

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

SECOND SECTION

CASE OF BYČENKO v. LITHUANIA

(Application no. 10477/21)

JUDGMENT

Art 8 • Family life • Domestic courts' refusal to make a residence order in the applicant's favour in respect of his son following child's unlawful removal from Lithuania by his mother • In-depth examination of entire family situation • Decisions reasoned and based on child's best interests • Applicant sufficiently involved in the proceedings

STRASBOURG

14 February 2023

FINAL

14/05/2023

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



In the case of Byčenko v. Lithuania,

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

Arnfinn Bårdsen*, President*,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 10477/21) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Dmitrijus Byčenko ("the applicant"), on 8 February 2021;

the decision to give notice of the application to the Lithuanian Government ("the Government");

the parties' observations;

Having deliberated in private on 24 January 2023,

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

INTRODUCTION

1. The case concerns the applicant's complaint that the courts refused to make a residence order in respect of his son in his favour, despite the fact that the child's mother had unlawfully removed the child from Lithuania. He invoked Articles 6 § 1, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1975 and lives in Vilnius. He was represented by Mr R. Mikulskas, a lawyer practising in Vilnius.

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

4. The applicant married O. in 2010. Their son, M., was born in 2011. The family lived in Vilnius.

5. In February 2017 the applicant and O. divorced. They signed an agreement, which was approved by a court, that M. would live with his mother and that the applicant would have the right to see him every Tuesday and Thursday and every other weekend, as well as spend part of the summer holidays and certain national holidays with him.

6. In August and September 2017, the applicant complained to the police and the bailiff that O. did not allow him to see M. in accordance with the agreed contact schedule. His complaints were dismissed, the authorities finding, *inter alia*, that on several occasions when the applicant had had the right to see the child, he had been travelling for work purposes – therefore, the fact that he had not seen his son on those dates had not been O.'s fault.

7. In September 2017, O. lodged a claim with the courts, asking them to change the contact schedule. On 8 March 2018 the applicant and O. reached a friendly settlement, which was approved by the Vilnius District Court on 9 March 2018. They amended the previous contact schedule and agreed that M. would spend the first week and the third weekend of every month with the applicant.

I. THE APPLICANT'S COMPLAINTS TO THE AUTHORITIES CONCERNING HIS SON'S DISAPPEARANCE

8. In May 2018 the applicant contacted the Department for the Protection of Children's Rights of the Vilnius Municipality, informing them that his son had disappeared and asking them for help in finding him. In reply, the Department informed the applicant that it was not entitled by law to determine the whereabouts of missing children, but that if the applicant had grounds to believe that his son had been taken out of Lithuania, he should contact the Service for the Protection of Children's Rights and Adoption (hereinafter "the SPCRA").

9. In May 2018 the applicant also lodged a complaint with the police, asking them to determine his son's whereabouts. The applicant stated that since the end of March 2018 he had been unable to contact O. on the phone or to find her at her home in Vilnius.

10. The police contacted O., who informed them that since March 2018 she and M. had been living in the Netherlands. O. stated that the applicant had been aware of her intention to move to the Netherlands and that he had her contact information but that he had not contacted her since she had moved there. O. also stated that she and the applicant had made new contact arrangements (see paragraph 7 above) specifically in order to make it easier for him to visit M. in the Netherlands and that she had no objection to him seeing the child. Accordingly, the police concluded that M.'s whereabouts had been established and that there were no grounds to believe that the criminal offence of child abduction had been committed. The police refused to open a pre-trial investigation, noting that complaints regarding contact rights or residence orders should be lodged in civil proceedings.

11. The applicant appealed against the above-noted decision, in which he argued that the police had not taken all the necessary measures to establish the exact location of his son and that their findings regarding his whereabouts

were incorrect. However, the prosecutor dismissed his appeal. The applicant did not appeal against the prosecutor's decision.

II. FIRST SET OF PROCEEDINGS BEFORE THE LITHUANIAN COURTS CONCERNING A RESIDENCE ORDER

12. In August 2018 the applicant lodged a claim against O. with the Vilnius District Court. He asked the court to change M.'s place of residence and to determine it as being with him. The applicant submitted that O. had removed their son from Lithuania without informing or consulting him and that she had concealed her intention to move to the Netherlands when they had made the new contact arrangements. He argued that O. was using her parental rights against the child's best interests by seeking to completely remove the applicant from their son's life; he argued that, according to the case-law of the Supreme Court, that constituted grounds to make a residence order in his favour (see paragraph 74 below).

13. On 3 September 2018 the Vilnius District Court ordered the applicant to amend his claim. It found that since March 2018 O. and M. had been living in the Netherlands, where O. worked and M. attended primary school. On those grounds, the court concluded that M.'s habitual place of residence was in the Netherlands. Consequently, 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, repealing Regulation (EC) No 1347/2000 (hereinafter "the Brussels II *bis* Regulation"), was applicable in the case at hand. Under the general rules of jurisdiction laid down in Article 8 § 1 of that Regulation, the Lithuanian courts did not have jurisdiction over the request to make a residence order in respect of M. in the applicant's favour (see paragraph 77 below). The Vilnius District Court further stated that none of the additional criteria for determining jurisdiction in specific situations provided in the Brussels II *bis* Regulation, including in cases of child abduction under Article 10, were applicable in the circumstances of the case. It considered that jurisdiction could be established under Article 12 § 3 of the Regulation if the applicant were able to provide evidence that O. had agreed to have the case examined by the Lithuanian courts and that such an examination would be in the best interests of the child (see paragraph 77 below). He was ordered to provide such evidence within fourteen days.

14. The applicant lodged an appeal against the above-mentioned decision. He submitted that the Vilnius District Court had decided that his son's habitual place of residence was in the Netherlands on the basis of one sole criterion – the child's actual presence there – without paying regard to any other relevant circumstances, such as M.'s social relationships in that country or his knowledge of the Dutch language. The applicant further contended that, in view of the fact that M. had been born in Lithuania and had lived there his

whole life, it ought to be presumed that that was his habitual place of residence and that the burden ought to be on O. to prove otherwise. Thus, he contended that the court had erred when finding that it had no jurisdiction under Article 8 of the Brussels II *bis* Regulation.

15. The applicant further submitted that, after finding that his son was currently residing in the Netherlands, the court should have verified whether his removal to the latter country could be considered wrongful within the meaning of Article 10 of the Brussels II *bis* Regulation. He contended that M. had been removed to the Netherlands wrongfully because O. had not informed the applicant of the move and had not obtained his consent. He submitted that, since M. had not yet lived in the Netherlands for one year, the Lithuanian courts retained jurisdiction under Article 10 of the Regulation (see paragraph 77 below).

16. On 27 September 2018 the Vilnius Regional Court dismissed the applicant's appeal. It did not address his argument that M.'s removal to the Netherlands had been wrongful within the meaning of Article 10 of the Brussels II *bis* Regulation (see paragraph 15 above)

17. The applicant did not amend his claim (see paragraph 13 above); accordingly, on 18 October 2018 the Vilnius District Court refused to examine the claim, deeming that it had not been properly lodged. The applicant did not appeal against that decision.

III. PROCEEDINGS BEFORE THE DUTCH COURTS CONCERNING INTERNATIONAL CHILD ABDUCTION

18. In September 2018 the applicant addressed the SPCRA, asking for its assistance in his efforts to have his son returned to Lithuania, in accordance with the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (hereinafter "the Hague Convention"). In November 2018 the SPCRA forwarded his request to the relevant Dutch authorities. The latter attempted to initiate mediation between the applicant and O., but after an initial conversation with them decided that mediation would not be appropriate in the circumstances. The case was referred to the Dutch courts in March 2019.

19. In April 2019, the Regional Court (*rechtbank*) of The Hague appointed a guardian *ad litem* to act in M.'s interests. The guardian spoke to M. twice in May 2019. M. stated that he liked living in the Netherlands, that he wished to live with his mother and did not want to live with the applicant or to return to Lithuania. The conversations were held in English, with interpretation into Russian, M.'s native language, although the guardian noted that sometimes M. himself switched from Russian to English. After the interviews, the guardian concluded that M. was "unable or unwilling to express his views completely freely".

20. On 26 June 2019 the Regional Court of The Hague refused to order M.'s return to Lithuania.

21. The court found that the boy had been living in the Netherlands since 9 March 2018; it settled on that date on the basis of flight tickets submitted by O., as well as the data of the relevant residents' register and the date of M.'s enrolment in a school in the Netherlands. The court noted that there was no dispute that, prior to the removal, M.'s habitual place of residence had been in Lithuania. Although O. had asserted that the applicant had consented to their son's removal, she had not supported that assertion with any evidence or explained how the applicant's consent had been obtained. Accordingly, the court concluded that the removal had been wrongful within the meaning of Article 3 of the Hague Convention (see paragraph 76 below).

22. The court observed that the request for the child's return had been lodged with it on 15 March 2019 – that is to say more than one year after the wrongful removal. Therefore, under Article 12 § 2 of the Hague Convention, the court had to examine whether the child was already settled in his new environment (see paragraph 76 below); the burden of proof in this respect was on O. The court found that M. was attending an international school, he did not speak the Dutch language and did not have any family in the Netherlands other than his mother. Those circumstances led the court to believe that M. had not yet settled in that country.

23. The court also found that none of the conditions provided in Article 13 § 1 of the Hague Convention, under which the court could refuse to order the child's return, had been established (see paragraph 76 below). It further noted that M. had been interviewed by his guardian *ad litem* and that he had been heard by the court itself; M. had stated that he liked living in the Netherlands and did not wish to return to Lithuania. However, the court considered that, in view of his young age, M. had not yet attained the degree of maturity necessary to render it appropriate to take account of his views; in this respect it relied on the conclusion reached by the guardian (see paragraph 19 above). Moreover, M. spent a lot of time with his mother, and it could not be ruled out that his opinion had been influenced by her. Accordingly, the court held that the child's objection did not preclude the possibility of ordering his return to Lithuania (Article 13 § 2).

24. Nonetheless, the Regional Court of The Hague observed that the Vilnius District Court, in its decision of 3 September 2018, had held that it did not have jurisdiction over the dispute regarding M.'s place of residence because his habitual place of residence was in the Netherlands (see paragraph 13 above) and the Vilnius Regional Court had upheld that decision (see paragraph 16 above). The Regional Court of the Hague stated that the purpose of the Hague Convention was to return the child to the State in which the courts had jurisdiction over disputes regarding his or her place of residence. Therefore, in view of the decisions adopted by the Lithuanian courts, in which they had clearly stated that they had no jurisdiction over the

matter, the Regional Court of the Hague considered that it was precluded from ordering M.'s return to Lithuania.

25. The applicant lodged an appeal against the above-mentioned decision. He submitted, *inter alia*, that the Lithuanian courts had erred when finding that M.'s habitual place of residence was in the Netherlands.

26. In July 2019, the guardian *ad litem* again spoke to M., who repeated that he wished to stay in the Netherlands with his mother.

27. On 14 August 2019 the Court of Appeal (*gerechtshof*) of the Hague dismissed the applicant's appeal. It upheld the lower court's conclusion that M.'s removal to the Netherlands had been wrongful. However, in contrast to the lower court, the appellate court found that M. was already settled in the Netherlands. It observed that the school which M. attended was not limited to children from foreign families; moreover, he took part in various extra-curricular activities in which he mingled with Dutch children, and he had Dutch friends. M. lived with his mother and her new partner; the latter was teaching him the Dutch language and M. was already able to understand it quite well. By contrast, M. did not speak Lithuanian and did not have any social ties to Lithuania, other than his parents. The court also observed that, even before O. and M. had moved to the Netherlands, the applicant had spent a lot of time abroad because of his work, and M. had formed a particularly strong attachment to his mother. Accordingly, the court concluded that M. was sufficiently settled in the Netherlands and that returning him to Lithuania would not be in his best interests.

IV. SECOND SET OF PROCEEDINGS BEFORE THE LITHUANIAN COURTS CONCERNING A RESIDENCE ORDER

A. Proceedings before the Vilnius District Court

1. The applicant's claim

28. In July 2019 the applicant lodged a new claim with the Vilnius District Court, in which he asked it to make a residence order in respect of M. in his favour and to grant O. the right to spend the first week and the third weekend of every month with M. He presented essentially the same arguments as those that he had made in the previous proceedings (see paragraph 12 above).

29. He also contended that, in the previous set of proceedings before the Lithuanian courts, those courts had not examined whether the child's removal to the Netherlands had been wrongful within the meaning of Article 10 of the Brussels II *bis* Regulation (see paragraphs 13 and 16 above). The applicant stated that, at the time of those proceedings, there had not been information indicating that his child had been abducted. However, since then, a Dutch court had acknowledged that the child's removal to the Netherlands had been wrongful (see paragraph 21 above). Therefore, the applicant contended that

the Lithuanian courts had jurisdiction over the matter, according to Article 10 of the Brussels II *bis* Regulation.

2. Submissions of the SPCRA

30. During the examination of the case, the Vilnius District Court requested the SPCRA to provide its views on whether changing M.'s place of residence would be in his best interests. The SPCRA informed the court that it was unable to do so because the child and his mother lived in the Netherlands, and it had not been able to visit their home and talk to them. The court nonetheless instructed the SPCRA to provide its views on the basis of the available documents, and the SPCRA did so. It stated that, during the time when O. and M. had lived in Lithuania, there had been no information that O. might have been caring for the boy improperly. According to the decisions of the Dutch courts, M. had been living in the Netherlands since March 2018; he was able to understand the Dutch language, went to school and took part in extra-curricular activities; he lived with his mother and her new partner and had Dutch friends (see paragraph 27 above). Thus, it appeared that he was provided with a safe environment which was suitable for his education and development, and there was no information indicating the contrary. The SPCRA emphasised the importance of ensuring stability for a child. Accordingly, it was of the view that changing M.'s place of residence would be contrary to his best interests.

31. At the court hearing, the SPCRA acknowledged that the child's removal to the Netherlands had been wrongful. However, he had been living in that country for nearly two years and had adapted to his new environment. Moreover, ever since the separation of his parents, M. had lived with his mother, and separating him from her would cause him harm. The SPCRA also stated that the applicant had not made sufficient efforts to maintain the relationship with his son – he had gone to the Netherlands only to take part in court proceedings and had not taken it upon himself to contact M.

3. The Vilnius District Court's decision

32. On 12 February 2020 the Vilnius District Court dismissed the applicant's claim.

33. The court firstly addressed the issue of jurisdiction. It held that, in order to deter parents from abducting their children, Article 10 of the Brussels II *bis* Regulation provided that the courts of the member State in which a child had been habitually resident prior to his or her wrongful removal retained jurisdiction over related matters after that removal. Only in narrowly defined circumstances did jurisdiction shift to the courts of the member State to which the child had been removed. It held that none of the conditions laid down in Article 10 of the Brussels II *bis* Regulation, under which jurisdiction would shift to the courts of the State to which the child had

been removed, had been met (see paragraph 77 below). Therefore, it concluded that it had jurisdiction to examine the applicant's claim.

34. Turning to the merits of the case, the Vilnius District Court emphasised the primary importance of the best interests of the child, enshrined in domestic and international law (see paragraphs 59, 70 and 75 below). It also cited the case-law of the Supreme Court on determining and changing a child's place of residence and the various factors that had to be taken into consideration when making such decisions, such as the physical and social environment that each parent was capable of securing for the child, the child's attachment to each of the parents, and the child's wishes (see paragraph 70 below). The court stated that no single factor was decisive and that all the relevant circumstances had to be assessed when deciding with which parent a child should reside. In this connection, it noted that the unlawfulness of M.'s removal to the Netherlands had been established by the Dutch courts and that their decisions had become final. However, according to the aforementioned case-law, that fact was not, in and of itself, sufficient to make a residence order in the applicant's favour.

35. Referring further to the Supreme Court's case-law (see paragraphs 69 and 71 below), the Vilnius District Court held that in order to change a child's place of residence and make a residence order in favour of the parent with whom the child had not previously been living, it had to be demonstrated that the child's current living environment had become unsafe or unsuitable for his or her development, and that the other parent would be able to ensure an appropriate environment. Domestic and international law protected the stability of a child's family environment and did not provide for changing it in the absence of a pressing need and clear and sufficient grounds, even where that environment had been created in violation of certain legal requirements (see paragraph 69 below; the Vilnius District Court also referred to the Court's judgment in *Mihailova v. Bulgaria*, no. 35978/02, 12 January 2006).

36. The court found that, despite the fact that the applicant had not consented to M.'s removal to the Netherlands, there was no indication that the removal had been contrary to M.'s best interests, because he had been provided with an environment that was suitable for his growth and development. Moreover, the Court of Appeal of the Hague had established that M. had adapted to his new environment: he attended school, took part in extracurricular activities and had friends (see paragraph 27 above). The Vilnius District Court held that, in the present case, there were no exceptional circumstances that would justify changing M.'s habitual place of residence. Such a change could have particularly negative consequences to the boy, leading to psychological instability and creating feelings of discomfort and insecurity. Therefore, the priority had to be given to maintaining the stability of his environment.

37. The court also noted that, in the course of the proceedings before the Dutch courts, M. had been interviewed by his guardian *ad litem* and had

expressed a wish to stay in the Netherlands with his mother (see paragraph 19 above). The Vilnius District Court considered that there were no grounds to believe that the wish expressed by the boy might be contrary to his best interests. The applicant had asked that his son to be heard by the Lithuanian courts, basing his request on the fact that the interviews in the Netherlands had not been carried out in M.'s native language. However, the Vilnius District Court observed that the boy had been interviewed in the presence of an English-to-Russian interpreter, and that those were the two languages which he spoke at home with his mother. Accordingly, the court dismissed the argument that M. had been interviewed in a language that he did not understand. It held that interviewing him again would be superfluous, and that, moreover, requiring M. to travel to Lithuania would interrupt his education and cause him additional stress.

38. Therefore, in view of the fact that the applicant's son had already settled into his new environment, the Vilnius District Court concluded that it was in his best interests to remain with his mother. Furthermore, separating M. from O., with whom he had lived since his parents' separation, would cause a significant change in his living situation and affect the consistency of his upbringing, which would be contrary to his best interests. The court noted that the SPCRA had reached a similar conclusion (see paragraphs 30 and 31 above) and that it had no reason to disagree with the latter.

39. Lastly, the court observed that, while it appeared that O. had not made sufficient efforts to ensure M.'s contact with his father, that in itself did not justify changing M.'s place of residence. Nor did the fact that M. lived in a different country from the applicant constitute grounds to remove the boy from the place in which he was settled. The court stated that the possibility to freely travel across international borders and the well-developed transport networks had made geographical distance less important. It also observed that the applicant had not taken any steps to have the contact schedule enforced in the Netherlands. The court considered that the existing contact arrangements, which entitled the applicant to spend rather long uninterrupted periods with his son (see paragraph 7 above), were appropriate in the circumstances.

B. Proceedings before the Vilnius Regional Court

1. The applicant's appeal

40. The applicant lodged an appeal against the decision of the Vilnius District Court. He submitted that that court had not been sufficiently active when resolving a family dispute and that it had breached a number of procedural requirements. In particular, the court had not heard M., thereby infringing both his and the applicant's rights. Moreover, although the SPCRA had informed the court that it was unable to provide its views on whether changing M.'s place of residence would be in his best interests, the court had nonetheless ordered it to provide such views and had relied on them in its

decision (see paragraphs 30 and 38 above). Therefore, the applicant argued that the court's decision had been adopted without obtaining a proper assessment of the situation from a relevant authority. He also submitted that the court had failed to ensure O.'s presence at the hearing, thereby excluding any possibility of a friendly settlement of the dispute.

41. He further contended that the Vilnius District Court had not adequately examined the circumstances of the case and that it had based its decision essentially on a single argument – that M. had settled in the Netherlands, as established by the Dutch courts. The applicant argued that the court had given disproportionate importance to those of the child's interests that were short-term and liable to change, such as his friends and extra-curricular activities, over his relationship with his father.

42. Lastly, he complained that, after deciding that M.'s place of residence should remain with his mother, the court had not examined whether it was necessary to make new contact arrangements in order to ensure the applicant's right to see his son – he argued that the existing contact schedule (see paragraph 7 above) could not be followed if he and his son lived in different countries.

2. The Vilnius Regional Court's decision

43. On 2 June 2020 the Vilnius Regional Court dismissed the appeal lodged by the applicant and upheld the decision of the first-instance court.

44. It firstly held that O.'s participation in the hearing had not been required by law. She had informed the court that she did not wish to participate in person, in view of her son's schooling, her financial situation, poor transport connections, and the hostile relationship between her and the applicant. Nonetheless, O. had submitted her arguments in writing; therefore, her absence had not precluded the first-instance court from being appraised of her position or from examining all the relevant circumstances of the case. The Vilnius Regional Court also observed that previous attempts to resolve the dispute between the applicant and O. through mediation had failed, owing to the animosity between them; thus, it had no reason to believe that O.'s attendance at the hearing could have led to them reaching a friendly settlement.

45. The court next stated that, under domestic law, when deciding matters concerning children, a child who was capable of forming and expressing his or her own views had to be heard by the court (see paragraphs 61, 63 and 67 below). The same principle was enshrined in international law (see paragraph 75 below) and in the case-law of the Court (the Vilnius Regional Court referred to *Hokkanen v. Finland*, no. 19823/92, § 61, 23 September 1994; *Gineitienė v. Lithuania*, no. 20739/05, § 38, 27 July 2010; and *G.B. v. Lithuania*, no. 36137/13, § 105, 19 January 2016). However, the Court's case-law did not lay down strict requirements as to the form in which a child should be heard (see *M. and M. v. Croatia*, no. 10161/13, 3 September

2015). Moreover, the Court had held that it would be going too far to say that domestic courts were always required to hear a child in court regarding the issue of access to a parent who did not have custody, but that this issue depended on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII). Similarly, the Supreme Court had found that when determining a child's place of residence, it was important to assess the entirety of the relevant circumstances; the views of the child constituted one factor to be taken into consideration, but they were not decisive (see paragraphs 63, 67 and 73 below). In the light of the foregoing, the Vilnius Regional Court concluded that domestic and international law placed the main emphasis on the fact that a child's views should be heard, whereas the form or the place in which those views were heard was of lesser importance, as long as the totality of evidence demonstrated that they had been expressed of his or her own free will and in conditions appropriate to the child's age and level of maturity.

46. The court observed that M. had been heard in the course of the proceedings before the Dutch courts. Although those proceedings had concerned the question of whether M. should be returned to Lithuania, rather than with which parent he should live, it was apparent from his answers to the questions posed by the guardian *ad litem* that he associated life in the Netherlands with his mother, and life in Lithuania with his father; he had stated that he liked living with his mother in the Netherlands and did not want to return to Lithuania or to live with the applicant. In any event, the Vilnius Regional Court observed that, as noted by the guardian, M. had been unable or unwilling to express his views completely freely (see paragraph 19 above), and the applicant had not disputed that conclusion. Moreover, O. had submitted that the boy was shy and sensitive and that he suffered from anxiety attacks because of the continuing court proceedings and the tense relationship between his parents. Thus, the court considered that causing the boy additional stress by making him travel to Lithuania and take part in another set of court proceedings had been unnecessary and would not have been in his best interests.

47. The court also observed that – as submitted by O. and not disputed by the applicant – M. did not speak Lithuanian. As a result, even if he had been interviewed during the proceedings before the Lithuanian courts, an interpreter would have been necessary. By contrast, in the Netherlands he had been interviewed in Russian and English, both of which he spoke at home, and the transcript of the interviews showed that he had understood the questions posed to him and had answered them in accordance with his age and level of maturity.

48. With regard to the role of the SPCRA in the proceedings, the Vilnius Regional Court observed that the particular circumstances of the present case had precluded that authority from directly examining M.'s place of residence

with his mother. In any event, the SPCRA's views had not had a decisive impact on the decision of the first-instance court (see paragraph 38 above). The Vilnius Regional Court also noted that the applicant had had the right to ask the SPCRA to clarify its submissions or to provide additional information, but he had not availed himself of that possibility during the proceedings.

49. The court stated that it was not disputed that O. had unlawfully removed M. to the Netherlands – that fact had been established by the Dutch courts (see paragraphs 21 and 27 above). That was relevant when determining whether there were grounds to change M.'s place of residence, but it was not decisive – instead, the court was required to assess the entirety of circumstances and to strike a balance between the different interests involved. The Vilnius Regional Court referred to the case-law of the Supreme Court, which had clarified under what circumstances a residence order should be made in favour of the parent with whom a child had not lived previously and emphasised the importance of the stability of a child's family environment to his or her psychological state (see paragraphs 69 and 71 below).

50. The Vilnius Regional Court stated that it had no reason to doubt the circumstances established by the Court of Appeal of the Hague regarding M.'s adaptation to and integration into life in the Netherlands (see paragraph 27 above) and that the applicant had not demonstrated that M.'s living environment had changed and had become unsuitable for him. It rejected the applicant's argument that his son's short-term interests had been accorded greater importance than his relationship with the applicant (see paragraph 41 above). It stated that the importance of the applicant's and his son's relationship had not been denied; however, when deciding on a child's place of residence, a wide variety of factors had to be taken into account, including the child's social links – in the present case, M.'s friends, his good relationship with his mother's new partner, and his strong bond with his mother, who had been taking care of him since his birth. It was the entirety of those circumstances that had led to the conclusion that it was in M.'s best interests that he continue living with his mother and that his place of residence remain unchanged. The court further observed that M. had expressed a wish to live in the Netherlands with his mother, and there were no grounds to believe that that wish was contrary to his best interests.

51. As to the applicant's argument that O. had prevented him from seeing their son, the court considered that that had not been proved. Although the applicant had submitted to the court copies of emails that he had sent to O. in which he had accused her of not allowing him to see M., he had not provided any proof that those allegations were true. The court observed that there was no indication that, since the time when O. and M. had moved to the Netherlands, the applicant had made any real effort to see the boy. His trips to the Netherlands had coincided with the hearings before the Dutch courts, and there was no evidence that, outside those periods, he had sought to talk

to M. by phone, text messages, video chat or any other means, or that O. had interfered with his efforts.

52. The Vilnius Regional Court acknowledged that the existing contact arrangements (see paragraph 7 above) were difficult to implement in practice, in view of the fact that the applicant and his son lived in different countries. However, for the entire duration of the proceedings the applicant had not made any proposals as to how they might be changed. On the contrary, when asking that a residence order be made in his favour, he had asked that O. be allowed to see M. according to a contact schedule that was identical to the one then in place (see paragraph 28 above). In the absence of a clearly formulated request by the applicant, the Vilnius Regional Court considered that there were no grounds for the courts to make new contact arrangements of their own motion.

C. Proceedings before the Supreme Court

53. The applicant lodged an appeal on points of law, in which he raised essentially the same arguments as those that he had submitted previously (see paragraphs 28 and 40-42 above).

54. On 3 December 2020 the Supreme Court dismissed the appeal on points of law and upheld the decision of the Vilnius Regional Court in its entirety. It affirmed the latter court's findings regarding the importance of ensuring the stability of a child's family environment (see paragraphs 49 and 50 above) and emphasised that in order for M.'s place of residence to be changed, the applicant had to prove that his son's current place of residence had become unsafe or unsuitable. However, the applicant had based his claim primarily on the fact that M.'s removal to the Netherlands had been unlawful, without providing any arguments or evidence that the conditions for changing M.'s place of residence had been met.

55. The Supreme Court further held that the parent who lived separately from his or her child should not seek such contact arrangements as would be most convenient to him or herself. The purpose of a contact schedule was to ensure that the child maintained a relationship with both parents, and any contact arrangements had to be conducive to the best interests of the child. The Supreme Court upheld the conclusions of the Vilnius Regional Court to the effect that the applicant had not made sufficient efforts to contact his son and that he had not proved that O. had prevented him from seeing the boy (see paragraph 51 above). It emphasised that conflict between the parents did not, in itself, amount to a reason to change the existing contact arrangements and that the parents were under an obligation to reach a compromise in the interests of their child.

56. Moreover, the Supreme Court agreed with the lower courts that it had not been necessary to interview M. during the proceedings at hand. The domestic and international case-law to which the Vilnius Regional Court had

referred (see paragraph 45 above) indicated that it was within the discretion of the court examining a case to choose the most appropriate way of ascertaining the child's views in that case. The Supreme Court considered that M. was of the age where he was capable of forming his own views and that he had clearly expressed a wish to live with his mother. Thus, his views had to be given due importance when deciding on his place of residence. It stated that it was immaterial that M. had been interviewed in a case concerning child abduction rather than the determination of M.'s place of residence, because in substance that interview had also disclosed his views on matters that were being decided in the case at hand.

57. Accordingly, the Supreme Court concluded that the lower courts had properly determined what was in the best interests of the applicant's son.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Constitution

58. The relevant provisions of the Constitution read as follows:

Article 38

"The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.

...

In the family, the rights of spouses shall be equal.

The right and duty of parents shall be to bring up their children to be honest people and faithful citizens, and to support them until they reach the age of majority ..."

Article 39

"...

Under-age children shall be protected by law."

B. Civil Code

59. Article 3.3 § 1 of the Civil Code states that the legal regulation of family relations in Lithuania is based on, *inter alia*, the principle of the primary protection and defence of the rights and interests of the child.

60. Article 3.159 § 3 states that parental rights cannot be used in ways that would be against the best interests of the child.

61. Article 3.164 § 1 provides, *inter alia*, that when deciding on any matters relating to a child, a child who is capable of forming his or her own

views must be heard directly; where that is not possible, he or she must be heard through a representative. The child's views must be taken into account when making any such decision, unless that would be contrary to the child's best interests. In a similar vein, Article 3.177 states that a court examining a dispute concerning a child must hear that child if he or she is capable of expressing his or her views, and elucidate the child's wishes.

62. Article 3.170 § 4 states that the parent with whom the child lives must not prevent the other parent from maintaining a relationship with the child and participating in the child's upbringing. Acting to the contrary constitutes abuse of parental rights, for which the parent in question must be held accountable in accordance with the law.

63. Article 3.174 reads as follows:

> "1. A request concerning the determination of a child's place of residence may be lodged with a court by the child's father or mother, or the legal guardian of a parent who is a minor and does not have full legal capacity.
>
> 2. The court shall decide the case on the basis of the best interests of the child, taking the child's wishes into account. The child's wishes may be disregarded only if they are contrary to his or her best interests.
>
> 3. A minor child whose permanent place of residence is in the Republic of Lithuania may be taken to live in another country by the parent with whom the child's place of residence has been determined only after obtaining the written consent of the other parent. If the other parent does not consent, the dispute must be resolved by a court.
>
> 4. Where the circumstances change or the parent with whom the child's place of residence has been determined leaves the child to live with and be brought up by other persons, the persons indicated in paragraph 1 of this Article may lodge a new request to determine the child's place of residence."

64. Article 3.175 § 1 provides, *inter alia*, that a parent has the right to request a court to set a contact schedule that enables him or her to see his or her child. Article 3.175 § 2 states, *inter alia*, that the court shall decide on the contact schedule in accordance with the best interests of the child and with the aim of providing the parent living apart from the child with the maximum opportunity to participate in the child's upbringing. Under Article 3.175 § 3, where relevant circumstances change, either parent has the right to lodge another claim with the courts, asking them to change the existing contact arrangements.

65. Article 3.178 § 1 provides that in cases concerning children, the participation of a State children's rights protection authority is mandatory. Article 3.178 § 2 states, *inter alia*, that that authority must examine the conditions of the family environment and present to the court its views on the case. When deciding on the case, the court must assess not only the views of the said authority, but also the views of the child, and any other evidence submitted by the parties.

C. Code of Civil Procedure

66. The relevant parts of Article 376 of the Code of Civil Procedure read:

> "1. The court examining a case [concerning family relations] has the right, on its own initiative, to collect evidence on which the parties do not seek to rely, if that is necessary in order to reach a fair decision.
>
> 2. The court must take measures to reconcile the parties and to seek to protect the rights and interests of children ...
>
> 3. Having regard to the factual circumstances that form the basis of the claim, as well as those that have been elucidated during the court hearing, the court has the right to go beyond the limits of the claim – that is to say to satisfy more requests than have been lodged or to decide on requests which have not been submitted but which are directly related to the subject of and the basis for the claim ..."

67. Article 380 § 1 provides that when determining all matters concerning children, a child who is capable of forming his or her own views must be heard directly, or if that is not possible, through a representative. When making the decision, regard must be had to the child's opinion, as long as that is not contrary to the child's best interests. Article 380 § 2 provides, *inter alia*, that the child's opinion may be expressed orally, in writing or in other ways chosen by the child.

D. Law on the Fundamentals of Protection of Children's Rights

68. The relevant parts of Article 4 of the Law on the Fundamentals of the Protection of Children's Rights (*Vaiko teisių apsaugos pagrindų įstatymas*) read:

> "Parents, other legal representatives of a child, State and municipal institutions and entities, non-governmental organisations, and other natural and legal persons must abide by the following principles:
>
> (1) the priority of the best interests of the child: when making decisions or taking any actions concerning children, the most important consideration is the best interests of the child. This principle is applied while paying due regard to the particular situation of an individual child; assessing and determining what is the most useful to the child in the short and the long term; taking into account the child's views; his or her identity; the protection of the family environment and family bonds and the maintenance of relationships; the fulfilment of the child's needs in the light of his or her age, development, capacities and degree of maturity, and ensuring his or her proper development; [the child's] physical and mental security; ensuring the child's right to health and education; and any other particular needs ..."

E. Case-law of the Supreme Court

69. In a ruling of 10 May 2006 in case no. 3K-3-320/2006, the Supreme Court held:

> "The case-law of the Supreme Court on the question of determining a child's place of residence is well established; according to this case-law, courts examining such cases

must base their decisions exclusively on the best interests of the child, and those interests must be identified individually in each case (ruling of 7 January 2004 in case no. 3K-3-6/2004 and ruling of 30 March 2005 in case no. 3K-3-176/2005, among others). When determining a child's place of residence, it is essential to assess the environment in which the child is living at the time of the adoption of the court's decision and its suitability in respect of the child's development, and to determine whether changing that environment would be in the child's best interests. Changes in the child's living environment cause him or her certain social and psychological damage and create emotional distress. International and domestic law ensure the protection of the child's family environment and, in the absence of a pressing need and clear and sufficient grounds, do not provide for changing it, even if the said environment has been created contrary to certain legal requirements (judgment of the European Court of Human Rights in the case of *Mihailova v. Bulgaria*, no. 35978/02, 12 January 2006). Factors that justify a decision not to change a child's living environment include: the period of time during which the child has been living in an environment that corresponds to his or her needs and ensures his or her right to a home; material conditions at home; whether the child's needs are being met; the formation of social relationships; an established constant emotional bond with the parent with whom the child is already living; relationships with other family members or persons living with the child; and other circumstances that may be considered important in a particular case. International and Lithuanian case-law is oriented to a period of time longer than one year during which the child has lived in an environment suited to his or her needs. Changing that environment must be justified and necessary ...

The panel of judges finds that, in cases where it is requested to make a residence order in favour of the parent with whom the child did not previously live, it must be determined that the child's present family environment has become unsafe or no longer meets the necessary conditions for his or her normal development and that such an environment would be created if the child lived with the other parent ..."

70. In a ruling of 3 September 2008 in case no. 3K-3-411/2008 and a ruling of 9 October 2008 in case no. 3K-3-383/2008, the Supreme Court held:

"A court has to determine with which of his or her parents a child should live in order to ensure his or her best interests. When determining a child's place of residence, the court must assess: the efforts and capabilities of each parent to ensure the implementation of the child's main rights and duties, as provided by law; the family's living conditions, including the personality of each parent and their respective ability to provide the child with conditions conducive for his or her growth and development; the relationship between the child and each of the parents; the child's attachment to the parents, siblings and other relatives; and the child's wishes, among other considerations."

71. In a ruling of 1 February 2010 in case no. 3K-3-24/2010, the Supreme Court held:

"One of the grounds for changing a child's place of residence after he or she has been living in a certain environment for more than one year is that that environment does not correspond to the child's needs (ruling of 22 October 2008 in case no. 3K-3-506/2008 ...). In order to ensure the child's right to a safe environment that would create the necessary conditions for him or her to develop, regard must be had to the objective living conditions that [each of the parents] is able to provide, taking account of the fact that the child's interests require that he or she be provided with an environment (within the physical and social sense) in which he or she could stay, engage in activities necessary for his or her development, play, be protected from the daily cares and

problems of adults, and so on. When examining the evidence regarding the capacity of [each parent] to bring up the child, the court cannot rely on a single fact but must assess the facts in their entirety from the perspective of the best interests of the child and only then reach a conclusion as to the child's place of residence. When assessing a wish expressed by the child to live with his or her father or mother, the court must elucidate ... the circumstances that determine the child's wish. That is an important condition because the grounds for the attachment (whether it is natural or resulting from the inappropriate behaviour or opinion of one of the parents) determine the relationship between the child and the parent in question. When establishing the degree of the child's attachment to each of the parents, it must be ascertained with which parent and for how long the child has lived since he or she was born and with which parent the child is living at the time of the examination of the case (ruling of 3 September 2008 in case no. 3K-3-411/2008 ...)."

72. In a ruling of 26 April 2013 in case no. 3K-3-269/2013, the Supreme Court held:

"It is provided by both international and national legal instruments that a court deciding whether to change a child's place of residence must ascertain with which of the parents the child prefers to live; however, there is no requirement that in every case this obligation on the part of the court be fulfilled directly – that is to say at a court hearing. The legal provision indicating that [a child must be heard directly at a court hearing unless that is] "not possible" must be understood as encompassing not only objective circumstances that preclude the child from attending the hearing (such as illness), but also situations in which attending the hearing might be contrary to the child's best interests. Having regard to the circumstances of the particular case (the child's sensitivity, the harm that the questioning may have on his or her mental state, [or] the possibility of the questioning giving rise to negative emotions such as fear, anxiety or insecurity), it may not be advisable, or may be counterproductive, to question the child at a hearing. Therefore, the court at the preparatory stage of the proceedings may instruct a State child protection authority, an educator, a social worker or another person to ascertain with which of the parents the child prefers to live."

73. In a ruling of 11 April 2014 in case no. 3K-3-202/2014, the Supreme Court held:

"When deciding on matters concerning children, a child who is capable of forming his or her own views, irrespective of his or her age, must be heard before the court, and if that is not possible, [his or her views must be presented to the court] through a representative (Article 3.177 of the Civil Code, Article 380 § 1 of the Code of Civil Procedure). The Supreme Court has noted that when taking a child's views into account, regard must be had not only to the child's age but also his or her level of maturity (Article 12 of the UN Convention on the Rights of the Child), as well as other relevant circumstances that may affect the child's wishes with regard to his or her place of residence, such as [the degree of] attachment to the person with whom the child is currently living, the material conditions provided by the latter [and] the [child's] sense of security ... (ruling of 4 February 2013 in case no. 3K-7-114/2013) ... [W]hen deciding on the contact schedule between a child and a parent [living apart from the child], the entirety of the relevant circumstances must be taken into account. The child's opinion is one of them, but it is not decisive. The law establishes the child's right to participate in the adoption of such decisions, by stating that a child's views must be considered (Article 3.174 § 2 of the Civil Code, Article 380 § 1 of the Code of Civil Procedure), but that does not mean that the final decision is taken by the child. The child's opinion

may be disregarded if it is contrary to his or her best interests (Article 3.174 § 2 of the Civil Code, Article 380 § 1 of the Code of Civil Procedure)."

74. In a ruling of 24 November 2016 in case no. 3K-3-454-969/2016, the Supreme Court held:

"82. [When a parent acts] in good faith in order to ensure the child's contact with [the other parent], [and] is willing to decide on matters concerning [the child] not only at his or her own discretion, then that may amount to an important argument in favour of determining the child's place of residence as being with that [parent]. Circumstances such as the occurrence of proceedings under the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 suggest a certain lack of responsibility [on the part of the parent in question], egoism [on the part of that parent], disregard for the child's best interests (namely, [his or her interests] in having contact with both parents) and a lack of cooperation with the [other] parent (ruling of 20 October 2014 in case no. 3K-3-455/2014).

83. According to the case-law of the Supreme Court, failure to respect the contact schedule established by a court decision or by a children's protection authority [or] the child's removal to another country without the knowledge of the other parent constitute important circumstances when deciding whether the parent in question is exercising his or her parental rights contrary to the child's best interests (ruling of 26 April 2013 in case no. 3K-3-269/2013).

84. Regard for the best interests of the child and respect for the principle of the equality of both parents when deciding on the most important questions of a child's life imply that when the parent with whom the child lives wishes to move to another country with the child, he or she must obtain the consent of the other parent ... Failure to secure the consent of the [other] parent precludes the removal of the child, unless a court finds the refusal to give consent legally unjustified (that is, contrary to the child's best interests). The burden of demonstrating that removing a child to another country best corresponds to his or her interests and that it does not violate the very essence of the rights of the [other] parent lies on the parent who seeks to change the child's habitual place of residence (ruling of 24 October 2014 in case no. 3K-3-454/2014)."

II. INTERNATIONAL AND EUROPEAN UNION LAW

A. Convention on the Rights of the Child

75. The relevant provisions of the United Nations Convention on the Rights of the Child, signed in 1989 and ratified by Lithuania in 1992, read:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by

competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

B. Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention")

76. The relevant provisions of the Hague Convention, signed in 1980 and ratified by Lithuania in 2002, read:

Article 3

"The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

Article 12

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment ..."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

C. European Union law

77. The relevant parts of the 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 ("the Brussels II *bis* Regulation") read as follows:

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 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 12
Prorogation of jurisdiction

"...

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 ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. The applicant complained about the courts' refusal to make a residence order in his favour in respect of his son. He relied on Article 6 § 1 and Article 8 of the Convention.

79. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined solely under 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' submissions

(a) The Government

80. The Government submitted that the applicant had failed to exhaust the available effective domestic remedies. Firstly, he had not appealed against the decision of the prosecutor to refuse to open a pre-trial investigation (see paragraphs 9-11 above). Secondly, he had failed to amend his claim, as instructed by the Vilnius District Court in the first set of proceedings, and he had not appealed against that court's decision to consider his claim as not having been lodged (see paragraphs 13 and 17 above). Lastly, he had not asked the courts to set a different contact schedule, one that would have made it more convenient for him to see his son.

(b) The applicant

81. The applicant submitted that his purpose when complaining to the police had been to find his son and that he had had no intention of having O. prosecuted. Accordingly, after the police had determined the child's whereabouts, he had focused on pursuing those remedies that could have resulted in his son's return to Lithuania.

82. He further submitted that, in the first set of proceedings, the Vilnius District Court had held that the only possibility for him to have the case examined before Lithuanian courts would be by proving that the conditions set by Article 12 of the Brussels II *bis* Regulation had been met; accordingly, it had ordered the applicant to provide evidence that O. had agreed to have the case examined by Lithuanian courts (see paragraph 13 above). However, obtaining O.'s consent had not been in the applicant's power, and it had thus been objectively impossible for him to amend his claim in the specific manner indicated by the court.

2. The Court's assessment

83. The relevant general principles concerning the requirement under Article 35 § 1 of the Convention to exhaust effective domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and the cases cited therein).

(a) As to the first set of proceedings

84. The Court considers that it is not necessary to address the parties' submissions concerning the exhaustion of domestic remedies in the first set of proceedings. Even assuming that, in the particular circumstances of the present case, the applicant could not be reasonably expected to amend his

claim in the manner requested by the Vilnius District Court or to appeal against that court's decision refusing to accept his claim for examination, that part of the application is in any event inadmissible, for reasons provided below.

85. The Court reiterates that compliance with the six-month time-limit concerns a matter which falls under its jurisdiction and which it is not prevented from examining of its own motion, even in the absence of an objection by the Government (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 98, 6 November 2018, and the cases cited therein). In the present case, assuming that the decision of the Vilnius District Court of 18 October 2018 is to be considered "final" for the purpose of Article 35 § 1 of the Convention, the Court observes that it was adopted more than six months before the present application was lodged (8 February 2021). Accordingly, any complaints concerning the first set of proceedings have been lodged out of time and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

86. Having found that it does not have jurisdiction to review the compatibility with Article 8 of the Convention of the first set of proceedings, the Court notes, nonetheless, that when assessing the second set of proceedings, it will have to put them in context, which inevitably means that it must to some degree have regard to the former proceedings and decisions (see, *mutatis mutandis*, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, §§ 147-48, 10 September 2019, and the cases cited therein).

(b) As to the remainder of the application

87. The Court reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy that addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy that has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-11, ECHR 2014 (extracts), and the cases cited therein). In the present case, the Government did not dispute that instituting civil proceedings before the courts constituted an effective remedy in respect of the applicant's complaint regarding his son's place of residence. Therefore, he was not required to also pursue a remedy under criminal law, and the fact that he did not appeal against the prosecutor's decision not to open a pre-trial investigation has no bearing on the admissibility of his complaint.

88. As to the Government's argument concerning the establishment of a new contact schedule (see paragraph 80 above), the Court considers that it is closely related to the merits of the case and that it is therefore more appropriate to address it at that stage.

89. Accordingly, the applicant's complaint concerning the second set of court proceedings cannot be dismissed for non-exhaustion of domestic remedies. The Court further 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.

B. Merits

1. The parties' submissions

(a) The applicant

90. The applicant submitted that the courts had failed to give due importance to the fact that O. had not complied with the agreed contact schedule and had unlawfully removed their son to another country. In view of her unlawful actions, the courts ought to have assessed whether, in the future, she would use her parental rights properly and would secure the applicant's right to see M., as well as M.'s right to maintain a relationship with both of his parents. The applicant contended that O. should have been required to demonstrate that her and M.'s residence in the Netherlands would not be contrary to the interests of the child and those of the applicant.

91. He further submitted that the courts had failed to strike a fair balance between the stability of the child's living environment and the applicant's right to see his son. Moreover, they had not carried out an assessment of the relevant factual circumstances themselves but had simply relied on the decisions of the Dutch courts.

92. In addition, the applicant submitted that, after M.'s removal to the Netherlands, compliance with the existing contact schedule (see paragraph 7 above) had become objectively impossible. Therefore, after refusing to make a residence order in the applicant's favour, the courts ought to have acted *ex officio* to protect his and his son's right to maintain a family relationship and have revised the existing contact arrangements. Their failure to do so had created a risk that the applicant's and his son's relationship might weaken or even end completely.

93. The applicant also complained that his son had not been heard before the Lithuanian courts. He submitted that the courts should not have relied on the interviews conducted in the course of the proceedings before the Dutch courts because the latter proceedings had concerned different subject matter – the child's unlawful removal and his adaptation to his new environment – whereas the proceedings before the Lithuanian courts had concerned the determination of his place of residence and his contacts with his parents. Moreover, M.'s guardian *ad litem* had found that the child had been unable or unwilling to freely express his opinion (see paragraph 19 above), and the interviews had not been conducted in M.'s native language, all of which had warranted interviewing him again.

94. The applicant further submitted that the court decisions had been adopted without obtaining a proper assessment of M.'s family environment from a qualified authority. The SPCRA had not visited O.'s and M.'s home

and had given its views only on the basis of written documents, which did not meet the requirements of the law (see paragraph 65 above), and the courts had breached the procedural rules by relying on those views.

95. Lastly, the applicant submitted that the courts had failed to respect the principle of equality of arms because they had not considered O.'s attendance at the hearing to be mandatory. Her absence had precluded the applicant from asking her questions and directly hearing her views, particularly with regard to ensuring compliance with the contact schedule in the future.

(b) The Government

96. The Government did not dispute that the refusal to make a residence order in respect of M. in the applicant's favour had constituted an interference with the applicant's right to respect for his private and family life; nonetheless, that interference had been provided by law, had pursued a legitimate aim and had been necessary in a democratic society.

97. The Government submitted that the courts had given primary importance to the best interests of the child, as required by domestic and international legal instruments and the case-law of the Court. They had carried out an in-depth assessment of the entire family situation and had based their findings on the available information, including the recent decisions adopted by the Dutch courts. While acknowledging that M.'s removal to the Netherlands had been unlawful, the courts had emphasised that that fact had not been determinative when deciding whether to change his place of residence. They had given due weight to M.'s opinion, clearly expressed on more than one occasion, that he wished to live with his mother in the Netherlands (see paragraphs 19 and 26 above). In view of the boy's young age and certain doubts as to whether he had been able to formulate his own views, the courts had also assessed whether those views had been in line with his best interests – to that effect, they had examined his living conditions and family environment in the Netherlands and had been satisfied that he had been provided with a secure and stable environment, suitable for his growth and development. The courts had also ascribed importance to the fact that M. had lived with his mother since his birth and that the applicant had not made sufficient efforts to see him (see paragraphs 38, 39, 50 and 51 above).

98. Furthermore, the Government contended that the applicant had been provided with adequate procedural guarantees. He had had an opportunity to lodge claims, appeals and requests, he had participated in court hearings and had been represented by a lawyer of his choice. Moreover, the courts' decisions had been properly reasoned. The Government submitted that the courts had addressed the applicant's requests that they hear M., ensure O.'s participation in the hearing and exclude the views of the SPCRA from the case and they had refused those requests on relevant grounds (see paragraphs 37, 44-48 and 56 above). The sole fact that his requests had been refused did not suffice to conclude that the proceedings had not been fair.

99. The Government further submitted that the outcome of the case had not been determined by the mere passage of time and that the authorities could not be reproached for failing to act with sufficient promptness. On the contrary, the applicant himself had failed to promptly request the return of his son: he had been advised by the authorities to institute proceedings concerning child abduction as early as May 2018 (see paragraph 8 above), but he had not done so until September 2018.

100. Lastly, the Government submitted that the decision not to change M.'s place of residence had not precluded the applicant from seeing his son. They pointed out that the applicant had not requested the courts to make new contact arrangements – on the contrary, when asking that his home be fixed as M.'s place of residence, he had proposed that O. should be allowed to see the child in accordance with a contact schedule identical to the one already in place (see paragraph 28 above), which indicated that he considered it to be appropriate.

2. The Court's assessment

(a) Existence of an interference, its legal basis and the aim pursued

101. The Court firstly observes that the relationship between the applicant and his son undoubtedly constitutes family life within the meaning of Article 8 of the Convention. It accepts that the decisions that determined that M. should continue to reside with his mother amounted to an interference with the applicant's right to respect for his family life (see, *mutatis mutandis*, *Širvinskas v. Lithuania*, no. 21243/17, § 98, 23 July 2019, and the cases cited therein). The Court furthermore notes that it has not been disputed by the parties that the interference had a basis in national law (see paragraph 63 above) and that it pursued the legitimate aim of safeguarding the best interests of the applicant's son. It therefore remains to be examined whether that interference was "necessary in a democratic society".

(b) Necessity of the interference in a democratic society

(i) Relevant general principles

102. The general principles applicable in cases concerning child custody and parents' contact rights have been summarised in *Širvinskas* (cited above, §§ 92-97, and the cases cited therein).

103. In particular, it is well established in the Court's case-law that in all decisions concerning children, their best interests are of paramount importance. This reflects the broad consensus on this matter (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 287, 8 April 2021, and the cases cited therein; see also Article 3 of the UN Convention on the Rights of the Child cited in paragraph 75 above).

(ii) Application of the above principles in the present case

(α) As to the decision-making process

104. The applicant complained about the following aspects of the decision-making process: firstly, that the courts had refused to hear M., relying instead on the views that he had expressed during the proceedings before the Dutch courts; secondly, that the courts had not required O. to be present at the hearings; and thirdly, that they had relied on the opinion given by the SPCRA, despite the fact that it had not directly examined O.'s and M.'s family environment. The Court will address those submissions in turn.

– *The refusal to hear the applicant's son*

105. The Court reiterates that, pursuant to the international standards in force, in any judicial or administrative proceedings affecting children's rights under Article 8 of the Convention, children capable of forming their own views should be sufficiently involved in the decision-making process and be given the opportunity to be heard and thus to express their views (see *Q and R v. Slovenia*, no. 19938/20, § 97, 8 February 2022, and the case-law cited therein).

106. At the same time, the Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts. The question of whether the domestic courts need to hear a child in court depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII, and *R.M. v. Latvia*, no. 53487/13, § 116, 9 December 2021).

107. In the present case, the courts held that it was not necessary to hear the applicant's son because he had already been heard in the proceedings before the Dutch courts, where he had expressed the wish to live with his mother (see paragraphs 37, 46 and 56 above).

108. The applicant did not challenge the credibility or impartiality of the guardian *ad litem* who had interviewed M. in the Netherlands (contrast *Sahin*, cited above, § 76). Instead, he submitted that the boy had not been interviewed in his native language and that the proceedings before the Dutch courts had concerned a different matter than those before the Lithuanian courts (see paragraphs 40 and 93 above). However, having examined the documents in its possession, the Court has no grounds to believe that the circumstances indicated by the applicant may have resulted in his son's views being established inaccurately. It further notes that the domestic courts addressed the applicant's submissions in sufficient detail and dismissed them in duly reasoned decisions (see paragraphs 37, 46, 47 and 56 above), and the Court has no reason to call those decisions into question.

109. Moreover, the domestic courts considered that requiring the applicant's son to travel to Lithuania and to participate in another set of court

proceedings would interrupt his education and would cause him additional stress (see paragraphs 37 and 46 above, as well as the relevant case-law of the Supreme Court in paragraph 72 above). The Court accepts that the practical and psychological difficulties that the child would have to endure if required to participate in court proceedings were valid concerns for the courts when deciding whether he should be heard (see, *mutatis mutandis*, *R.M. v. Latvia*, cited above, § 117). It also notes that the applicant did not dispute those concerns.

110. The Court further observes that M. was interviewed by the guardian *ad litem* in April and July 2019 (see paragraphs 19 and 26 above), meaning that the last interview was conducted the same month as that in which the applicant instituted the proceedings before the Lithuanian courts (see paragraph 28 above). In view of the very short time between the interviews and the start of the new proceedings, the Court considers that the applicant failed to substantiate the need to interview his son again. Indeed, at no point did he argue that there had been any circumstances that might have led to a change in M.'s views regarding his preferred place of residence.

111. Lastly, the Court notes that, under the Civil Code and according to the case-law of the Supreme Court of Lithuania, when deciding on a child's place of residence, the courts must take into account the entirety of the relevant circumstances; the child's opinion is one of them, but it alone is not decisive, and the final decision must be based on the child's best interests (see paragraphs 63 and 73 above). The courts that examined the applicant's case followed this approach (see paragraph 45 above), and the Court is satisfied that that was in line with the principle of the paramount importance of the best interests of the child (see *Širvinskas*, cited above, § 96, and the cases cited therein), particularly in view of the doubts as to whether M. was capable of freely expressing his views (see paragraph 19 above).

112. In the light of the foregoing, the Court finds no reason to reproach the domestic courts for deciding not to hear the applicant's son directly but to rely instead on the views that he had expressed in the proceedings before the Dutch courts, which views were then assessed together with other relevant circumstances.

– *O.'s absence from the court hearings*

113. The Court reiterates that, 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 that provision (see, among many other authorities, *G.B. v. Lithuania*, no. 36137/13, § 105, 19 January 2016, and the cases cited therein). It has also consistently held, in cases concerning child custody or contact rights, that parents must be involved in the decision-making process to a degree sufficient to provide them with the requisite

protection of their interests (see *Q and R v. Slovenia*, cited above, § 96, and the cases cited therein).

114. However, it does not follow from the Court's case-law under Article 8 of the Convention that a parent who waives his or her right to participate in such proceedings must nonetheless be obliged to attend them, provided that the non-attendance does not interfere with the overall fairness of the proceedings. In the present case, the Vilnius Regional Court found that O. had presented her position with regard to the applicant's claims in her written submissions and that there was therefore no need to oblige her to participate in person (see paragraph 44 above). The Court observes that, while the applicant complained that he had not been given an opportunity to hear O.'s views "directly" (see paragraph 95 above), he never argued that her views on any of his claims had been unknown to him. Instead, his main complaint regarding her absence was that it had precluded the case from being resolved by way of a friendly settlement (see paragraph 40 above). However, the Court has no reason to question the position taken by the Vilnius Regional Court to the effect that the previous attempts to find an amicable solution to the case had failed because of the animosity between the applicant and O. and that there were no grounds to believe that her presence at the hearing would have changed the situation (see paragraph 44 above).

115. Accordingly, the Court finds that O.'s absence from the court hearings did not interfere with the fairness of the proceedings taken as a whole.

– *The lack of a proper expert assessment*

116. While reiterating that Article 8 of the Convention contains no explicit procedural requirements (see the references in paragraph 113 above), the Court observes that in several cases concerning children it found that the decision-making process had not been fair in view of the failure of the domestic authorities to obtain an expert opinion, where such an opinion had been necessary in order to assess a child's relationship with his or her parents or to evaluate whether the statements given by the child corresponded to his or her true wishes (see *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII, and *Petrov and X v. Russia*, no. 23608/16, § 108, 23 October 2018).

117. Turning to the circumstances of the present case, the Court observes that, under the Civil Code, the participation of a State children's rights protection authority is mandatory in cases concerning children; that authority must examine the conditions of the relevant family environment and present to the court its views on the case. However, the views of such an authority must be assessed together with other available evidence (see paragraph 65 above).

118. There was no dispute between the parties that the SPCRA did not speak to O. and M. and did not directly examine their family environment,

and that its views were based solely on the written material. Some of that material had been collected by the SPCRA itself – namely, information to the effect that, during the time when O. and M. had lived in Lithuania, there had been no information that O. had been caring for the child improperly (see paragraph 30 above), and the applicant did not question its relevance to the proceedings. However, the remainder of the SPCRA's conclusions were based entirely on the findings of the Dutch courts and not on any assessment of O.'s and M.'s family environment carried out by SPCRA experts themselves, and the Court is unable to regard such an assessment as adequate.

119. At the same time, it observes that the Lithuanian courts themselves based their decisions primarily on the material of the proceedings before the Dutch courts, such as views given by the child during the interviews with the guardian *ad litem* and the Dutch courts' conclusions regarding the child's adaptation to life in the Netherlands, his social relationships and family environment. It considers that, in the present case, the Lithuanian courts cannot be faulted for relying heavily on the decisions reached by the Dutch courts, particularly in view of the fact that the latter decisions had been taken with the applicant's participation and had been adopted shortly before or after the start of the proceedings before the Lithuanian courts (see paragraphs 20, 27 and 28 above); moreover, in his application before the Court, the applicant did not raise any complaints against the Netherlands regarding those decisions. It further observes that during the proceedings before the Lithuanian courts, the applicant did not argue that the assessment of O.'s and M.'s family environment by the Dutch courts had been incorrect, nor did he provide any reasons why that environment might have changed and become unsuitable for his son since then. Moreover, the applicant never specified which kind of circumstances may not have been identified in the absence of an adequate assessment by the SPCRA (compare and contrast *Elsholz*, § 52, and *Petrov and X*, §§ 108-09, both cited above).

120. Therefore, the Court accepts that, given the circumstances of the present case, the fact that the domestic courts decided the applicant's son's place of residence without obtaining an expert assessment did not render the decision-making process, taken as a whole, unfair.

(β) As to the reasons given by the courts for refusing to make a residence order in the applicant's favour

121. The Court reiterates that in cases concerning child custody or access rights its 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 *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts), and *Strand Lobben and Others*, cited above, § 210).

122. At the outset, the Court observes that the proceedings before the Lithuanian courts were not concerned with determining the lawfulness of the child's removal from his habitual place of residence or the possibility of his return within the meaning of the Hague Convention (see paragraph 76 above) – such proceedings had already taken place before the Dutch courts and they are outside of the scope of the present case because the applicant lodged his application solely against Lithuania and not against the Netherlands. Accordingly, in the present case the Court is not called upon to assess whether the Lithuanian courts examined the applicant's complaint in the light of the requirements of the Hague Convention (see *X v. Latvia* [GC], no. 27853/09, § 93, ECHR 2013). The issue before it is whether their decisions on determining a child's place of residence with one of the parents complied with the relevant requirements of Article 8 of the Convention (see paragraphs 102 and 103 above).

123. When taking the decision not to change the applicant's son's place of residence, the domestic courts emphasised the paramount importance of the best interests of the child (see paragraph 34 above; see also the relevant domestic statutory law and case-law in paragraphs 59, 68 and 70 above). They acknowledged that M.'s removal to the Netherlands by his mother had been unlawful, but considered that that fact was not decisive – instead, when determining the child's place of residence, the decision had to be taken in the light of the entirety of the relevant circumstances (see paragraphs 34 and 49 above). Furthermore, the courts emphasised the importance of stability for a child and stated that a child's habitual place of residence should not be changed without important reasons (see paragraphs 35, 49 and 54 above). They found that the applicant's son was already settled in the Netherlands and that he was provided with an environment suitable for his growth and development; therefore, changing that environment would not be in his best interests (see paragraphs 36 and 50 above). Moreover, the courts held that M. was very attached to his mother, with whom he had lived since his birth, and that the lack of contact between the applicant and his son was not due to any interference on the part of O. but to the applicant's own lack of effort (see paragraphs 38, 39 and 51 above).

124. The Court sees no reason to disagree with the domestic courts' position on the importance of stability for a child or their approach that a child's place of residence should not be changed in the absence of important reasons (see *Širvinskas*, cited above, § 109, and the case-law cited therein). It observes that the applicant's son was removed to the Netherlands at the age of seven and that, at the time of the start of the proceedings before the Lithuanian courts, he had been living in the Netherlands for nearly two years, which must be considered a substantial period of time in view of his young age. Accordingly, it has no grounds to question the courts' findings with regard to M.'s adaptation to his new environment.

125. In particular, the Court does not wish to speculate whether the level of M.'s adaptation to living in Netherlands would have been assessed differently had it been examined by the courts in the first set of proceedings, when less time had passed since O. and M.'s move to that country. In those proceedings the applicant's complaint of child abduction was dismissed in a very cursory manner (see paragraphs 13 and 16 above); however, the Court does not have jurisdiction to assess them (see paragraph 85 above). Be that as it may, it notes that the Court of Appeal of the Hague, which adopted the final decision in the Dutch proceedings, did not rely on any decisions taken in the first set of proceedings before the Lithuanian courts (see paragraph 27 above), and the applicant did not lodge an application with the Court against the Netherlands, alleging that the conclusions of the Dutch courts regarding his son's adaptation to his new environment had been ill-founded. In such circumstances, the Court cannot fault the Lithuanian courts for relying on the conclusions made by the Dutch courts with regard to M.'s being settled in the Netherlands.

126. The applicant did not argue either in the domestic proceedings or before the Court that living with O. had become unsafe or unsuitable for his son for any reason. His main argument was that the courts had failed to accord due importance to the fact that O. had unlawfully removed M. from Lithuania.

127. The Court has held in a number of cases concerning international child abduction that the "abductor" parent should not be permitted to benefit from his or her own wrong and should not be able to legalise a factual situation brought about by the wrongful removal of the child. In order to discourage this type of behaviour and to promote the general interest in ensuring respect for the rule of law, in such cases the presumption is in favour of the prompt return of the child to the "left-behind" parent (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 152, 11 December 2014, and *McIlwrath v. Russia*, no. 60393/13, § 126, 18 July 2017). At the same time, the Court has noted that it follows directly not only from Article 8 of the Convention but also from the Hague Convention itself, given the exceptions expressly enshrined therein to the principle of the child's prompt return to his or her country of habitual residence, that such a return cannot be ordered automatically or mechanically (see *X v. Latvia*, cited above, § 98). Indeed, the Hague Convention, which associates the best interests of the child with restoration of the status quo by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of unlawful abduction, also takes account of the fact that non-return may sometimes prove justified for objective reasons that correspond to the child's interests (ibid., § 97).

128. In the light of the above case-law, the Court considers that the fact that a child was previously abducted by one of his or her parents must be given due importance when taking subsequent decisions on child custody or contact rights. However, this does not mean that that fact is necessarily

decisive: when taking any such decisions, the relevant authorities must assess the entirety of the relevant circumstances and take the final decision in accordance with the best interests of the child.

129. In the present case, the Court is satisfied that the domestic courts acknowledged the unlawfulness of O.'s conduct when removing M. to the Netherlands without the applicant's consent, but that they examined the entirety of the relevant circumstances, such as the child's views, his relationship with and attachment to his parents and his adaptation to his new environment, and that they decided on M.'s place of residence according to his best interests (see paragraphs 34 and 49 above and, *mutatis mutandis*, *Hromadka and Hromadkova*, cited above, §§ 163-64).

(γ) As to the applicant's contact rights

130. The Court reiterates that while the essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective "respect" for family life (see, among many other authorities, *Maumousseau and Washington v. France*, no. 39388/05, § 83, 6 December 2007). It has acknowledged on a number of occasions that the positive obligations under Article 8 may entail a duty on the part of domestic authorities to take steps towards reuniting parents with their children or ensuring their contact rights (see *Hromadka and Hromadkova*, cited above, § 150, and *Kacper Nowakowski v. Poland*, no. 32407/13, § 74, 10 January 2017). At the same time, the Court emphasises that the obligations in question are not absolute and that they have to be assessed in the light of the circumstances of each case (see *Kosmopoulou v. Greece*, no. 60457/00, § 45, 5 February 2004, and *Maumousseau and Washington*, cited above, § 83).

131. Turning to the circumstances of the present case, the Court observes that, in his initial claim, the applicant did not make any requests regarding his contact rights (see paragraph 28 above). The first time that he asked the courts to change the contact schedule was when he lodged his appeal, but even then he did not make any specific proposals regarding new contact arrangements (see paragraph 42 above). Therefore, although the Vilnius Regional Court acknowledged that the existing contact schedule was difficult to implement in practice, in view of the fact that the applicant and his son resided in different countries, it decided not to change it in the absence of a specific request made by the applicant (see paragraph 52 above).

132. The applicant argued that, after refusing his request to make a residence order in his favour, the courts should have acted of their own motion and changed the existing contact arrangements in order to ensure that his right to see his son was practicable and effective; it appears that doing so would have been permitted by domestic law (see paragraph 66 above). While the Court cannot rule out the possibility that in certain circumstances such an obligation may be incumbent on the domestic courts, it observes that in the

present case the applicant did not provide any explanation for not submitting any specific requests with regard to contact arrangements. It also takes note of the fact that he proposed that O. should see their son in accordance with a contact schedule that was identical to the one already in place (see paragraph 28 above), which led the Vilnius Regional Court to conclude that the applicant considered such arrangements to be appropriate (see paragraph 52 above).

133. The Court further observes that, according to Lithuanian law, decisions on parents' contact rights do not become *res judicata*, but that either parent may lodge a new claim with the courts and ask them to make new contact arrangements in the event that the relevant circumstances change (see paragraph 64 above). Therefore, the decisions taken in the proceedings at hand do not preclude the applicant from seeking for the contact schedule to be changed in the future, and he has not alleged that such a possibility is purely theoretical (compare and contrast *Nechay v. Russia*, no. 40639/17, § 63, 25 May 2021).

134. Accordingly, the Court has no grounds to find that, in the present case, the domestic courts were required to change the existing contact arrangements of their own motion, in the absence of a properly formulated request by the applicant.

(δ) Conclusion

135. In the light of the foregoing, the Court finds that in the second proceedings before the Lithuanian courts, the latter carried out an in-depth examination of the entire family situation and their decisions were based on the best interests of the child. Moreover, the applicant was sufficiently involved in those proceedings, and the courts addressed his arguments in duly reasoned decisions. Lastly, at no point did the applicant allege that the domestic authorities had failed to act with the requisite promptness and that the outcome of the case had been *de facto* determined by the mere passage of time (contrast *Širvinskas*, cited above, §§ 110-12), and the Court has no reason to find otherwise.

136. There has accordingly been no violation of Article 8 of the Convention.

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

137. The applicant complained that he had been discriminated against on the grounds of his gender because the courts had presumed that the child should live with the mother. He relied on Article 14 of the Convention taken in conjunction with Article 8.

Article 14 of the Convention reads as follows:

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

Admissibility

1. The parties' submissions

138. The Government submitted that the applicant had failed to exhaust the available domestic remedies: he had not alleged at any stage of the domestic proceedings that he had been discriminated against, thereby precluding the assessment of that complaint at the national level.

139. The applicant did not comment on the admissibility of this complaint.

2. The Court's assessment

140. The Court reiterates that Article 35 § 1 of the Convention requires that complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see *Vučković and Others*, cited above, § 72, and the cases cited therein).

141. In the present case, the applicant did not raise the issue of alleged discrimination either explicitly or in substance before any of the domestic authorities. Accordingly, he has failed to exhaust domestic remedies with regard to his complaint under Article 14 of the Convention read in conjunction with Article 8.

142. The Court therefore declares this complaint inadmissible under Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention concerning the second set of proceedings before the Lithuanian courts admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 14 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President