decision. The Dodecanese Court of Appeal, by its decision no. 302/2017 of 11 December 2017, declined to hear the appeal, saying that Greek courts had no jurisdiction and referring to the case-law of the Court of Justice of the European Union (hereinafter "the CJEU"), namely to the judgments in *A* (C-523/07, 2 April 2009, EU:C:2009:225, § 37-41) and *Mercredi* (C-497/10 PPU, 22 December 2010, EU:C:2010:829, § 47-56). It observed, in particular, that E.B. had taken a flight to Germany with her children on 11 December 2013, saying that she wanted to visit her parents for the Christmas holidays and that she would return on 13 January 2014, but that she had instead stayed in Germany and not come back. This meant that when the applicant lodged his application, which is the crucial point for defining jurisdiction, the children had already had their habitual residence in Germany for over a year. In particular, on 5 February 2014 the mother had made a declaration to the German authorities that they were resident in the city of Kevelaer and they had been insured under the German social security system since 31 April 2014. E.B. started working and the children started attending nursery school, X. from 1 March 2014 and G. from 1 August 2014, where they had adapted relatively well. They had developed social relationships and participated in various activities; it had been relatively easy for them to adapt to their new surroundings because they held German nationality and already spoke the language thanks to their mother, who had been their carer almost exclusively while they lived in Greece. They had also grown close to E.B.'s wider family in Germany. Given that the children had moved permanently to Germany with their mother, who had sole custody; were attending school

there; had established family and social relationships; and had developed German language skills to the point where they had barely any knowledge of Greek words, the children were habitually resident in Germany for the purposes of Article 8 of the Brussels II *bis* Regulation and Article 5 of the Hague Convention.

13. The domestic court clarified that habitual residence would not depend on whether one parent had illegally moved a child from one place to another, which in any event was not the case in the present situation as E.B. had had sole custody of the children, under decision no. 590/2013 of the One-Member Athens Court of First Instance when she moved them to Germany. A custodial parent had the right to determine a child's place of residence under Article 2 § 9 of the Brussels II *bis* Regulation, irrespective of whether it was in the children's interests to maintain contact with the other parent, as in the present case, and that determination was sufficient to form the basis of habitual residence. The fact that E.B. had allegedly misled the domestic court by stating that she did not intend to move to Germany which, according to the applicant, had contributed to her being given sole custody of the children, did not alter the position given that in decision no. 590/2013 of the One-Member Athens Court of First Instance there were no conditions on E.B.'s place of residence, which in any event would have been an unlawful restriction on the rights under Article 2 § 9 of the Brussels II *bis* Regulation and Article 5 of the Hague Convention. There had been no wrongful relocation or retention of the children in the sense of Article 10 of the Brussels II *bis* Regulation, which therefore did not apply. Moreover, decision no. 26/2015 of the One-Member Athens Court of First Instance, which had revoked decision no. 590/2013 of the same court and had given the applicant sole custody of the children, had never been enforced in Germany. There was therefore no unlawful retention of the children there, principally because the children had been habitually resident in Germany since January 2014. The applicant's allegation that decision no. 26/2015 was immediately enforceable in Germany because he had obtained certificates nos. 179/2015 and 180/2015 from the One-Member Rhodes Court of First Instance, under Article 42 of the Brussels II *bis* Regulation, was unfounded. In particular, decision no. 26/2015 of the One-Member Athens Court of First Instance had not been a decision under Article 11 § 8 of the Brussels II *bis* Regulation as it had been made in January 2015, that is to say prior to the decision of the German courts rejecting the applicant's application for the children's return. The latter was delivered on 24 June 2015 and was therefore not a subsequent judgment within the meaning of Article 11 § 8 of the Brussels II *bis* Regulation, which in any event only referred to final and not interim decisions.

14. The domestic court further held that E.B. had never accepted that the Greek courts were competent to hear the case under Article 12 § 3 of the Brussels II *bis* Regulation, even though she had lodged an action in the

domestic courts in November 2013 seeking custody of the children. Referring to the case-law of the CJEU (judgments in *L*, C-656/13, 12 November 2014, EU:C:2014:2364, paragraph 57 and *E*, C-436/13, 1 October 2014, EU:C:2014:2246, paragraphs 40-49), the domestic court observed that E.B. had lodged that action when she was still resident in Rhodes, and, in any event, she had withdrawn it before it was heard, thus retroactively annulling the procedural consequences emanating from its lodging. As regards the applicant's court application, at the hearing on 7 December 2015 E.B.'s lawyer had appeared but merely asked for an adjournment, and at the hearing of 19 September 2016 he had protested as to the jurisdiction of the Greek courts. E.B. had therefore not expressly or implicitly acknowledged that they were competent to hear the case. It further observed that in any event, decision to prorogate jurisdiction would also have to be taken on the basis of the interests of the child, which would not be the case in the present circumstances as the children had been settled in Germany for three and a half years and proceedings in any state other than that of their habitual residence would be against the principle that the best court to decide on children matters was the one local to the children and against the principle of the primacy of children's best interests.

15. The applicant brought an appeal on points of law. In particular, he argued that the appellate court had applied the Brussels II *bis* Regulation wrongly in that it had not taken the following elements into consideration:

(a) that the children had been relocated in breach of his contact rights under decision no. 590/2013;

(b) that E.B. had misled the domestic courts in order to obtain custody of the children, which made their relocation to Germany unlawful;

(c) that decision no. 26/2015 had revoked decision no. 590/2013 and given custody of the children to the applicant, and the applicant had obtained the relevant executory certificates of the order;

(d) that the appellate court should have applied Article 10 of the Brussels II *bis* Regulation, which provides that the courts of the jurisdiction in which the children were habitually resident prior to their unlawful relocation retained jurisdiction over the case; and

(e) because it had applied Article 12 of the Brussels II *bis* Regulation concerning the habitual residence of children wrongly and had wrongly interpreted the concept of the children's best interests.

16. The appeal on points of law was heard on 3 December 2018. On 26 July 2019, the Court of Cassation delivered decision no. 927/2019, which confirmed the decision of the appellate court. The Court of Cassation held that the appellate court had applied Article 8 of the Brussels II *bis* Regulation correctly and had been correct that Articles 10 and 42 of the Brussels II *bis* Regulation were not applicable in the circumstances of the case. It had taken into account the significant adaptation of the children to the new environment into which their mother had taken them while she had sole custody of them,

before concluding that the children's place of habitual residence was Germany and that therefore it did not have jurisdiction. It had further rightly concluded that E.B. had not accepted the Greek courts' jurisdiction, pursuant to Article 12 § 3 of the Brussels II *bis* Regulation. It therefore dismissed the applicant's appeal on points of law and confirmed that the Greek courts were not competent to hear his application for custody. The decision was available to the applicant as from 14 November 2019.

17. By decision no. 3423/2018 of 30 October 2018, the One-member Rhodes Misdemeanour Court found E.B., who had been duly summoned but did not appear in the proceedings, guilty of breaching court decisions nos. 590/2013 and 26/2015 for the period between 13 December 2013 and 24 March 2015 and sentenced her to three months' imprisonment.

II. PROCEEDINGS IN GERMANY

18. The Greek Central Authority dealing with international child abduction received the applicant's request under the Hague Convention with supporting documents on 2 January 2015 and transmitted it to the Central German Authority on 7 January 2015. On 30 January 2015, it transmitted a German translation of decision no. 26/2015 of the One-Member Rhodes Court of First Instance.

19. On 30 June 2015, the German Central Authority notified the Greek Central Authority that on 24 June 2015 the Düsseldorf District Court had ordered the children's return to Greece. E.B. appealed against that decision.

20. On 27 November 2015, the Düsseldorf Court of Appeal delivered a judgment overturning the first-instance decision and ordering that the children should stay in Germany with their mother. It held, in particular, that the applicant's application for return had been lodged after the time-limit of one year from the children's relocation to Germany had expired; therefore, Article 12 § 2 of the Brussels II *bis* Regulation applied. Given the fact that the children had settled well in Germany, the court declined to return them to Greece under Article 12 § 2 of the Hague Convention. This decision was notified to the Greek Central Authority on 4 December 2015.

21. On 18 December 2015 the applicant lodged an application with the Federal Constitutional Court which was dismissed on 11 February 2016.

22. On 2 February 2016, the Düsseldorf District Court gave decision no. 258 F 26/15 dismissing E.B.'s application for decision no. 26/2015 of the One-Member Rhodes Court of First Instance not to be recognised. No further information has been provided as to whether E.B. appealed against that decision or whether the applicant tried to have decision no. 26/2015 enforced.

23. In custody proceedings initiated in Germany by E.B., the courts initially suspended the proceedings under Article 19 § 2 of the Brussels II *bis* Regulation pending clarification by the Greek courts of what had happened

in the custody proceedings initiated by the applicant in Greece. Following the decision no. 927/2019 of the Court of Cassation (see paragraph 16 above), on 18 October 2021 the court of Geldern gave parental responsibility to E.B. The applicant has lodged an appeal against that decision, but no information has been provided as to the outcome.

RELEVANT LEGAL FRAMEWORK

I. NATIONAL LAW

24. Under Article 3 of the Code of Civil Procedure, Greek nationals and foreigners are subject to the jurisdiction of the civil courts, provided that the Greek courts have jurisdiction.

25. Under Article 1518 of the Civil Code as it read at the time, “custody of a child shall include, in particular, his or her upbringing, supervision, work, education, and determination of his or her place of residence ...”.

II. EUROPEAN UNION LAW AND CASE-LAW

A. The Brussels II *bis* Regulation

26. At the material time, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (known as “the Brussels II *bis* Regulation”) was in force and was later repealed by Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction as of 31 July 2022 (known as “the Brussels II *ter* Regulation”). In its relevant part, the Brussels II *bis* Regulation read as follows:

“ ...

Whereas:

...

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child’s habitual residence, except for certain cases of a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility.

...

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been

wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

...”

Article 1 Scope

“1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

...”

Article 2 Definitions

“For the purposes of this Regulation:

...

9. the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

10. the term "rights of access" shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

11. the term "wrongful removal or retention" shall mean a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.”

Article 8
General jurisdiction

“1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.”

Article 9
Continuing jurisdiction of the child’s former habitual residence

“1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child’s former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child’s former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child’s new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.”

Article 10
Jurisdiction in cases of child abduction

“In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.”

Article 11
Return of the child

“1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter ‘the 1980 Hague Convention’), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

...

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.”

Article 12
Prorogation of jurisdiction

“1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

...”

Article 16
Seising of a Court

“1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.”

Article 17
Examination as to jurisdiction

“Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.”

Article 19
Lis pendens and dependent actions

“...

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.”

Article 39
Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

“The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).”

SECTION 4
Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child

Article 40
Scope

“1. This Section shall apply to:

...

(b) the return of a child entailed by a judgment given pursuant to Article 11(8).

...”

Article 42
Return of the child

“1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.”

B. Case-law of the CJEU

27. In *A* (2 April 2009, C-523/07, EU:C:2009:225), the CJEU interpreted Article 8 of the Brussels II *bis* Regulation as follows:

“37. The ‘habitual residence’ of a child, within the meaning of Article 8(1) of the Regulation, must be established on the basis of all the circumstances specific to each individual case.

38. In addition to the physical presence of the child in a Member State other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that the residence of the child reflects some degree of integration in a social and family environment.

39. In particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family’s move to that State, the child’s nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.

40. As the Advocate General pointed out in point 44 of her Opinion, the parents’ intention to settle permanently with the child in another Member State, manifested by certain tangible steps such as the purchase or lease of a residence in the host Member State, may constitute an indicator of the transfer of the habitual residence. Another indicator may be constituted by lodging an application for social housing with the relevant services of that State.

41. By contrast, the fact that the children are staying in a Member State where, for a short period, they carry on a peripatetic life, is liable to constitute an indicator that they do not habitually reside in that State.”

28. In *Mercredi* (22 December 2010, C-497/10 PPU, EU:C:2010:829) the CJEU interpreted the concept of “habitual residence” as follows:

“

41. By its first question, the referring court seeks clarification, in essence, on how properly to interpret the concept of ‘habitual residence’ for the purposes of Articles 8 and 10 of the Regulation, in order to determine which court has jurisdiction to make

orders on matters relating to rights of custody, in particular where, as in the case in the main proceedings, the dispute concerns an infant who is lawfully removed by her mother to a Member State other than that of her habitual residence and has been staying there only a few days when the court in the State of departure is seised.

...

44. In that regard, it must first be observed that the Regulation contains no definition of the concept of ‘habitual residence’. It merely follows from the use of the adjective ‘habitual’ that the residence must have a certain permanence or regularity.

45. According to settled case-law, it follows from the need for a uniform application of European Union law and the principle of equality that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, *inter alia*, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17; and Case C-523/07 *A* [2009] ECR I-2805, paragraph 34).

46. Since the articles of the Regulation which refer to ‘habitual residence’ make no express reference to the law of the Member States for the purpose of determining the meaning and scope of that concept, its meaning and scope must be determined in the light of the context of the Regulation’s provisions and the objective pursued by it, in particular the objective stated in recital 12 in the preamble to the Regulation, that the grounds of jurisdiction established in the Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity.

...

56. It follows from all of the foregoing that the answer to the first question is that the concept of ‘habitual residence’, for the purposes of Articles 8 and 10 of the Regulation, must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother’s move to that State and, second, with particular reference to the child’s age, the mother’s geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.

57. If the application of the abovementioned tests were, in the case in the main proceedings, to lead to the conclusion that the child’s habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child’s presence, under Article 13 of the Regulation.”

29. The CJEU has reaffirmed its above-mentioned case-law in other cases such as *C* (9 October 2014, C-376/14 PPU, EU:C:2014:2268, paragraphs 50-53), and *OL* (8 June 2017, C-111/17 PPU, EU:C:2017:436, paragraphs 40-44).

30. In *HR* (28 June 2018, C-512/17, EU:C:2018:513), the CJEU held, in so far as relevant, the following:

“42. It is apparent from that case-law that the child’s place of habitual residence for the purpose of Regulation No 2201/2003 is the place which, in practice, is the centre of that child’s life. Pursuant to Article 8(1) of that regulation, it is for the court seised to determine where that centre was located at the time the application concerning parental responsibility over the child was submitted.”

III. INTERNATIONAL MATERIAL

31. The relevant provisions of the international instruments applicable in the present case are presented in *X v. Latvia* ([GC] no. 27853/09, §§ 34-42, ECHR 2013).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that the domestic courts, by rejecting his application for custody of his children on the grounds that they had no jurisdiction, had violated his right to respect for his family life as guaranteed by Article 8 of the Convention, which reads as follows:

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

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

A. Admissibility

1. *The parties’ arguments*

33. The Government put forward several objections to the admissibility of the applicant’s complaint. First, they argued that the applicant lacked victim status. In their view, the domestic courts had not refused to examine the applicant’s application but had first considered whether they were competent to hear the matters raised, as they were obliged to do by national and European legislation; therefore the applicant lacked victim status.

34. The Government further argued that the complaint raised fell outside the scope of Article 8 of the Convention and that the applicant had failed to refer to that Article in his submissions in the domestic courts. In addition, he had failed to lodge an application seeking a variation of decision no. 590/2013 of the Rhodes One-Member Court of First Instance setting a schedule for contact with his children within three months of their relocation to Germany, as required by Article 9 § 1 of the Brussels II *bis* Regulation. The domestic courts had still had jurisdiction during the three-month period

following that relocation. In any event, and given that Greek law did not provide for the reopening of civil proceedings following a finding of a violation of the Court, the applicant must have lodged his present application merely in order to receive compensation. He should therefore have lodged an application under Article 105 of the Introductory Law to the Civil Code to that effect, seeking compensation for damage caused to him by wrongful judicial decisions. This was an effective remedy, as had already been held in decision no. 1501/2014 of the Plenary of the Supreme Administrative Court.

35. Lastly, the Government submitted that if the domestic authorities should be held accountable for the content of decision no. 26/2015 of the One-Member Rhodes Court of First Instance, the application had been lodged outside the time-limit of six months.

36. The applicant submitted that his applications to the domestic courts concerned the custody of his children, which fell within the scope of Article 8, so he had raised the relevant complaints in substance. Moreover, the fact that his application was not examined in substance but was rejected as inadmissible did not negate the fact that he was a victim of the violation complained about. As regards the exhaustion of domestic remedies, the applicant had used all the remedies at his disposal. The Government had not shown that an application under Article 105 of the Introductory Law to the Civil Code would have been effective in his case.

2. *The Court's assessment*

37. The Court considers that the question of whether the applicant can claim to be a victim of the violation alleged is inextricably linked to the merits of the complaint under Article 8 of the Convention. It therefore joins the Government's preliminary objection in respect of the applicant's victim status to the merits of his complaint under Article 8 of the Convention.

38. As regards the argument that the applicant's complaint falls outside the scope of Article 8 of the Convention, the Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision (*Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 202, 10 September 2019). It follows that custody proceedings fall within the scope of Article 8 of the Convention (see, among many others, *Tzioumaka v. Greece*, no. 31022/20, § 79, 9 April 2024, with further references).

39. Turning to the objections of non-exhaustion raised by the Government, the general principles of the Court have been set out in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; see also *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-46, 27 November 2023).

40. In the present case, the Court notes that the applicant had made an application for custody of the children. His application was rejected at first instance and on appeal for want of jurisdiction. The applicant then lodged an appeal on points of law, presenting the Court of Cassation with a complete account of the proceedings in the Court of Appeal and presented arguments that were in substance relevant to Article 8 of the Convention. In particular, he advanced several reasons as to why his application for custody should have been heard by the Greek courts and detailed the reasons why, in his view, the Greek courts had jurisdiction over his application for custody of the children (see paragraph 15 above). The Court of Cassation, for its part, examined the applicant's arguments in so far as it had power to do so and dismissed them (see paragraph 16 above).

41. In view of the foregoing, the Court is satisfied that through the arguments he raised in the Court of Cassation, the applicant did complain, albeit implicitly, that his right to respect for his family life had been breached. In doing so, he raised, at least in substance, a complaint under Article 8 of the Convention in the Court of Cassation, and the court examined that complaint. It follows that he provided the national authorities with the opportunity that is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention – namely, the opportunity to put right the violations alleged against them (see *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016). This part of the Government's objection concerning the alleged failure to exhaust domestic remedies must therefore be dismissed.

42. Turning to the second limb of that objection, the Court observes that the applicant's complaint relates to the reasoning of the domestic courts which rejected his application for custody and asserts that they failed to take various elements into account. In this regard, a domestic application under Article 9 § 1 of the Brussels II *bis* Regulation for the modification of contact rights would not be relevant to and could not put right a violation such as that alleged by the applicant.

43. The objection put forward by the Government concerning Article 105 of the Introductory Law to the Civil Code has been rejected by the Court in the past in respect of similar situations (see *Margari v. Greece*, no. 36705/16, § 32, 20 June 2023). In the present application, no argument has been put forward by the Government which would lead the Court to a different conclusion; the Government's objection as to the failure to exhaust domestic remedies must therefore be dismissed.

44. Lastly, as to the Government's objection that the application had been lodged out of time, the Court observes that the final decision complained of is decision no. 927/2019 of the Court of Cassation, which was delivered on 26 July 2019 and was accessible to the applicant from 14 November 2019. The present application was lodged on 14 April 2020, so the application was therefore lodged within the then applicable time-limit of six months.

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

B. Merits

1. The parties' arguments

46. The applicant argued that E.B. had obtained custody by giving false assurances to the One-Member Rhodes Court of First Instance that she would not move to Germany: just a few months later she had moved there permanently. Her behaviour had been criticised in decision no. 26/2015 of the same court which had given the applicant custody of the children. Despite his having served that decision on E.B. on 7 February 2015 and having obtained the relevant certificates as to enforceability, E.B. had never complied with that decision. Moreover, E.B. had been found guilty of breaching a court decision by criminal courts (see paragraph 17 above).

47. When the applicant lodged his application for custody in January 2015 his children had been living in Germany for a year, that is to say for less time than they had lived in Greece prior to their removal. The Greek courts should have examined his application within three months of the Greek Central Authority being notified that the children had not been returned from Germany, pursuant to Article 11 § 7 of the Brussels II *bis* Regulation, which provides that the courts of the children's country of habitual residence retain jurisdiction. In the applicant's view, the domestic courts had misinterpreted the relevant legal provisions, had not shown that their decisions had taken the children's best interests into account and had failed to explain why they had not applied Article 10 of the Brussels II *bis* Regulation in the circumstances of the present case.

48. The Government argued that the rules on jurisdiction that had been applied by the domestic courts in the present case had been set by the European legislation in accordance with the children's best interests, as indicated at paragraph (12) of the Preamble to the Brussels II *bis* Regulation. The competent courts were those of the children's habitual residence, with certain exceptions. The domestic courts had thoroughly examined the matter of jurisdiction and replied to all the applicant's arguments. Their interpretation of the European legislation was in alignment with the case-law of the CJEU and the decision delivered by the German courts on the applicant's application under the Hague Convention. Moreover, decision no. 26/2015 of the One-Member Rhodes Court of First Instance giving the applicant custody of his children had not created any precedent concerning the jurisdiction of the Greek courts. The applicant could not have expected that an application to the Greek courts would end positively for his case, nor could he have been sure that applying to the German courts would not end in his favour. Moreover, the applicant had erroneously relied on

Articles 10 and 11 § 7 of the Brussels II *bis* Regulation, the conditions for which had not been met.

49. In the Government's view, there was therefore no interference with the applicant's rights under Article 8 of the Convention, given that the domestic courts' decision concerned merely the matter of jurisdiction and there was no substantive examination of his claims. Even if it were accepted that there had been an interference with the applicant's right to family life, then that interference was justified under Article 8 § 2 of the Convention. It was provided for by Greek and European legislation. The interpretation given of the relevant rules was foreseeable and accessible and in line with the interpretation of the CJEU.

50. The rules on jurisdiction served a legitimate aim. They were framed to promote legal certainty and the proper administration of justice, to prevent contradictory decisions being taken in different jurisdictions and also to protect the interests of others, namely the children whose best interests were at the core of the Brussels II *bis* Regulation's provisions. In the Government's view, the measure was proportionate to the aims pursued. The applicant had not been obstructed from pursuing his claims in another jurisdiction, so the substance of his right had remained intact. In addition, the domestic courts had a wide margin of appreciation in interpreting broad legal concepts such as, in the present case, the concept of habitual residence.

2. *The Court's assessment*

(a) **General principles**

51. In determining whether the refusal of custody or access was justified under Article 8 § 2 of the Convention, the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must 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 regarding child custody and access issues, 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 *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); *C. v. Finland*, no. 18249/02, § 52, 9 May 2006; and *Z.J. v. Lithuania*, no. 60092/12, § 96, 29 April 2014). To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of

each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 139, ECHR 2010, and *Antonyuk v. Russia*, no. 47721/10, § 134, 1 August 2013).

52. 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. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, 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 an 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 *Sahin*, cited above, § 65, and *Sommerfeld*, cited above, § 63).

53. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sahin*, cited above, § 66, and *Sommerfeld*, cited above, § 64).

54. The Court cannot satisfactorily assess whether the reasons advanced 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, was fair (see *Sahin*, cited above, § 68, and *Sommerfeld*, cited above, § 66). While 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 Article 8. 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 to a degree sufficient to provide him with the requisite protection of his interests (see *Z.J. v. Lithuania*, cited above, § 100, with further references).

55. The Court notes that as member States of the European Union both States are parties to the Brussels II *bis* Regulation, which therefore applies in the case. The 1980 Hague Convention itself has to be interpreted and applied in the context of this instrument (see *K.J. v. Poland*, no. 30813/14, § 58, 1 March 2016). As the Court has previously held, it must verify that the principle of mutual recognition is not applied automatically and mechanically to the detriment of fundamental rights – which, the CJEU has also stressed,

must be observed in this context (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 116, ECHR 2016).

(b) Application of those principles to the facts of the case

56. By a decision of 26 July 2019, the Court of Cassation dismissed the applicant's application for custody of the children for want of jurisdiction, finding that when the application had been lodged his children were already habitually resident in Germany, the courts of which had jurisdiction to deal with the applicant's complaints (see paragraph 16 above). Despite the Government's arguments, the Court considers that that decision amounted to an interference with the applicant's right to respect for his family life, as the domestic courts had undertaken a substantive analysis as to where the children were habitually resident, which had a direct impact on the applicant's family life given that the mutual enjoyment by a parent and a child of each other's company constitutes a fundamental element of family life protected under Article 8 of the Convention (see *Adžić v. Croatia* (no. 2), no. 19601/16, § 79, 2 May 2019). It follows that there has been an interference with the applicant's rights under Article 8 of the Convention.

57. The Court must examine whether the interference in question was justified in terms of Article 8 § 2. It reiterates that any interference with the right to respect for family life constitutes a violation of that Article unless it is "in accordance with the law", pursues a legitimate aim, and can be regarded as "necessary in a democratic society" (see, for example, *Adžić* (no. 2), cited above, § 80).

58. The Court firstly observes that the interference was provided for by law, namely Article 3 of the Code of Civil Procedure under which Greek courts can only decide on claims falling within their jurisdiction, in conjunction with Article 8 of the Brussels II *bis* Regulation which sets the rule that the competent courts in cases concerning custody matters are those where the children have their habitual residence.

59. Secondly the Court observes that the Court of Cassation acted in what it considered to be pursuit of the legitimate aim of protecting the rights and freedoms of the children (see *Michnea v. Romania*, no. 10395/19, § 43, 7 July 2020), which is consistent with the protection of the rights and freedoms of others as provided for by Article 8 § 2 of the Convention.

60. Lastly, the Court must determine whether the interference in question was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention, interpreted in the light of the relevant international instruments, and whether, when the courts were striking a balance between the competing interests at stake, appropriate weight was given to the child's best interests, within the margin of appreciation afforded to a State in such matters (see paragraph 59 above and *Vladimir Ushakov v. Russia*, no. 15122/17, § 88, 18 June 2019). The Court will have regard to the

reasoning advanced by the Court of Appeal and the Court of Cassation for their decisions (see paragraphs 12-16 above).

61. In this regard, the Court notes that the domestic courts examined whether the children were habitually resident in Greece, taking into account various factors, and ruled that they were habitually resident in Germany. On the basis of that finding and Article 8 of the Brussels II *bis* Regulation, they rejected the applicant's application for want of jurisdiction. They further dismissed the applicant's arguments that the children's removal to Germany had been unlawful because it had been in breach of his contact rights and E.B. had been granted custody on the basis of her allegedly false assurances that she would stay in Greece. Moreover, they considered that decision no. 26/2015 giving custody of the children to the applicant, which had never been enforced, was not immediately enforceable under Article 42 of the Brussels II *bis* Regulation, as it was not a decision based on Article 11 § 8 of the Brussels II *bis* Regulation. Lastly, they rejected the applicant's arguments that there had been prorogation of jurisdiction on the part of E.B. (see paragraphs 12-16 above).

62. The Court will ascertain whether the above interpretation and application of the provisions of the Brussels II *bis* Regulation by the Court of Cassation was consistent with the applicant's rights as guaranteed under Article 8 of the Convention (see *Vladimir Ushakov*, cited above, § 92).

(i) *Article 10 of the Brussels II bis Regulation*

63. Turning to the first part of the applicant's argument and the dismissal of his application, the Court notes that the domestic courts examined whether the breach of the applicant's contact rights and the allegedly false assurances given by E.B. in the proceedings that concluded with decision no. 590/2013 made the relocation or retention of the children wrongful within the meaning of Article 10 of the Brussels II *bis* Regulation, and whether decision no. 26/2015, delivered in January 2015, had affected the lawfulness of the children's retention.

64. The domestic courts found that the children's relocation by E.B. was not wrongful, as at the time she had custody of them pursuant to decision no. 590/2013 and was therefore the sole person responsible for deciding their place of residence under Article 2 § 9 of the Brussels II *bis* Regulation. That fact was independent of any hindrance that it might have caused to the applicant's contact rights, which needed to be modified and adapted to the new circumstances. Even if E.B. did give false assurances that she would stay in Greece in order to obtain interim custody of the children - something which had not been proved - that was not relevant to the lawfulness of her relocation of the children, given that, in any event, she had sole custody and could therefore decide their place of residence (see paragraphs 13 and 16 above).

65. As regards decision no. 26/2015 giving the applicant custody of the children, this had had no bearing on the conclusion that the children's relocation had been lawful because it had never been enforced in Germany, and more importantly because the children were then habitually resident in Germany. The domestic courts dismissed the applicant's argument that decision no. 26/2015 had been directly enforceable in Germany under Article 42 of the Brussels II *bis* Regulation, clarifying that it had not been a decision on the return of the children under Article 11 § 8 of the Brussels II *bis* Regulation and that it had been delivered prior to decision of the Düsseldorf District Court on the applicant's application for the return of the children under the Hague Convention, which had been delivered in June 2015. They therefore concluded that Article 10 of the Brussels II *bis* Regulation did not apply and that Article 8 of the Brussels II *bis* Regulation, which provided that the competent courts were those of the country where the children were habitually resident, was the appropriate basis for deciding jurisdiction (see paragraphs 13 and 16 above).

66. The Court must reiterate that the concept of custody rights, in the context of the Hague Convention, has an autonomous meaning, since it has to be applied to all the States Parties to that Convention and may be defined differently in their various legal systems (see *Neulinger and Shuruk*, cited above, §§ 65-68 and 102). In addition, it is noteworthy that, even though in principle the Hague Convention applies only to breaches of custody rights, it can be seen from its Preamble and from Article 1 (b) and Article 21 that it also seeks to protect access rights (*ibid.*, § 104).

67. The Court acknowledges that the relocation of E.B. and the children from Greece to Germany must undoubtedly have hindered the effective exercise of the applicant's contact rights as set out in decision no. 590/2013, making the exercise of those rights impracticable. It observes however that under Article 1518 of the Civil Code, custody of a child also includes the right to decide the child's place of residence (see paragraph 25 above and contrast *Neulinger and Shuruk*, cited above, § 102, in which, under domestic law, deciding the place of residence was associated with guardianship, not custody). Similarly, according to Article 2 § 9 of the Brussels II *bis* Regulation, the term "rights of custody" includes the right to decide the children's place of residence. When she relocated to Germany, E.B. had sole custody of the children under decision no. 590/2013, irrespective of her assertions that she would stay in Greece, which the domestic courts considered had not been proved to have been false. The Court therefore sees no reason to disagree with the domestic courts' assessment that the relocation of the children was not wrongful when it took place. The same applies for the applicant's argument that the domestic authorities should have applied Article 11 § 7 of the Brussels II *bis* Regulation, given that it is applicable only in cases of wrongful relocation.

68. Moreover, as regards decision no. 26/2015, the Court does not see any reason to depart from the assessment of the domestic courts that it was not directly enforceable in Germany. It is clear from the text of Article 42 of the Brussels II *bis* Regulation that it refers to decisions concerning the return of a child under Article 11 § 8 of the Brussels II *bis* Regulation, namely a “subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation”. That decision, however, was not a decision under Article 11 § 8 of the Brussels II *bis* Regulation. It appears that a certificate under Article 42 of the Brussels II *bis* Regulation was issued in respect of decision no. 26/2015 of the One-Member Rhodes Court of First Instance notwithstanding that the conditions for certification had not been met. In particular, the Court observes that that decision did not concern the return of the children, but custody of them; was delivered by a court that was found in the subsequent judgments of domestic courts, which held that the children were already habitually resident in Germany, not to have had jurisdiction; and was not a “subsequent judgment”, as it was delivered before the decision of the German courts on the return of the children. The Court thus shares the conclusion reached by the domestic courts that decision no. 26/2015 was not directly enforceable under Article 42 of the Brussels II *bis* Regulation, despite the fact that the relevant certificate had been issued by the domestic authorities.

69. In view of the above, the Court finds that the domestic courts, in interpreting the relevant provisions of Article 2 § 9, Article 10 and Article 11 §§ 7-8 and Article 42 of the Brussels II *bis* Regulation as above, dealt fully with the applicant’s arguments and that their interpretation of the relevant provisions is not arbitrary or manifestly unreasonable. On the contrary, they took into account all the elements put forward by the applicant and also the interpretation given to the relevant provisions by CJEU, the preamble to the Brussels II *bis* Regulation, the Hague Convention and the purposes of the relevant provisions and concluded that the conditions for Article 10 of the Brussels II *bis* Regulation to apply were not met in the circumstances of the present case.

(ii) On Germany as the place of habitual residence

70. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This also applies where domestic law refers to rules of general international law or to international agreements. The Court’s role is confined to ascertaining whether those rules are applicable and whether their interpretation is compatible with the Convention (*Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I). In this regard, the Court observes that the Brussels II *bis* Regulation and the Hague Convention do not offer a precise definition of the child’s habitual residence, nor do they offer guidance as to what criteria should be applied in order to determine a

child's habitual residence. The CJEU has repeatedly held that the concept is an autonomous one of European Union law, which has to be interpreted in the light of the context of the provisions referring to that concept and the objectives of the Brussels II *bis* Regulation, in particular that which is apparent from recital 12 of the preamble to the Brussels II *bis* Regulation, according to which the grounds of jurisdiction which it establishes are shaped in the light of the best interests of the child and, in particular, on the criterion of proximity (judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraphs 31, 34 and 35; of 22 December 2010, *Mercredi*, cited above, paragraphs 44 to 46; of 9 October 2014, *C*, C-376/14 PPU, EU:C:2014:2268, paragraph 50; and of 8 June 2017, *OL*, C-111/17 PPU, EU:C:2017:436, paragraph 40). The CJEU has further held that the child's place of habitual residence for the purpose of the Brussels II *bis* Regulation is the place which, in practice, is the centre of that child's life (judgment of 28 June 2018, *HR*, C-512/17, EU:C:2018:513, paragraph 42).

71. Turning to the circumstances of the present case, the Court observes, that, in applying Article 8 of the Brussels II *bis* Regulation, the domestic courts took into account various elements in order to conclude that the children were habitually resident in Germany: in particular, they noted that E.B. had declared to the local authorities and the German insurance provider that Germany was their place of residence; E.B. had started working and the two children had started attending nursery school where they had adapted relatively well; they had developed social relationships with their teachers, other children of their age and the wider family and friends of E.B.; they had German nationality and could speak German because their mother had been their primary caretaker even when they lived in Greece; and in general, during the year between their relocation and the applicant's lodging of his application, the children had adapted well to their new environment, they had established good relationships with family and friends, they attended school and they had developed their use of the German language. They further observed that the applicant's argument that the relocation of the children had been unlawful had no bearing on the determination of their habitual residence, which had been examined on the basis of the factors mentioned in indicative way in the CJEU (see paragraphs 12 and 16 above).

72. It follows from the analysis of the relevant decisions that the domestic courts made a thorough assessment of all those factors and replied in detail to all the applicant's arguments. They took into account and made reference to the case-law of the CJEU, from which they drew inspiration as regards the factors indicating the children's habitual residence. They applied the relevant principles with due regard to the contextual differences between the cases brought before the CJEU and the case before them (contrast *Michnea*, cited above, § 49).

73. The applicant did not point to any factor which would indicate that the children were habitually resident in Greece, other than arguing that the period

of one year during which the children had lived in Germany was less than the period they had spent in Greece. However, in the Court's view, such an argument could not outweigh the courts' careful assessment of all the factors indicating that the children had integrated well in their new environment, which had become the centre of their lives, in line with the case-law of the CJEU and with the children's best interests. It is further noteworthy that the domestic courts made their own assessment of how the children had adapted to living in Germany, independently of the assessment made by the German courts, which when the applicant's appeal was heard had already delivered the judgment dismissing the applicant's application for return of his children to Greece under Article 12 of the Hague Convention (see paragraph 20 above).

(iii) On prorogation of the domestic courts' jurisdiction

74. The last part of the applicant's complaint referred to the dismissal of his application to hear his case on the basis of Article 12 of the Brussels II *bis* Regulation concerning prorogation of jurisdiction. It provides that the courts of a Member State also have jurisdiction in relation to parental responsibility in proceedings where the child concerned has a substantial connection with the Member State and the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the superior interests of the child. The domestic courts examined the argument carefully and concluded that there had been no express or implicit acceptance by E.B. that the Greek courts had jurisdiction and therefore Article 12 did not apply. In particular, E.B.'s action for custody of the children had been lodged in November 2013, prior to her relocation in Germany and was then withdrawn. Moreover, in the proceedings that ended with decision no. 26/2015, E.B.'s lawyer appeared at the first hearing only in order to seek an adjournment, which could not be taken as an unequivocal acceptance of jurisdiction, and at the next hearing he had objected to the jurisdiction of the Greek courts. Referring to the case-law of the CJEU, the appellate court concluded that the rules relating to prorogation of jurisdiction in Article 12 § 3 of the Brussels II *bis* Regulation referred only to the set of the proceedings for which jurisdiction had been accepted and did not extend to any other proceedings. It further observed that, in any event, prorogation of jurisdiction must also be decided in the interests of the child, which was not the case in the present circumstances, as the children had already been settled in Germany for three and a half years and to hold proceedings in a state other than that of their habitual residence would be to ignore the importance of the criterion of proximity to the children's best interests (see paragraphs 14 and 16 above).

75. The Court observes that the domestic court analysed the applicant's arguments carefully and also examined all the relevant circumstances before concluding that E.B. had never submitted to the jurisdiction for the specific

set of proceedings, and that, in any event, such prorogation would run counter to the children’s best interests. It relied on the case-law of the CJEU and provided detailed reasons for the rejection of the applicant’s allegations. In view of the above, the Court is satisfied that the domestic courts’ assessment and interpretation of the relevant provisions was not arbitrary and that it was in accordance with the children’s best interests.

(iv) *Conclusion*

76. Based on the above, there has been an interference with the applicant’s right to respect for his family life and therefore, the Government’s objection as regards the lack of victim status must be dismissed. The Greek courts examined the case and gave judgments that paid particular consideration to the principle of the paramountcy of the interests of the children – who appeared to be very well integrated into their new environment (see, by contrast, *Neulinger and Shuruk*, cited above, §§ 145-51). Their decisions do not appear arbitrary. The Court therefore finds no imperative reason to depart from the domestic courts’ findings in the case.

77. The Court concludes that, having particular regard to the need to address the specific facts in children cases, the Greek courts’ assessment of the case in the light of the requirements of the Brussels II *bis* Regulation did not amount to a violation of Article 8 of the Convention, as it was proportionate to the legitimate aim pursued.

78. The Court thus dismisses that the Government’s objection as regards the lack of victim status on the part of the applicant and concludes that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits and *dismisses* the Government’s preliminary objection of lack of victim status of the applicant;
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 3 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Peeter Roosma
President

GIANNAKOPOULOS v. GREECE JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Arnardóttir is annexed to this judgment.

CONCURRING OPINION OF JUDGE ARNARDÓTTIR

1. The present case provided an opportunity for the Court to consider whether the “*Bosphorus* presumption” applied in respect of the Brussels II *bis* Regulation in the circumstances of the applicant’s case (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI).

2. Instead of addressing that question, the Chamber chose to analyse the case based on the approach developed in *X v. Latvia* ([GC], no. 27853/09, ECHR 2013). That judgment, however, concerned a child’s return to a non-EU member State and did not address the particularities of the EU’s mutual recognition mechanisms based on mutual trust. While that approach has admittedly been applied in some cases concerning a child’s return from one EU member State to another (see, for example, *Royer v. Hungary*, no. 9114/16, 6 March 2018, and *Michnea v. Romania*, no. 10395/19, 7 July 2020), the Court has also applied the *Bosphorus* presumption in the context of the enforcement of a return order under the Brussels II *bis* Regulation (see *Povse v. Austria*, no. 3890/11, 18 June 2013) and in the context of the Brussels I Regulation (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 116, ECHR 2016). I see no reason of principle not to apply the Court’s case-law on the EU’s mutual recognition mechanisms to the present applicant’s case (see also *Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, 25 March 2021).

3. While I regret that the Chamber did not take this opportunity to clarify the Court’s case-law in this respect, I fully agree, on the merits of the present case, that there has been no violation of Article 8 of the Convention.