

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

SECOND SECTION

CASE OF ŠIRVINSKAS v. LITHUANIA

(Application no. 21243/17)

JUDGMENT

STRASBOURG

23 July 2019

FINAL

23/10/2019

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



In the case of Širvinskas v. Lithuania,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 2 July 2019,

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

PROCEDURE

1. The case originated in an application (no. 21243/17) 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 Dalius Širvinskas ("the applicant"), on 8 March 2017.

2. The applicant was represented by Mr A. Gruodis, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Acting Agent – most recently Ms L. Urbaitė.

3. The applicant complained that the decisions of the domestic courts to make a residence order in respect of his daughter in favour of his ex-wife had violated his rights under Article 6 § 1 and Article 14 of the Convention.

4. On 29 May 2018 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Karmėlava, in the Kaunas Region.

6. In June 2010 the applicant married I. In September 2010 their daughter P. was born. Until 9 November 2013 they lived in the applicant's parents' house in Karmėlava.

7. On 9 November 2013, at around 3 p.m., the applicant called the police and told them that he and his wife were having a dispute and that she had decided to leave their home and take their daughter with her. According to the police report, when they arrived at the applicant's home, there were no signs of physical violence; the applicant stated that his wife had accidentally scratched him when picking up their daughter but had not caused him any pain. He and his wife did not have any complaints against one another and asked the police not to open an investigation.

8. In his submissions to the Court, the applicant stated that on 9 November 2013 I. had moved out of their home, taking P. with her. The applicant and I. had disagreed on whether their daughter should go with I. or stay with the applicant, and he had called the police, who had ordered the applicant to allow his wife to take their daughter with her. The applicant had complied. He and I. had agreed that, until they reached a permanent decision, P. would live with each of them in turn.

9. On 20 December 2013 the applicant wrote to the Department for the Protection of Children's Rights of Kaišiadorys Municipality (hereinafter "the Kaišiadorys childcare authority"), asking it "to influence the behaviour" of his wife. He submitted that I. had left their home (see paragraphs 7 and 8 above) and that, at her request, he had of his own free will taken their daughter to I.'s apartment in Žiežmariai, in the Kaišiadorys Municipality. On 10 December 2013 they had agreed that the applicant would collect the child ten days later. However, when he had arrived at I.'s apartment on 20 December 2013, I. had refused to allow P. to go with the applicant. He also stated that on one occasion when he had called I. by telephone, he had heard P. crying, which had made him suspect that the child might have experienced psychological and possibly physical violence. He furthermore stated that after spending time with I., P. had asked him not to leave her alone with I. any more.

10. On 22 December 2013 I. lodged a complaint with the police, stating that on the previous day the applicant had arrived at her workplace and had aggressively demanded that she allow him to take P. with him. I. had explained to him that the child had been ill, but the applicant had threatened to take her away while I. was at work. Later I. had received a call from her mother, who had told her that the applicant had forced his way into her house and had threatened to take P. by force. The police had been called and they had told the applicant that he could not take the child in I.'s absence. I. stated that she was experiencing constant psychological pressure and felt unsafe because of the applicant's threats to take P. away from her.

11. On 23 December 2013 the applicant wrote to the Kaišiadorys childcare authority, stating that on 9 November 2013, when he had come home after work, his wife had attacked and scratched him; after seeing this, their daughter had started screaming. The applicant stated that his wife's outbursts of anger had been frequent and that she had previously been

physically violent towards P. On that day he had called the police, but had decided not to lodge a formal complaint in order not to cause problems for I. He had allowed I. to take the child with her because he had been misled by the police officers, who had told him that I. had the right to do so (see paragraphs 7 and 8 above).

The applicant furthermore submitted that on 20 December 2013, as previously agreed with I., he had arrived at her apartment to collect P. but that nobody had been at home. When he had called I. on her mobile telephone, she had told him to stop harassing her. The following day the applicant had gone to I.'s mother's house, where he had found P.; P. had run to him crying and had asked him to take her home. In the applicant's opinion, the child had appeared sad and her movements had slowed down; she had told him that she had been attacked by I.'s mother's dog. When I.'s mother had refused to let the applicant take the child away, he had called the police, but they had told him that they would not be able to do anything in the absence of a formal complaint. Then the applicant had gone to I.'s workplace and had asked for her permission to collect the child, but I. had refused.

The applicant alleged that whenever he had telephoned I., she had refused to give him information about P., and he had often heard P. crying in the background. Furthermore, whenever he had spoken to P. on the telephone, she had screamed and asked him to take her home, but on hearing P. say that, I. would start yelling at the child and tell her that the applicant did not want to live with her.

The applicant asked the Kaišiadorys childcare authority to take measures to protect his daughter from I. He submitted that I. could not control her emotions, had often yelled at the child and had sometimes beaten her. Furthermore, she hindered the applicant's contact with P. He also submitted that P. was used to the house in which she had lived since birth until her departure with I., and that I. had unilaterally changed P.'s place of residence, which was contrary to the law. In addition, the living conditions in I.'s new apartment were not suitable for the child, and because of I.'s work schedule, P. frequently stayed with I.'s mother. Moreover, I. had another daughter from a previous marriage who was being taken care of by I.'s mother, which made the applicant doubt I.'s capacity to raise their daughter.

12. The Kaišiadorys childcare authority notified the police of the applicant's allegations concerning the alleged violence against P. (see paragraphs 9 and 11 above). Subsequently the police declined to open a pre-trial investigation, finding no evidence that I. had been violent towards the child.

13. On 23 December 2013 the Kaišiadorys childcare authority held a meeting with the applicant and I. The latter stated that she did not object to the applicant seeing their daughter, but only when I. herself was present,

because the applicant had previously tried to turn P. against her. However, I. would not allow the applicant to come to her home with his parents because, in her opinion, they had been the reason for the applicant's and I.'s separation. It was agreed that the applicant would see P. in I.'s apartment on 26 December 2013.

The applicant submitted to the Court that on 26 December 2013 he had arrived at I.'s apartment but that neither I. nor P. had been there. He had telephoned I. and had sent her text messages but had not received any response.

14. On 27 December 2013 an official of the Kaišiadorys childcare authority visited I.'s apartment. The official found that the conditions in I.'s apartment, albeit modest and in need of some renovation, were suitable for a child. P. felt happy there and her relationship with her mother was warm and genuine.

A. Determining the child's temporary place of residence and other related proceedings

15. On 30 December 2013 I. filed a petition for divorce before the Kaišiadorys District Court. She asked the court to find that the marriage had broken down through the fault of the applicant, alleging that he had started drinking, had not taken care of the family, had taken out multiple loans without consulting her, and on 9 November 2013 had thrown her and P. out of their house (see paragraphs 7 and 8 above). She also asked the court to make a residence order in respect of P. in her favour, to set a schedule in respect of the applicant's contact with the child, and to order him to pay child maintenance. Lastly, she asked the court to grant an interim measure and to rule that P. should temporarily reside with her until the final decision was adopted.

16. On 31 December 2013 the applicant also lodged a request with the Kaišiadorys District Court, asking it to make a residence order in his favour. He submitted that I. did not allow him to see their daughter, even though the girl had expressed the wish to see him and to live with him. He alleged that I. had often shouted at P. and had sometimes beaten her, whereas the applicant had never harmed the child in any way. He reiterated the statements that he had previously made before the Kaišiadorys childcare authority, including his statement that on 9 November 2013 he had allowed I. to take P. with her because he had been misled by the police officers, who had told him that I. had the right to do so (see paragraphs 9 and 11 above). He also submitted that from her birth until her departure with I., P. had lived in the applicant's parents' house and was used to it, and that she was attached to her grandparents, who lived there as well. He contended that the house was better suited to the child's needs and was closer to her kindergarten than I.'s apartment. The applicant accordingly argued that the

girl should live with him. In the event that the court refused his request, the applicant asked it to set a schedule in respect of his contact with his daughter. He also asked the court to order an interim measure and to rule that P. should temporarily reside with him until the final decision was adopted. The applicant lastly asked the court not to adopt decisions in the parties' absence (see paragraph 72 below).

17. On 2 January 2014 an official of Žiežmariai Eldership visited I.'s apartment and found the conditions there to be suitable for a child. The report on the visit also stated that on 2 January 2014 P. had started attending a kindergarten in Žiežmariai and that the Eldership had not received any complaints about the family.

18. On 6 January 2014 the Kaišiadorys District Court in written proceedings adopted two separate decisions on the applicant's and I.'s requests for interim measures (see paragraphs 15 and 16 above).

19. The court refused the applicant's request for an interim measure. It stated that, in accordance with domestic law, an interim measure, such as determining a child's place of residence, had to be applied when there were sufficient grounds to believe that without it the child's rights or interests would be threatened. It also emphasised that changing a child's habitual place of residence (*įprastinė gyvenamoji vieta*) might cause him or her social and psychological harm. The court considered the applicant's allegation that I. had beaten their daughter to be unproven. It furthermore held that there were no grounds to find that P.'s residence with I. was in any way harmful to the girl's rights and interests. It observed that P.'s residence with her mother did not limit the applicant's right to see his daughter and to take part in her upbringing. The court noted that on 23 December 2013 the applicant had complained to the Kaišiadorys childcare authority that he had not been able to see his daughter (see paragraph 11 above), but that complaint had not been examined at that time, so it was not possible to conclude whether it was well-founded.

20. In a separate decision, the Kaišiadorys District Court allowed I.'s request for an interim measure. It observed that P. was living with I. and that P.'s official place of residence had been declared as being I.'s apartment. The court held that "changing a child's habitual place of residence and disrupting her emotional bond with her mother, with whom she had lived since birth, in every case leads to emotional distress and is likely to cause social and psychological harm". The court accordingly allowed the request for an interim measure and ruled that P. should temporarily reside with I. The applicant was given the right to see his daughter every other weekend, from Saturday morning until Sunday evening, and was ordered to pay maintenance of 400 Lithuanian litai ((LTL), approximately 116 euros (EUR)) per month.

The wording of the decision stated that it had been adopted without the applicant being notified thereof.

21. The applicant lodged an appeal against the above-mentioned decisions on interim measures (see paragraphs 18-20 above). He argued that the Kaišiadorys District Court had incorrectly determined that his daughter's habitual place of residence was with I. The applicant submitted that P. had lived in his parents' house from the time of her birth until her departure with I. and that, by taking her away, I. had changed P.'s habitual place of residence without the consent of the other parent (that is to say the applicant). He submitted that those unilateral actions had amounted to abuse of parental rights and that the Kaišiadorys District Court had legitimised that abuse. The applicant furthermore argued that his daughter, from the time of her birth until her departure with I., had lived not only with her mother but also with her father (the applicant) and that disrupting her emotional bond with either of the parents would cause her equal distress; thus, I. should not have been treated more favourably simply because she was the child's mother. The applicant also reiterated the arguments made in his initial claim as to why P. should live with him (see paragraph 16 above). He lastly asked the court to amend the contact schedule and to allow him to see P. every weekend.

22. In her response to the applicant's appeal, I. submitted that, when she had moved out of their house, the applicant had agreed that she would take their daughter with her and that there had never been any agreement that P.'s place of residence would change regularly (see paragraphs 7 and 8 above), as such instability would have been detrimental to the child. I. also denied that she had prevented the applicant from seeing their daughter, and submitted that the applicant had not complied with the interim measures that had been ordered by the Kaišiadorys District Court (see paragraphs 26, 27 and 30 below). While I. acknowledged that the applicant's parents' house had been P.'s habitual place of residence from the time of her birth until her parents had separated, I. argued that P. was more attached to her mother than to that house and that she had quickly adapted to the new apartment; I. also pointed out that P. was attending a kindergarten nearby (see paragraph 17 above). She furthermore submitted that the living conditions in her apartment were suitable for the child, she had a regular income and her work schedule allowed her to take proper care of P.

23. On 17 January 2014 the applicant wrote to the Kaišiadorys childcare authority, stating that I. continued to hinder his contact with P. He stated that on 26 December 2013 he had arrived at I.'s apartment, as had been agreed (see paragraph 13 above), but that another resident of the building had told him that I. did not live there. The applicant stated that, to his knowledge, I. and P. had moved into that apartment only on 2 January 2014, which showed that she had previously lied to the authorities about her place of residence. The applicant furthermore alleged that I. was not complying with the contact schedule that had been established by the court (see paragraph 20 above). He stated that on Saturday, 11 January 2014, he had

arrived at I.'s apartment, having notified her the day before, to collect the child for the weekend but that the door had been locked and I. had not responded to his telephone calls or text messages. The applicant also submitted that the building in which I.'s apartment was located was in poor condition and that he had seen drunk individuals in and around the building; it was therefore not an appropriate environment for the child.

24. On 20 January 2014 the Department for the Protection of Children's Rights of the Kaunas Region Municipality (hereinafter "the Kaunas regional childcare authority") submitted to the Kaišiadorys District Court an assessment of the conditions at the applicant's home. It stated that the conditions there were suitable for a child and were in accordance with the child's interests. Furthermore, the authority did not have any information that P. might have been neglected or that her parents had ever acted inappropriately. However, it also stated that the Kaunas regional childcare authority was unable to submit a final conclusion regarding which of the parents the child should live with because I. did not live in the Kaunas Region and the authority did not have the necessary information about her.

25. On 21 January 2014 the Kaišiadorys childcare authority submitted to the Kaišiadorys District Court an assessment of the conditions at I.'s apartment, finding them to be suitable for a child. The assessment report also included statements by I. that P. was attached to her older sister, R. (I.'s daughter from her previous marriage) and to her maternal grandparents. I. had acknowledged that P. loved her paternal grandparents as well, but that she had not been able to see them for a while because of the conflict between I. and the applicant; however, I. believed that once that conflict was resolved, she would be able to ensure more frequent contact between P. and her paternal grandparents. The assessment report concluded that, having examined all the relevant circumstances, the Kaišiadorys childcare authority was not opposed to a residence order being made in respect of P. in I.'s favour.

26. On 20 January 2014 the applicant wrote to the Kaunas regional childcare authority that on 18 January 2014 he had collected his daughter from I. for the weekend, in accordance with the court decision on interim measures. The following day, when he had been scheduled to return her to I., P. had begun crying and asking him not to take her back to I. because I. had hurt her (*skriaudžia*); the applicant stated that he had an audio recording of P. telling him this. He had then telephoned I. and informed her of P.'s reluctance to return to her; when I. had asked the applicant to allow her to speak to P. on the telephone, the child had refused to talk to her and had started crying again. I. had accused the applicant of turning the child against her and had threatened to call the police and a bailiff. Afterwards the applicant had asked P. why she had not wanted to go to her mother, and P. had stated that I. had hit her on the head. In the applicant's opinion, the child was suffering from psychological distress and was being subjected to

physical violence. He asked the authorities to refer P. to a psychologist in order for her psychological condition to be assessed.

27. On the same day I. lodged a complaint with the Kaišiadorys childcare authority and the Kaunas regional childcare authority, alleging that the applicant was not complying with the court decision on interim measures and was refusing to return P. to her. She submitted that the applicant had not answered her telephone calls and had not allowed her to speak to the child on the telephone. I. asked the authorities to promptly contact the applicant and to oblige him to return the child to her.

28. On the same day the Kaunas regional childcare authority issued a referral for P. to see a psychologist and forwarded the applicant's allegations of physical violence (see paragraph 26 above) to the police. The police opened a pre-trial investigation, but it was subsequently discontinued, the police having found that no criminal acts had been committed.

29. On 20 January 2014 the applicant also lodged a request with the Kaišiadorys District Court, asking it to explain how its decision on interim measures (see paragraphs 18-20 above) should be enforced, given that the child refused to go back to her mother and wanted to live with him (see paragraph 26 above). On 23 January 2014 the Kaišiadorys District Court explained that in order to enforce the decision on interim measures, the applicant had to notify a bailiff.

30. On 24 January 2014 I. asked the Kaišiadorys District Court to order the applicant to return the child to her. On 27 January 2014 the Kaišiadorys District Court ordered the applicant to immediately return the child to I.

31. On 27 January 2014 I. wrote to the Kaišiadorys childcare authority and the Kaunas regional childcare authority, stating that the applicant had still not returned P. and had not allowed I. to talk to her. As a result, P. was not attending kindergarten and had missed a doctor's appointment. I. furthermore stated that the applicant had been taking P. to various psychologists, without having consulted I., and was thereby causing the child emotional distress.

On the same day the applicant wrote to the Kaišiadorys childcare authority, stating that he had not returned P. to I. because the child had once again refused to return to her. He stated that on 21 and 23 January 2014 he had taken his daughter to a psychologist, following a referral from the Kaunas regional childcare authority (see paragraph 28 above), and that she had told the psychologist that her mother had hurt her and had previously thrown her out of her home (*buvo išvariusi iš namų*). The applicant submitted that he was trying to convince his daughter to return to I. but that he did not wish to take her there by force. He expressed his hope that his wife would see a psychologist and change her behaviour towards their daughter.

32. On 29 January 2014 the applicant asked a bailiff to hand P. over to I., without harming the child, despite the fact that P. refused to go to her mother. On that day P. was handed over to I.

33. On 4 February 2014 the applicant lodged a request with the Kaišiadorys District Court, asking it, *inter alia*, to ensure that P. continued seeing psychologists in Kaunas, following the referral by the Kaunas regional childcare authority (see paragraph 28 above). He submitted that, under that referral, ten visits had been deemed necessary in order for the psychologists to make a final conclusion as to P.'s emotional bonds with her parents. To date, four such visits had taken place. The applicant expressed his fear that I. might prevent P. from seeing the psychologists any further because their preliminary conclusions had been to the effect that P.'s attachment to the applicant was strong.

34. On 10 February 2014 the Kaišiadorys District Court allowed the applicant's request concerning P.'s visits to psychologists in Kaunas. It ordered I. to ensure that P. visited psychologists at the Centre for Psychological Support and Counselling (a public institution) until they were able to reach a final conclusion as to the girl's emotional state and opinion.

35. Subsequently I. lodged a request with the Kaišiadorys District Court, asking it to amend the aforementioned decision (see paragraph 34 above) and to allow her to take P. to psychologists in Kaišiadorys, which was closer to the child's place of residence, and not in Kaunas. The Kaišiadorys childcare authority had recommended that P. see psychologists at the Pedagogical-Psychological Service of the Kaišiadorys Region (hereinafter "the Kaišiadorys psychological service"). It appears that the applicant did not oppose I.'s request. On 26 February 2014 the Kaišiadorys District Court allowed I.'s request and ordered her to ensure that P. visited psychologists at the Kaišiadorys psychological service.

36. On 3 March 2014 I. asked the Kaišiadorys psychological service for recommendations regarding how she and the applicant should behave with their daughter while their dispute concerning her place of residence was pending. On an unspecified date the Kaišiadorys psychological service met with I. and P., and on 10 March 2014 it issued the following conclusions. After observing P. and I., it found that their relationship and communication corresponded to the normal level of P.'s development for her age, and there were no indications that P. might be suffering a psychological crisis or that she felt any emotional tension or aggression towards either of her parents. The report concluded:

> "It is insisted (*primygtinai rekomenduojama*) that the parents ... :
>
> 1. resolve their dispute concerning [P.'s] place of residence and contact rights by means of a friendly agreement, in the interests of the child's well-being;
>
> 2. reduce to the minimum the unavoidable trauma suffered by the child as a result of her parents' divorce by providing her with a stable living environment and contact with her father and mother, in a manner in keeping with her age;

3. take into account the fact that children of [P.'s] age (i.e. from six months to three years of age) are likely to suffer anxiety when separated from their mother (*atsižvelgti į tai, jog [P.] amžiaus vaikų raidai (t.y. nuo pusės iki trejų metų) būdingas atsiskyrimo su mama nerimas*);

4. [acknowledge that] in order to avoid a crisis reaction to the divorce, during the critical period (i.e. during the divorce proceedings and at least half a year after they end) it is unquestionably essential to fulfil [P.'s] need to live with her mother in a stable physical, emotional and social environment (*vienareikšmiškai būtina tenkinti [P.] poreikį gyventi su motina stabilioje fizinėje, emocinėje ir socialinėje aplinkoje*);

5. protect [P.] from any wish on the part of the spouses – often observed during divorce proceedings – to take revenge on the other by using the child's helplessness and her need for emotional closeness with each of her parents."

37. The applicant lodged a complaint with the Children's Rights Ombudsperson regarding the Kaišiadorys psychological service's conclusions. He submitted that those conclusions were biased and had been reached solely on the basis of I.'s statements – which had been inaccurate – and without assessing P.'s emotional bond with the applicant. In particular, he contested the service's findings that P. was "likely to suffer anxiety when separated from [her] mother" and that it was "unquestionably essential to fulfil [P.'s] need to live with her mother" (see paragraph 36 above), arguing that P. would suffer no less if she were separated from her father.

The applicant also complained to the Equal Opportunities Ombudsperson that the conclusions of the Kaišiadorys psychological service were discriminatory against him, as P.'s father, on the grounds of gender.

38. On 20 March 2014 the Centre for Psychological Support and Counselling, in a letter responding to a prior request lodged by the applicant, stated that to that date it had held five meetings with P. and several meetings with the applicant and I. separately. While it was clear that P. loved both her parents, during all the meetings she had expressed the wish to live with the applicant, and the psychologists had observed her great attachment to him. In the letter it was recommended that the provision of psychological support to P. be continued.

39. On 1 April 2014 the Kaunas Regional Court, in written proceedings, examined the appeal lodged by the applicant against the decision of the Kaišiadorys District Court on interim measures (see paragraphs 18-20 above). The court dismissed the part of the appeal concerning P.'s temporary residence. It stated that the applicant had not proved that P.'s residing with I. was contrary to the child's interests; it also referred to the authorities' findings that the conditions in I.'s apartment were suitable for the child (see paragraph 17 above). The court emphasised that at that stage of the proceedings it was determining only the child's temporary place of residence, and that her permanent place of residence would be determined when it examined the merits of the divorce claim; only at that stage would it be decided to which parent the child was more attached or which place of residence was more suited to her needs. Referring to the reports of the

psychologists who had examined P. (see paragraphs 36 and 38 above), the court considered that at that stage the psychologists had not reached a final conclusion as to which parent the child was more attached to, and that they had found that because of her young age P. was unable to express her preference regarding with which parent she wished to live and was likely to be influenced by her parents' views. However, the court extended the applicant's contact rights, giving him the right to see P. every other weekend, from Friday evening until Sunday evening.

40. Subsequently the applicant asked the Kaišiadorys District Court to further extend his contact rights, but on 9 May 2014 the court, in an oral hearing, dismissed that request.

41. On 15 July 2014 the applicant wrote to the Kaišiadorys childcare authority, stating that P. had told him on the telephone that her older sister, R. (I.'s daughter from her previous marriage), had beaten her. The following day an official of the Kaišiadorys childcare authority, together with a police officer, visited I.'s parents' house, where P. and R. were. They spoke to P. and she told them that she loved her sister and that the latter had never beaten her. Afterwards I. lodged a complaint with the Kaišiadorys childcare authority, stating that the applicant had wrongfully accused her daughter, R., of beating P. The authority forwarded I.'s and the applicant's allegations to the Kaišiadorys police, but on 18 August 2014 the police decided not to open a pre-trial investigation. After interviewing the applicant, I. and R., the police found no evidence that R. had used violence against P. It also considered that the applicant had not intentionally slandered R. but had merely informed the authorities of his genuine suspicions.

42. On 27 August 2014 the Kaišiadorys psychological service sent a written explanation to the Kaišiadorys District Court that its conclusions of 10 March 2014 (see paragraph 36 above) had been delivered following I.'s request for psychological assistance; however, its aim had not been to determine P.'s opinion concerning her place of residence. The Kaišiadorys psychological service also stated that it did not have the authority to assess P.'s attachment to her parents.

43. On 30 September 2014 the Children's Rights Ombudsperson, after examining the applicant's complaint against the conclusions of the Kaišiadorys psychological service of 10 March 2014 (see paragraphs 36 and 37 above), issued an opinion. The Ombudsperson observed that on 3 March 2014 I. had addressed the Kaišiadorys psychological service on her own initiative, and that after the Ombudsperson had begun the present inquiry, in August 2014 the service had informed the Kaišiadorys District Court that it had not assessed the degree of P.'s attachment to her parents because it did not have the authority to do so (see paragraph 42 above). The Ombudsperson found that the Kaišiadorys childcare authority had not informed the Kaišiadorys psychological service in due time of the court's decisions ordering I. to take P. to see psychologists (see paragraphs 34

and 35 above). The Ombudsperson furthermore observed that, according to the relevant legal instruments, the Kaišiadorys psychological service did not have the authority to assess with which parent a child should live in the event of a divorce, and that the Kaišiadorys childcare authority should thus not have referred I. and P. to that service. In the Ombudsperson's view, when adopting its decision of 26 February 2014 (see paragraph 35 above), the Kaišiadorys District Court had been misled about the scope of the authority of the Kaišiadorys psychological service. The Ombudsperson therefore considered that the service's conclusions of 10 March 2014 (see paragraph 36 above) should not have been accepted as evidence by the court. The Ombudsperson's opinion was forwarded to the Kaišiadorys District Court.

44. In October and November 2014 the applicant lodged several complaints with the Kaišiadorys childcare authority, alleging that I. was not taking proper care of P.'s health and that he was being prevented from seeing his daughter or talking to her on the telephone on the pretext that she was ill. On 3 November 2014 representatives of the Kaišiadorys childcare authority visited I.'s home; on 10 November 2014 they held a meeting with the applicant and I. in its office, during which I. denied the applicant's allegations. P.'s doctor and the director of the kindergarten also attended the meeting and confirmed that P. was generally in good health and did not fall ill more often than most children of her age. The Kaišiadorys childcare authority expressed its regret that the applicant and I. were unable to resolve their disagreements, because such a situation was harmful to the child. It recommended to I. that if P. fell ill on a weekend that she was supposed to spend with the applicant and the illness was not serious, the applicant could still collect the child; it furthermore recommended that if the applicant had to miss a weekend with P. because of her illness, I. should allow him to spend a different weekend with the child.

45. On 10 November 2014 the applicant asked the Kaišiadorys District Court to amend the contact schedule and to order that, if P. was supposed to spend a weekend with the applicant but she was not handed over to him for any reason, he would have the right to collect P. on the following weekend. On 13 November 2014 the Kaišiadorys District Court refused that request on the grounds that the applicant's proposal would require changing P.'s place of residence often and that such a lack of stability might be harmful to her. The court also referred to the conclusions of the Kaišiadorys psychological service that during the divorce proceedings and at least half a year after they ended, it was essential to fulfil P.'s need to live with her mother in a stable physical, emotional and social environment and that children of P.'s age were likely to suffer anxiety if separated from their mothers (see paragraph 36 above). The applicant lodged an appeal against that decision, but on 26 January 2015 the Kaunas Regional Court dismissed his appeal and upheld the lower court's decision in its entirety. It

emphasised that the applicant's inability to see P. on the weekends had been due to the child's illness and not any attempt on I.'s part to prevent him from seeing the child.

46. On 11 November 2014 the Equal Opportunities Ombudsperson examined the applicant's complaint against the conclusions of the Kaišiadorys psychological service (see paragraphs 36 and 37 above). It referred to the opinion of the Children's Rights Ombudsperson (see paragraph 43 above), which had found that the Kaišiadorys psychological service had not assessed P.'s attachment to her parents because it had not had the authority to do so and that its conclusions had been forwarded to the Kaišiadorys District Court by mistake. Accordingly, the Equal Opportunities Ombudsperson stated that, since the conclusions of the Kaišiadorys psychological service could not have been used as evidence in court proceedings, they could not have affected the applicant's rights or discriminated against him on the basis of gender.

47. The applicant lodged a complaint against the Equal Opportunities Ombudsperson with the Vilnius Regional Administrative Court. He argued that the courts had relied on the conclusions of the Kaišiadorys psychological service, thereby violating his rights and discriminating against him on the basis of his gender. On 3 November 2015 the Vilnius Regional Administrative Court dismissed his complaint. It held that although the Kaišiadorys District Court and the Kaunas Regional Court in their decisions had indeed relied on the conclusions of the Kaišiadorys psychological service (see paragraphs 39 and 45 above), that had not affected the lawfulness of the Equal Opportunities Ombudsperson's opinion because the applicant had had the possibility to defend his rights by appealing against those court decisions.

48. In November 2015 the applicant lodged several complaints with the Kaišiadorys childcare authority, stating that I. was using physical and psychological violence against P. and that doctors and kindergarten personnel were providing him with untruthful information about his daughter. The authority forwarded the applicant's complaints to the Kaišiadorys police but the police declined to open a pre-trial investigation, stating that there were no grounds to find that any criminal acts had been committed.

B. Determining the child's permanent place of residence

49. On 7 March 2014 the Kaišiadorys District Court held a hearing in order to examine the merits of the applicant's and I.'s divorce case. It held that both the applicant's and I.'s participation in the hearing was mandatory; since neither of them had appeared, it decided to hold another hearing on 6 May 2014.

50. The court held further hearings on 6 May, 6 June, 17 July and 3 September 2014 during which it heard various witnesses, examined documentary evidence and considered requests lodged by the parties.

51. During the hearing held on 22 October 2014 the court allowed the applicant's request for P. to be examined by a court-appointed psychologist in order for the degree of her attachment to each of her parents to be determined. It ordered the parties to submit their questions for the psychologist by 3 November 2014.

52. On 5 November 2014 the court forwarded the questions submitted by the applicant and I. to the psychologist. The case was adjourned until the issuance of the psychologist's conclusion.

53. P. was examined by the court-appointed psychologist on 18 March 2015 and the psychologist issued her conclusion on 30 April 2015. It stated that P. was too young to have an independent opinion concerning her place of residence and that she was very easily influenced by the people closest to her. Although P. was unable to fully understand the conflict between her parents, she felt anxious about it and was unwilling to answer questions related to it. She expressed warm feelings towards both of her parents, was attached to and felt safe with both of them, and denied having experienced any physical violence from either of them. It was clear that P. was missing her father (the applicant) and the house in which she had spent the first years of her life; she wished to spend more time with her father, felt happy when she saw him and felt sad when separated from him. At the same time, having to choose between her parents was unpleasant for P. and she mostly wished that they and she could live together again.

According to the psychologist, P. had already become used to her current place of residence (I.'s apartment) and the kindergarten that she was attending, and it was therefore not recommended that she change her place of residence again, as that would undermine the child's feelings of stability and safety. The psychologist emphasised that the girl was missing her father and that it was therefore essential to ensure frequent and uninterrupted visits from him. Furthermore, in order to protect the child's best interests, it was important to create stability in her life and, as much as possible, not to involve her in her parents' disagreements.

The psychologist's conclusions were forwarded to the Kaišiadorys District Court on 5 May 2015.

54. On 26 May 2015 the court decided to resume its examination of the divorce case. It held a hearing on 25 June 2015 and decided to hold the following hearing on 10 September 2015, after the judge's and lawyers' holidays. On the latter date, after hearing the parties' final arguments, the court announced that it would deliver its decision on 30 September 2015.

55. On 30 September 2015 the court decided to renew the examination of the merits of the case on the grounds that the parties had not submitted sufficient documents detailing their current financial state and their debts to

one another. It ordered them to provide the relevant documents by 2 November 2015 and scheduled a hearing for that date.

56. At the hearing of 2 November 2015 the court examined the new documents, heard the parties' final arguments and concluded its examination of the merits of the case. It announced that the decision would be delivered on 18 November 2015.

57. On 18 November 2015 the Kaišiadorys District Court delivered its decision in the divorce case. The court observed that the applicant and I. had both accused each other of alcohol abuse, physical violence and abandoning their family, but on the basis of the available information it considered that both of them had been equally responsible for the breakdown of the marriage.

58. When making its residence order, the court observed that P. had been living with I. since 9 November 2013 and was attending a kindergarten nearby; local child protection authorities had inspected I.'s apartment and had found that it was suitable for the child and that there was no indication that living with I. was harmful to P. in any way (see paragraphs 14, 17 and 25 above). The court also referred to the findings of the court-appointed psychologist, who had found that P. was equally attached to both parents but was too young to express an independent opinion as to which of them she preferred to live with; the girl had adapted to her new place of residence with her mother and to the kindergarten that she was attending, and the psychologist had recommended that it not be changed again, as stability was very important for a child of her age (see paragraph 53 above). Taking those findings into account, the court held that it was "an especially important circumstance" (*itin svarbi aplinkybė*) that for two years the child had been living with I., and emphasised that changing her place of residence might cause her social and psychological harm (see paragraphs 75 and 76 below). It stated that even though both parents were capable of ensuring proper conditions for P.'s development and upbringing and that she was attached to both of them, there were "no imperative and imminent reasons" (*nėra būtino ir neišvengiamo pagrindo*) for changing her present place of residence. The court therefore made a residence order in I.'s favour.

59. The court furthermore emphasised that the parent with whom the child lived had no right to interfere with the other parent's right to see the child and to participate in the child's upbringing. It held that the applicant had the right to see his daughter every other weekend, from Saturday morning until Sunday evening. He was also ordered to pay child maintenance of EUR 200 per month.

60. By the same decision the court divided between the applicant and I. their marital property and liability for debts to their creditors.

61. The applicant lodged an appeal against that decision. He argued that the court had incorrectly found that I.'s apartment had become P.'s habitual place of residence and should not be changed. He submitted that his parents'

house, in which P. had lived from the time of her birth until her departure with I., had remained her habitual place of residence and that she had been removed from that house only because of I.'s unilateral actions, which had constituted abuse of parental rights (see paragraphs 7 and 8 above). He contended that the first-instance court had made a residence order in I.'s favour essentially because P. had already been living with I. as the result of an earlier decision ordering interim measures (see paragraphs 18-20 above) and that the interim measures had become *de facto* permanent. The applicant also submitted that the court had not addressed any of his arguments as to why the child should live with him (see paragraph 16 above). He argued that the findings of the psychologists and the testimony of the witnesses had shown that P. felt a stronger attachment to him than to I. and that she wanted to live with him. He furthermore submitted that the court had not taken into account I.'s personality and behaviour, such as her refusal to let the applicant see the child and the fact that I.'s daughter from her previous marriage did not live with her. The applicant also asked for his contact rights to be extended and the amount in maintenance that he was required to pay to be reduced.

62. On 10 May 2016 the Kaunas Regional Court decided to renew the examination of evidence related to the residence order. It held an oral hearing on 18 August 2016.

63. On 8 September 2016 the Kaunas Regional Court partly amended the lower court's decision. It upheld the findings concerning the residence order in their entirety (see paragraph 58 above) and stated that the applicant had not provided any evidence that "changing his daughter's habitual place of residence would be in her interests". However, the court extended the applicant's contact rights, granting him the right to see his daughter every other weekend, from Friday evening until Sunday evening, to see her during certain public holidays and to spend part of his summer holidays with her.

64. The applicant lodged an appeal on points of law in which he reiterated the arguments concerning the child's place of residence that he had raised in his previous claims and appeals (see paragraphs 16, 21 and 61 above). In addition, he complained about the absence of an oral hearing before the courts that had decided on the above-mentioned interim measures (see paragraphs 18-20 above). The applicant submitted that his daughter's temporary place of residence, determined in the proceedings on interim measures, had been decisive in the subsequent determination of her permanent place of residence – that is to say the residence order in I.'s favour had been made mainly on the basis of the fact that P. had already been living with I. (see paragraph 58 above). The applicant therefore argued that it had been essential for him to be heard in person when the interim measures were being determined. He also complained that he had been discriminated against on the grounds of his gender and that I. had been treated more favourably by the courts simply because she was the child's

mother. The applicant submitted that both he and I. had been found to be capable of ensuring suitable living conditions for their daughter; however, the courts had presumed that the child should reside with I. and had placed the burden of proving otherwise on the applicant.

65. On 13 December 2016 the Supreme Court refused to accept the applicant's appeal on points of law for examination as raising no important legal issues.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

66. Article 38 of the Constitution provides, in its relevant parts:

> "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 ..."

67. Article 3.156 of the Civil Code provides that both parents have equal rights and obligations *vis-à-vis* their children. That rule applies irrespective of whether a residence order has been made in favour of one of the parents.

68. Article 3.174 § 2 of the Civil Code provides that a dispute concerning a child's place of residence must be decided in accordance with the child's best interests and taking into account the child's wishes, unless those wishes are contrary to his or her best interests. Article 3.174 § 4 provides that when circumstances change or when the parent in whose favour a residence order has been made gives custody of the child to other people, the other parent may ask the court to make a new residence order.

69. Article 3.170 §§ 1 and 4 of the Civil Code provides that the parent who does not live together with a child has the right to see the child and to take part in his or her upbringing, and the other parent must not interfere with that right.

70. Article 3.65 of the Civil Code provides that the court examining a divorce case may apply interim measures in the best interests of the spouses or their minor children. One such measure is determining children's temporary place of residence with one of the parents.

71. Article 147 § 1 of the Code of Civil Procedure provides that decisions on interim measures are to be adopted in written proceedings.

72. Article 378 of the Code of Civil Procedure provides that decisions in family cases cannot be adopted in the parties' absence.

73. Article 376 § 1 of the Code of Civil Procedure provides that courts examining family cases may on their own initiative obtain evidence that is not relied on by the parties, if the court considers that to be necessary for the fair adjudication of the case.

B. Domestic courts' case-law

74. In its ruling of 19 February 2014 in civil case no. 3K-3-138/2014, the Supreme Court, referring to its previous case-law, set out the general principles concerning the determination of a child's place of residence with one of the parents:

> "Article 3.156 § 2 of the Civil Code provides that parents have equal rights and obligations *vis-à-vis* their children, irrespective of whether the child was born inside or outside of marriage, or after a divorce, or the annulment of a marriage, or a separation. That means that even if the parents are not married or do not live together, they must agree on the exercise of parental authority and they are equally responsible for the upbringing of the child and for ensuring proper conditions for his or her development. All questions concerning children's upbringing are decided by agreement of both parents. Only when the parents are unable to reach an agreement will the disputed question be decided by a court (Article 3.165 § 3 of the Civil Code). One of the questions on which a court has authority to decide is that of a child's place of residence when the parents live separately and do not agree regarding which one of them the minor child should reside with (Article 3.169 § 2 of the Civil Code). When determining the child's place of residence, the court must base its decision on the child's best interests and take into account his or her wishes (Article 3.174 § 2 of the Civil Code). The interests of the child constitute the main criterion in the court's determination of the child's place of residence. This is based on the principle of the priority of the child's rights and interests, as established in national and international legal instruments (Article 3 § 1 of the UN Convention on the Rights of the Child, Article 3.3 § 1 of the Civil Code, and Article 4 § 1 of the Law on the Protection of the Rights of the Child), which means that in all actions concerning children, their best interests must be the primary consideration ...
>
> The chamber emphasises that the court, when making a residence order, must assess, among other circumstances, the efforts and capacity of each of the parents to ensure the fulfilment of the child's fundamental rights and obligations, as guaranteed by law, [as well as] the family environment of each parent. When assessing the family environment, the court must examine the child's relationship with each of the parents, their moral and other personal characteristics, their approach to the child's upbringing and development, [their] participation in the child's maintenance and care before the dispute arose, [their] capacity to ensure suitable conditions for [the child's] life, upbringing and development (taking into account the nature of the parents' work, their work schedule, [and their] financial situation), among other circumstances ... The child's interests must be identified individually in each case ... These are first and foremost determined by the [need to ensure the] development of the child as a healthy, moral, strong and intellectual person and his or her need to have a secure (both physically and socially) personal environment in which he or she can spend time, engage in his or her activities, play, develop his or her capabilities, be protected from the daily worries of adults, etc. ...

The Supreme Court has established in its case-law that, when making a residence order, superior material conditions of one of the parents cannot be decisive when the other parent is also capable of providing adequate conditions. What matters is whether the child would be able to grow and develop appropriately under the material conditions provided by the other parent as well."

75. In its ruling of 26 April 2013 in civil case no. 3K-3-269/2013, the Supreme Court, relying on its previous case-law, elaborated on the circumstances in which a residence order, made in favour of one of the parents, could be changed:

"A court's decision on a residence order in respect of a child does not become *res judicata* ... Article 3.169 § 3 of the Civil Code provides that, upon a change of relevant circumstances ..., the other parent may lodge a request for a new residence order.

The Supreme Court in its case-law concerning the interpretation and application of the aforementioned provision has held that when a request for a new residence order is lodged, the parent who has lodged it must prove that there has been a material change in the circumstances that previously determined the making of a residence order [in favour of the other parent] ... The Supreme Court's case-law does not specifically define what change of circumstances can be regarded as material – that is to say giving sufficient grounds to consider changing the child's place of residence – but some examples have been given, such as: a change in the behaviour or financial situation of the parent with whom the child lives, a deterioration in the child's upbringing, an improvement of the other parent's financial situation, ... a change of the child's wishes (taking into account the child's age and maturity), ... and other circumstances which have to be assessed in each individual case. It is emphasised that when it is requested that a residence order be made in favour of the parent with whom the child did not live before the lodging of that request, it must be established that the current place of residence has become unsafe for the child and no longer meets the requirements of his or her normal and healthy development, and that changing the child's place of residence and making a residence order in favour of the other parent would create [an appropriate] environment ... The stability of the child's living environment is important for the child's psychological state; thus, when the child has lived in a certain environment for more than a year, the possibility of changing it must be considered with particular care ...

It must be noted that when deciding whether the present living environment fulfils the child's needs and [provides him or her with the] opportunity to grow and develop in a healthy manner, it is essential to also consider the general criteria for making a residence order in favour of one of the parents ... It must be noted that a court's decision cannot be determined by the parents' gender – i.e. when deciding with which parent the child should live, the court cannot show favouritism towards the father or the mother."

76. In its ruling of 18 January 2013 in civil case no. 3K-3-153/2013, the Supreme Court, referring to its previous case-law, set out the general principles for changing a child's habitual place of residence:

"When deciding whether to change a child's place of residence ..., a court must assess the environment in which the child is living at the time of the adoption of that court's decision and its suitability for the child's development and determine whether the change of that environment is necessary and in the child's interests. Changing the

> living environment can cause a child emotional distress and certain social [or] psychological harm. International and national legal instruments guarantee the protection of a child's family environment and, without a pressing need and clear and sufficient grounds, do not provide for the changing of that environment. The need to ensure a stable environment for a child is reflected in the case-law of the European Court of Human Rights under Article 8 (the right to respect for private and family life – see, *mutatis mutandis*, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, ECHR 2010, and *Hokkanen v. Finland*, no. 19823/92, 23 September 1994). The case-law of the Lithuanian courts is also aimed at ensuring a child's stable life in an environment suitable for his or her needs. A change to such an environment must be justified and necessary – i.e. it has to be established that the current living environment has become unsafe and no longer meets the requirements of the child's normal and healthy development, and that changing the child's place of residence and making a residence order in favour of the other parent would create [an appropriate] environment ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

77. The applicant complained about the court proceedings in which his daughter's temporary and permanent place of residence was determined as being with his ex-wife. He invoked Article 6 § 1 of the Convention. 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 under Article 8 of the Convention, which reads:

> "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

Non-exhaustion of domestic remedies

(a) The parties' submissions

78. The Government submitted that the applicant had failed to exhaust the available effective domestic remedies. Firstly, he had not turned to a bailiff in connection with any of I.'s alleged failures to comply with the contact schedule that had been established by the court's decision on interim

measures. Secondly, if the applicant had been of the opinion that the childcare authorities had failed to act diligently, he should have instituted proceedings against them before an administrative court. The Government provided examples of domestic cases in which the courts had acknowledged various failures on the part of different childcare authorities and awarded claimants monetary compensation. Lastly, the applicant could have lodged a civil claim against the State requesting compensation in respect of non-pecuniary damage for the length of the court proceedings (see *Savickas and Others v. Lithuania* (dec.), nos. 66365/09 and 5 others, §§ 86-88, 15 October 2013).

79. The applicant contested the Government's submissions. He provided a copy of a decision adopted by a bailiff on 28 April 2014 in which the bailiff had confirmed that he had received from the applicant an enforcement writ issued by the Kaunas Regional Court following its decision of 1 April 2014 (see paragraph 39 above) and had informed I. of her obligation to comply with the said court decision. The applicant furthermore stated that he could not have instituted court proceedings against the childcare authorities while the proceedings in the divorce case were pending because those authorities had also been parties to the latter proceedings. He also emphasised that his complaint to the Court was directed against the decisions of the domestic courts and not any other authorities. He submitted that he could not have instituted court proceedings for compensation for damage that had been caused by decisions of other courts, and that a claim for damages against the State could not have overturned the court decisions that had determined the temporary and later the permanent place of residence of his daughter.

(b) The Court's assessment

80. The Court reiterates that applicants are only obliged to exhaust the domestic remedies that are available in theory and in practice at the relevant time – that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (see, among many other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-74, 25 March 2014). In the present case, the applicant complained about the decisions adopted by the domestic courts that had determined his daughter's place of residence. His complaint did not concern compliance with the contact schedule set by a court or any actions or omissions on the part of the childcare authorities. Accordingly, the Court considers it immaterial whether the applicant lodged any complaints with the domestic authorities concerning those matters. Furthermore, the Court is of the view that a civil claim for damages, as a remedy of a purely compensatory nature, was not capable of providing redress in respect of the applicant's complaint that his

daughter's place of residence had been determined by the duration of court proceedings (see, *mutatis mutandis*, *Z.J. v. Lithuania*, no. 60092/12, § 80, 29 April 2014). It was therefore not an effective remedy that he was obliged to exhaust under Article 35 § 1 of the Convention. The Government's objection is thus dismissed.

81. The Court furthermore notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

82. The applicant firstly submitted that the courts had ordered an interim measure (that is to say, ordered that the child should temporarily reside with I.) in written proceedings, without notifying him and without hearing him in person (see paragraph 20 above), thereby depriving him of the opportunity to defend himself against I.'s allegations (see paragraph 15 above). While the possibility of deciding on interim measures in written proceedings was provided for by domestic law (see paragraph 71 above), given the particular circumstances of the case it had not been in the interests either of the child or of the parents not to notify him and not to hold an oral hearing. The applicant argued that the decision on the interim measures had been decisive because at later stages of the proceedings, when making or upholding the residence order, the courts had not assessed what would have been the most appropriate home for his daughter but had only examined the question of whether there were grounds to change her temporary place of residence. Therefore, in the applicant's view, oral hearings at those later stages of the proceedings had been essentially pointless, and the temporary place of residence, decided without him being heard in person, had in fact become permanent.

83. Secondly, he submitted that the courts had not addressed his arguments as to why his daughter should live with him – such as her attachment to him, his house and his parents, or the living conditions at his home (see paragraphs 16 and 21 above) – at any stage of the proceedings. When determining the child's temporary place of residence, the courts had stated that the applicant's arguments would be addressed at a later stage of the proceedings (see paragraph 39 above), but when determining the permanent place of residence they had merely held that there had been no good reason to change the child's temporary place of residence, which had been with I. (see paragraphs 58 and 63 above).

84. Thirdly, the applicant contended that the domestic courts had presumed that it was in the best interests of his daughter to live with her

mother and had placed the burden of proving otherwise on him, whereas no such burden of proof had been placed on I. Furthermore, the courts had not assessed the entirety of the evidence in the case – in particular, when determining the child's attachment to her parents, they had relied solely on the findings of the court-appointed psychologist (see paragraph 53 above) but not on another psychological assessment that had reached a different conclusion (see paragraph 38 above).

85. Lastly, the applicant submitted that the length of the divorce proceedings had been excessive given the particular circumstances of the case because during that time the child had lived with I., and that fact had actually determined her permanent place of residence (see paragraphs 58 and 63 above). The applicant argued that the courts could have decided on the residence order separately from the other questions relating to the divorce, such as the division of marital property, in order to speed up the proceedings.

(b) The Government

86. At the outset, the Government expressed regret at the tense relationship between the applicant and his ex-wife, which had been harmful to their daughter. The Government considered that the applicant had employed a "drastic strategy" in the divorce case, as demonstrated by his refusal to return P. to I. (see paragraphs 26-32 above), the numerous complaints that he had lodged against I. with the authorities (see paragraphs 9, 11, 23, 26, 31, 41, 44 and 48 above) and his taking P. to see psychologists without I.'s consent (see paragraph 31 above). The Government emphasised that all cases concerning children had to be decided in accordance with the best interests of the child, which could be different from those of the parents (see paragraphs 70 and 74 above). They also emphasised that, under Lithuanian law, court decisions making a residence order did not acquire a *res judicata* effect (see paragraph 75 above). Therefore, the applicant was not permanently precluded from living with his daughter – her place of residence could be determined afresh, were the relevant circumstances to change.

87. The Government submitted that there was nothing to indicate that the applicant had objected to I. taking P. with her on 9 November 2013 – the police had decided not to open a pre-trial investigation because the applicant and I. had not lodged any complaints against each other, and the applicant had not challenged that decision (see paragraphs 7 and 8 above).

88. They furthermore submitted that the courts that had ordered interim measures had done so in accordance with the law and had pursued the legitimate aim of protecting the interests of the child and of one of the spouses (see paragraphs 70 and 71 above). When adopting the interim measures, the courts had had to act promptly and they had been under no obligation to notify the parties. The Government emphasised that decisions

regarding both the applicant's and his ex-wife's requests regarding interim measures had been examined in writing, without any distinction being made, and the applicant himself had not asked to be heard in person (see paragraphs 16 and 21 above). They pointed out that when the applicant had subsequently lodged a request with the Kaišiadorys District Court for the contact schedule to be amended, that request had been examined in an oral hearing (see paragraph 40 above). In any event, in the proceedings on interim measures the applicant's interests had been adequately secured – he had been promptly informed of the decision of the Kaišiadorys District Court and he had had the possibility to appeal against it. Furthermore, the courts had ensured the applicant's right to see his daughter – the Kaišiadorys District Court had established a contact schedule and the Kaunas Regional Court had further extended the applicant's contact rights (see paragraphs 20 and 39 above). The contact schedule had been largely complied with, save for some exceptions, which had arisen because of the child's illness (see paragraphs 44 and 45 above).

89. The Government contended that the court proceedings in the divorce case, taken as a whole, had been fair. The applicant and his lawyer had participated in all the court hearings, he had made oral and written submissions, all of his requests had been duly examined, and many of them had been granted. The courts had carried out a thorough examination of the family situation and had duly assessed all the circumstances of the case; the courts had reached their conclusions after hearing the applicant, his ex-wife, numerous witnesses, psychologists and representatives of child-protection authorities. The Government emphasised that the national authorities had had the benefit of direct contact with all the persons concerned and they had enjoyed a wide margin of appreciation.

90. The Government also argued that the courts had implicitly addressed the applicant's arguments as to why the child should live with him by giving decisive weight to the conclusions of the court-appointed psychologist (see paragraph 53 above). The Kaišiadorys District Court had acknowledged that the applicant and I. had both been capable of ensuring adequate conditions for the child and that P. was attached to both her parents (see paragraph 58 above). In the Government's view, this demonstrated that the applicant had not been treated less favourably than his ex-wife. However, the courts had also held that it had been important to create safety and stability for the child, and that changing her place of residence after the two years during which she had lived with her mother would thus not have been in her best interests (see paragraphs 58 and 63 above); that conclusion had been in line with the case-law of the Supreme Court (see paragraphs 75 and 76 above). Furthermore, by setting a contact schedule, the courts had ensured that the applicant would have adequate opportunities to participate in the upbringing of his daughter (see paragraph 63 above).

91. Lastly, the Government submitted that the proceedings in the divorce case had been complex and sensitive, in view of the legal and factual issues involved – the dissolution of marriage, child custody and maintenance, and the division of property. In any event, the courts had been active and had acted with sufficient promptness. After I. had filed a petition for divorce on 2 January 2014, the Kaišiadorys District Court had promptly adopted a decision on interim measures and had held the first preparatory hearing in the divorce case on 7 March 2014 (see paragraphs 18 and 49 above). That court had held a total of ten hearings, "with no delays on the part of either of the parties", and during those hearings it had heard multiple witnesses and had examined the parties' requests (see paragraphs 49-56 above); the only time when the case had been suspended had been during P.'s examination by the court-appointed psychologist (see paragraphs 52-54 above). As for the proceedings before the Kaunas Regional Court, the Government argued that its decision to renew the assessment of the evidence of the case and to hold an oral hearing (see paragraph 62 above), although time-consuming, had been to the advantage of the applicant. The Government also pointed out that the applicant had not taken any action to expedite the proceedings; on the contrary, he had waited several months before lodging appeals against court decisions, and he had lodged numerous complaints and requests during the course of the proceedings. The Government also contended that the applicant had failed to show that his contact with his daughter had been obstructed on account of the length of the proceedings.

2. The Court's assessment

(a) General principles

92. The Court reiterates that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII). Such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society" (ibid., § 45).

93. In determining whether the refusal of custody or access was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations

that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); and *Z.J. v. Lithuania*, cited above, § 96).

94. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Sahin*, § 65, and *Sommerfeld*, § 63, both cited above).

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

96. While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him or her with the requisite protection of his or her interests (see *Z.J. v. Lithuania*, cited above, § 100, and the case-law cited therein). To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors – in particular of a factual, emotional, psychological, material and medical nature – and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 139, ECHR 2010, and *Leonov v. Russia*, no. 77180/11, § 64, 10 April 2018).

97. Lastly, the Court considers that in conducting a review within the context of Article 8 it may also have regard to the length of the local authority's decision-making process and of any related judicial proceedings. In cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. In this connection, the Court reiterates that effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere passage of time (see *W. v. the United Kingdom*, 8 July 1987, § 65, Series A no. 121; see also *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 69, 24 April 2003, and *Z.J. v. Lithuania*, cited above, § 100).

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

98. Turning to the circumstances of the present case, the Court firstly observes that the relationship between the applicant and his daughter, P., undoubtedly constitutes family life within the meaning of Article 8 of the Convention. It accepts that the decisions that determined the child's temporary and later permanent place of residence with her mother amounted to an interference with the applicant's right to respect for his family life (see *G.B. v. Lithuania*, no. 36137/13, § 87, 19 January 2016, and *Petrov and X v. Russia*, no. 23608/16, § 103, 23 October 2018). The Court furthermore notes that it has not been disputed by the parties that the interference had a basis in national law and pursued the legitimate aim of safeguarding the best interests of the applicant's daughter (see also *G.B. v. Lithuania*, cited above, § 90). It therefore remains to be examined whether that interference was "necessary in a democratic society".

99. The applicant complained about the court decisions which had allowed his ex-wife's request for an interim measure and decided that their daughter should temporarily reside with her (see paragraphs 18-20 and 39 above), as well as about the decisions in which the residence order in favour of his ex-wife had been made (see paragraphs 57-60 and 63 above). The Court notes that all those decisions were taken within the same divorce proceedings, instituted by I. on 30 December 2013 (see paragraph 15 above) and concluded by the Supreme Court on 13 December 2016 (see paragraph 65 above). The Court will address the applicant's complaints about each stage of the divorce proceedings in turn.

100. At the outset, it takes note of the fact that, under the Lithuanian law, a court decision making a residence order does not acquire a *res judicata* effect; thus, even after the conclusion of the impugned court proceedings, the applicant retained the right to ask the domestic courts to make a new residence order in his favour (see paragraphs 68, 75 and 86 above). However, the case-law of the domestic courts makes it clear that a child's habitual place of residence can be changed only when there is "a

pressing need and clear and sufficient grounds", in particular, where it has been established "that the current living environment has become unsafe and no longer meets the requirements of the child's normal and healthy development" (see paragraphs 75 and 76 above). Therefore, in view of the difficulty of changing the child's place of residence once it has been determined, the lack of a *res judicata* effect cannot reduce the importance of what was at stake for the applicant in the proceedings in issue.

(i) Decisions concerning interim measures

101. In the decisions concerning interim measures, both the Kaišiadorys District Court and the Kaunas Regional Court emphasised the fact that changing a child's habitual place of residence might cause the child social and psychological harm and that the habitual place of residence should thus only be changed if it were found to be harmful to the child (see paragraphs 18-20 and 39 above). The Kaunas Regional Court also stated that, at that stage of the divorce proceedings, the courts were not determining P.'s permanent place of residence and not making an assessment of which parent she was more attached to or which parent's home was more suited for her needs, as that would be done later, when adopting a residence order (see paragraph 39 above). Having found that P. was living with I. and that the conditions in I.'s apartment had been assessed by the relevant authorities as suitable (see paragraphs 14 and 17 above), the courts considered that there were no reasons to change P.'s place of residence.

102. However, the Court notes that the applicant in his submissions before the Kaišiadorys District Court and the Kaunas Regional Court challenged the assumption that I.'s apartment was P.'s habitual place of residence. He submitted that her habitual place of residence was his parents' house, where she had lived from the time of her birth until her departure with I., and that I. had abused her parental rights by changing that place of residence unilaterally (see paragraphs 16 and 21 above); I. did not dispute that the applicant's parents' house had been P.'s habitual place of residence before 9 November 2013 (see paragraph 22 above). The applicant also stated that on 9 November 2013 he had allowed I. to take P. with her because he had been misled by the police and because he and I. had agreed that P. would live with each of them in turn (see paragraphs 11, 16 and 21 above), whereas I. denied the existence of such an agreement (see paragraph 22 above). The Court observes that neither the Kaišiadorys District Court nor the Kaunas Regional Court adequately addressed those arguments in their decisions. The courts did not provide any explanation as to why they considered that P.'s habitual place of residence was I.'s apartment, where at that time the girl had been living for only a few months after being taken from her previous home by her mother, and not in the applicant's parents' house, where she had lived for several years from her

birth until 9 November 2013. Furthermore, the courts did not examine the circumstances in which I. had taken P. away on 9 November 2013 and whether there had been any agreement between the applicant and I. concerning P.'s future living arrangements. In particular, they did not take any statements from the applicant, I. or the police officers who had been called to the applicant's parents' house on that day and might have been able to elucidate the relevant facts, especially as the applicant claimed to have been misled by the police. In that connection, the Court notes that the Lithuanian Code of Civil Procedure allows courts examining family cases to obtain evidence on their own initiative (see paragraph 73 above). It furthermore notes that although, as indicated by the Government, the Code of Civil Procedure provides that decisions on interim measures are to be taken in written proceedings, it also provides that decisions in family cases cannot be taken in the parties' absence (see paragraphs 71 and 72 above), and the applicant in his complaint to the Kaišiadorys District Court asked the court to apply the latter provision (see paragraph 16 above).

103. The Court emphasises that it is not its role to determine with which of the parents the child should have resided temporarily during the divorce proceedings. It nonetheless observes that the decisions on interim measures, by which it was ruled that the applicant's daughter should temporarily reside with her mother, had the effect of further strengthening P.'s attachment to her mother's place of residence and thereby increased the likelihood that that place of residence would eventually become permanent, in view of the need to ensure stability for the child. Therefore, in view of the significance of those proceedings for the eventual determination of the dispute, the Court considers that it was especially important for the applicant to be involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests, as safeguarded by Article 8 of the Convention (see the references in paragraph 96 above). In the light of the aforementioned circumstances, the Court is unable to conclude that the proceedings before the Kaišiadorys District Court and the Kaunas Regional Court concerning interim measures provided the applicant with such protection.

(ii) Decisions concerning the residence order

104. The Court will next examine the decisions in which the residence order in respect of P. was made in I.'s favour. The Kaišiadorys District Court and the Kaunas Regional Court in their decisions on the merits of the divorce case again emphasised that a child's habitual place of residence should not be changed, unless there were "imperative and imminent reasons" for doing so and only when that was in the child's best interests (see paragraphs 58 and 63 above). When deciding whether to change P.'s place of residence, which at that time was with her mother, the courts relied on the assessment of the conditions in I.'s and the applicant's homes carried

out by the childcare authorities, as well as on the conclusions provided by the court-appointed psychologist concerning the degree of P.'s attachment to her parents.

105. The childcare authorities that examined the conditions at the applicant's and I.'s homes found them both to be suitable for the child (see paragraphs 14, 17, 24 and 25 above). Although it appears that I.'s apartment was modest and in need of some renovation (see paragraph 14 above) and the applicant argued that his home was better suited to his daughter's needs (see paragraph 16 above), the Court is able to share the view of the Lithuanian Supreme Court (see paragraph 74 above) that superior material conditions at the home of one of a child's parents cannot be decisive when the other parent is also capable of providing adequate conditions.

106. The Court furthermore observes that during the court proceedings, at the applicant's request, P. was examined by a court-appointed psychologist (see paragraph 51 above). The psychologist found that the girl was attached to both of her parents and wished to live with both of them. While it was clear that P. missed the applicant, the psychologist stated that the girl had become used to living with her mother in her apartment, and recommended that her place of residence not be changed again, as that would undermine her feelings of stability and safety (see paragraph 53 above). The applicant did not challenge the credibility or impartiality of the court-appointed psychologist; however, he argued that the courts should also have taken into account a previous psychological assessment that had shown that P. felt a stronger attachment to him than to I. (see paragraphs 38, 61 and 84 above). In this connection, 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 (see *Sahin*, § 73, and *Sommerfeld*, § 71, both cited above). In the present case, although the courts did not explicitly indicate their reasons for not relying on the findings of the psychological assessment referred to by the applicant, the Court is prepared to accept that it was not arbitrary or manifestly unreasonable for them to rely on a more recent assessment carried out by a court-appointed psychologist which, moreover, had been ordered at the applicant's request and the credibility or impartiality of which the applicant had not challenged.

107. It also notes that although both the applicant and I. accused one another of inappropriate behaviour in the family, and the applicant lodged numerous complaints against I. with the authorities (see paragraphs 9, 10, 11, 15, 16, 23, 26, 27, 31, 41, 44 and 48 above), all of those allegations were eventually dismissed (see paragraphs 12, 28, 41, 44, 48 and 57 above).

108. The Court therefore considers that it was reliably established by the domestic authorities and courts that both the applicant and his ex-wife were capable of taking care of their daughter and ensuring suitable living conditions for her, and that the girl was attached to both of them. As a

result, the girl's habitual place of residence became the decisive factor for the courts making the residence order.

109. The Court is aware of the difficulties faced by domestic authorities and courts deciding on childcare issues, especially when they have no other choice but to make a residence order in favour of one of two separated parents (see, *mutatis mutandis*, *Antonyuk v. Russia*, no. 47721/10, § 121, 1 August 2013). It sees no reason to disagree with the domestic courts that ensuring stability and avoiding unnecessary changes of P.'s place of residence was in her best interests, particularly in view of her young age. It is also prepared to accept that in situations such as the present one, where the child is attached to both parents and they are both capable of providing adequate care, the child's habitual place of residence could be the decisive factor when making a residence order in favour of one of the parents (see, for a similar situation, *Malinin v. Russia*, no. 70135/14, §§ 71-72, 12 December 2017).

110. At the same time, the Court reiterates that effective respect for family life requires that future relations between parent and child be determined solely in the light of all the relevant considerations and not by the mere passage of time (see the references in paragraph 97 above). It observes that when making the residence order in I.'s favour, the Kaišiadorys District Court found that P. had been living with I. for two years; the court considered that to be "an especially important circumstance" and held that there were "no imperative and imminent reasons" to change P.'s place of residence (see paragraph 58 above). The Court notes that in the decisions on interim measures, P.'s place of residence was determined as temporarily being with I.; those decisions, as it has already found, were adopted without providing the applicant with adequate procedural safeguards (see paragraph 103 above). Furthermore, the above-mentioned period of two years after the start of P.'s residence with I. (9 November 2013) resulted from the duration of the proceedings before the Kaišiadorys District Court – that court's decision on the merits of the divorce case was only delivered on 18 November 2015 (see paragraph 57 above).

111. Having examined the material submitted to it by the parties, the Court is unable to conclude that the proceedings before the Kaišiadorys District Court were sufficiently speedy, especially in view of their importance to the applicant's right to respect for his family life. It observes that, on average, no more than one court hearing was scheduled per month (see paragraphs 49-56 above) and that on several occasions the breaks between the hearings lasted for two or three months (for example, between 7 March and 6 May 2014, between 17 July and 3 September 2014, and between 25 June and 10 September 2015 – see paragraphs 49, 50 and 54 above). In addition, more than four months passed after the court forwarded questions to the psychologist until that psychologist examined P., despite

the fact that the examination required only one visit (see paragraphs 52 and 53 above). Furthermore, while it appears that the first hearing, scheduled on 7 March 2014, had to be postponed because neither the applicant nor I. appeared (see paragraph 49 above), there is no indication that any of the other delays were imputable to the applicant (compare and contrast *Leonov*, cited above, § 75). The Government did not allege that during the proceedings the applicant had lodged unreasonable requests or abused his procedural rights in any other way (see paragraph 91 above), and nor did the domestic courts make any findings to that effect. The Court takes note of the Government's argument that the divorce case was complex, as it involved multiple legal and factual questions (see paragraph 91 above), as well as the applicant's argument that the courts could have decided on the residence order separately from the other questions in order to speed up the proceedings (see paragraph 85 above). It reiterates that it is for the State to organise its judicial system in such a way as to enable its institutions to comply with the requirements of the Convention (see, *mutatis mutandis*, *Mardosai v. Lithuania*, no. 42434/15, § 55, 11 July 2017, and the cases cited therein). In the light of the foregoing, the Court finds that, in the circumstances of the present case, the proceedings before the Kaišiadorys District Court cannot be considered sufficiently speedy.

112. Furthermore, although the examination of the applicant's appeals by the Kaunas Regional Court and the Supreme Court does not appear to have been excessive (see paragraphs 63 and 65 above), in the Court's view, that could not have remedied the fact that the period of two years during which the case was examined by the first-instance court and during which the applicant's daughter lived with her mother had *de facto* determined the issue of the child's residence.

(iii) Conclusion

113. The Court lastly observes that both at the stage of the proceedings concerning interim measures and at the stage of the issuance of the residence order the applicant raised various arguments to support his contention that P. should live with him, such as her strong attachment to him, his parents and his home; the material conditions at his home; and his favourable work schedule (see paragraphs 16, 21, 61 and 64 above). The courts that made the decisions on interim measures refused to examine the substance of those arguments, stating that P.'s attachment to her parents and the suitability of their homes would be assessed later (see paragraph 39 above). However, at the stage of the issuance of the residence order, the courts held that both parents were capable of ensuring adequate conditions and that there were thus no grounds to change P.'s habitual place of residence, which at that time was with I. (see paragraphs 58 and 63 above). It is not for the Court to determine what weight the applicant's arguments should have had, or what would have been the most appropriate stage of the

proceedings at which to examine them. It reiterates, however, that in such cases Article 8 of the Convention requires the domestic courts to conduct an in-depth examination of the entire family situation and of a whole series of relevant factors (see the references in paragraph 96 above). In the present case, the applicant found himself in a situation in which an interim decision was made without an examination of the merits of his arguments, and with the passage of time that interim decision determined the final outcome of the case, as a result of which his arguments were no longer relevant. The Court therefore considers that the proceedings in the applicant's and I.'s divorce case, taken as a whole, were incompatible with his right to respect for his family life under Article 8 of the Convention.

114. There has accordingly been a violation of that provision.

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

115. The applicant also complained that the courts that had determined his daughter's place of residence had treated him less favourably than his ex-wife, thereby discriminating against him on the basis of his gender. He relied on Article 14 of the Convention.

116. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others*, cited above, §§ 114 and 126), considers that this complaint falls to be examined under Article 14 of the Convention, taken in conjunction with Article 8. Article 14 reads as follows:

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

1. The parties' submissions

(a) The Government

117. The Government firstly submitted that the applicant had failed to exhaust the domestic remedies. In particular, he had not raised the issue of discrimination in his appeal against the decision of the Kaunas District Court in the divorce case (see paragraph 61 above), thus precluding an assessment of that complaint at the national level. Nor had the applicant appealed against the decision of the Vilnius Regional Administrative Court of 3 November 2015, which had dismissed his complaint against the Equal Opportunities Ombudsperson in which he had alleged discrimination on the basis of gender (see paragraphs 46 and 47 above).

118. The Government furthermore submitted that, in any event, there were no grounds to find that the applicant had been discriminated against.

The decisions of the domestic courts had been motivated by the best interests of the child and on the basis of thorough assessments by the relevant public authorities and experts. The gender of either of the parents had not been decisive and there was nothing to indicate that the case would have been decided differently had it not been for the applicant's gender. Lastly, as concerns the conclusions of the Kaišiadorys psychological service, which the applicant considered to have been discriminatory (see paragraphs 36 and 37 above), the Government submitted that the applicant could no longer be considered a victim of discrimination, because his complaint against those conclusions had been addressed by the Equal Opportunities Ombudsperson and the conclusions had not been used as evidence by the courts issuing the residence order (see paragraphs 42, 43, 46 and 47 above).

(b) The applicant

119. The applicant contested the Government's objection of non-exhaustion of domestic remedies. He submitted that his complaint to the Court had concerned the decisions adopted by the domestic courts and not by the Equal Opportunities Ombudsperson; thus, he had not been obliged to appeal against the Vilnius Regional Administrative Court's decision in the proceedings concerning the Ombudsperson (see paragraph 47 above). He also submitted that he had complained about discrimination on the basis of gender in the appeal on points of law that he had lodged against the decision of the Kaunas Regional Court in the divorce case (see paragraph 64 above), because it had been in that decision that the discrimination against him had been "exposed the most".

120. The applicant furthermore submitted that the domestic courts had treated his ex-wife more favourably because she was the girl's mother. In his view, the courts had presumed that it was in the child's best interests to live with her mother and had placed on the applicant the burden of proving otherwise, whereas his ex-wife had not been required to prove why their daughter should not live with the applicant.

2. The Court's assessment

121. The Court considers that it is not necessary to address the Government's objection concerning exhaustion of domestic remedies because the complaint is in any event inadmissible, for the reasons provided below.

122. The Court observes at the outset that the Lithuanian law does not make any distinction between the sexes in the determination of parents' rights and obligations *vis-à-vis* their children (see paragraphs 66-69 above). When making a residence order in the event of a divorce, the domestic courts must evaluate all relevant circumstances, including the child's relationship with each of the parents, their moral and other personal

characteristics, their approach to the child's upbringing and development, their participation in the child's maintenance and care before the dispute arose, and their capacity to ensure suitable conditions for the child's life, upbringing and development (see paragraph 74 above). A dispute concerning a child's place of residence must be decided in accordance with the child's best interests (see paragraphs 70 and 74 above). Furthermore, the Supreme Court has explicitly held that a court's decision on a child's place of residence cannot be determined by the parents' gender – when deciding with which parent the child should live, the court cannot show favouritism towards the father or the mother (see paragraph 76 above).

123. In the present case, the Court has already found that both the applicant and his ex-wife were considered to be equally capable of caring for their daughter and ensuring adequate living conditions for her; as a result, the residence order was made relying essentially on the girl's habitual place of residence (see paragraph 108 above). The courts which determined first the temporary and later the permanent place of residence of the applicant's daughter emphasised the need to ensure safety and stability for a young child and not to change her habitual place of residence without important reasons (see paragraphs 20, 39, 58 and 63 above). The Court takes note of the conclusions adopted by the Kaišiadorys psychological centre which stated that P. was "likely to suffer anxiety when separated from [her] mother" and that it was "unquestionably essential to fulfil [P.'s] need to live with her mother" and about which the applicant complained to the Equal Opportunities Ombudsperson (see paragraphs 36 and 37 above). However, none of the courts which determined P.'s place of residence relied on those conclusions or made any statements implying that the mother was more important to the child than the father (see paragraphs 18-20, 39, 57-60 and 63 above). Therefore, although the Court has criticised the proceedings in which those decisions were adopted, it is unable to discern any difference of treatment on account of gender in the decisions adopted by the domestic authorities (see, *mutatis mutandis*, *Petrov and X*, cited above, §§ 127-29).

124. It therefore concludes that the complaint under Article 14 of the Convention, taken in conjunction with Article 8, is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

126. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 10,000 in respect of non-pecuniary damage allegedly suffered by his daughter.

127. The Government submitted that the applicant's daughter was not an applicant in the present case and that the claim in respect of non-pecuniary damage that the applicant had lodged on his daughter's behalf was thus unfounded. They therefore considered that the applicant had in fact claimed EUR 15,000 for himself, which was excessive and unsubstantiated.

128. The Court notes that just satisfaction can be awarded in so far as the damage in question is the result of a violation found, and that no award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible. It observes that the present application was lodged with the Court by the applicant alone, and the violation found in the present judgment concerns only the rights of the applicant. Accordingly, the claim in respect of the applicant's daughter must be rejected.

129. However, the Court considers that the applicant must have suffered emotional distress as a result of the violation of his rights under Article 8 of the Convention found in the present case. It therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

130. The applicant did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

C. Default interest

131. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President