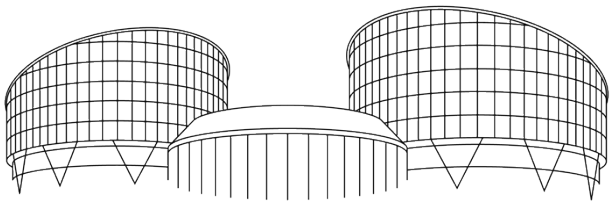

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF Y.U. v. RUSSIA

(Application no. 41354/10)

JUDGMENT

STRASBOURG

13 November 2012

FINAL

13/02/2013

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

In the case of Y.U. v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 41354/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Y.U. ("the applicant"), on 13 July 2010. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr Ye. Arkhipov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the State's failure to enforce a court judgment ordering that her minor son reside with her had breached her right to respect for her family life.

4. On 1 September 2010 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 1 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lives in the town of Khimki, the Moscow Region.

7. In July 2004 the applicant married Mr O.A.

8. In the applicant's submission, after the registration of the marriage her husband told her that his father, Mr M.A., was an influential person in the criminal world. She also submits that her husband has informal connections with police officers.

9. On 19 August 2004 the applicant gave birth to a son, M.

10. In 2007 marital tensions began to develop between the couple.

11. On 28 April 2008 Mr O.A. threw the applicant out of their family home without M. He said that he would take M. to Armenia and would not allow the applicant to contact the boy.

12. The applicant kept calling her son on the phone, but her husband's family did not allow her to speak to M. Her attempts to visit her son were futile.

13. On 15 May 2008 the applicant instituted divorce proceedings before the Moscow Kuzminskiy District Court ("the district court"). She also requested the court to make an order concerning the child's place of residence and to restrict Mr O.A.'s parental rights ("to remove a child from a parent" within the meaning of Article 73 of the Family Code of Russia).

14. On 25 August 2008 Mr O.A. and M. officially registered their place of residence as being at the Nikitskoe residence. In the applicant's submission, Mr O.A. did not ask for her consent when changing M.'s place of residence.

15. In September 2008 the applicant saw her son for the first time since her separation from her husband for twenty minutes in the presence of Mr O.A., his mother and sister, as well as officials of child welfare authorities.

16. Two different district child welfare authorities examined the applicant's and Mr O.A.'s respective places of residence. The Khimki Town Child Welfare Authority ("the Khimki child welfare authority") delivered a report stating that it was in the best interests of the child to stay with the applicant, while the Moscow Kuzminki District Child Welfare Authority ("the Kuzminki child welfare authority") decided that it was best for M. to live with his father, who had good living conditions and was prosperous.

17. On 13 November 2008 the district court dissolved the applicant's marriage. It further found that the best interests of M. required that he reside with his mother. The judgment read, in so far as relevant, as follows:

"Having assessed all [the available] evidence as a whole, the court sees no reason to order that the child's place of residence be with his father after the dissolution of the marriage, since it has not been proven that his mother has acted in breach of the child's best interests. For a lengthy period of time the child has been living with the defendant without his mother's consent. The defendant has not taken any real steps to reunite the family after the institution of court proceedings and has not provided the claimant with an opportunity to see the child.

... The court disagrees with the conclusions of the Kuzminki child welfare authority, as they are based exclusively on the fact that the defendant has certain assets ... The defendant did not deny that he had kept the child at his place [of residence against the claimant's will], which was not taken into account by the [Kuzminki] child welfare authority when drafting the conclusions.

The child was born in 2004 ... Taking into account the particular circumstances of the case, the age of the child, the willingness of his mother to bring him up, [and] the conclusions of the Khimki child welfare authority, the court considers it appropriate, while dissolving the parties' marriage, to order that the child live with his mother, while ensuring his father's rights as a separately-residing parent.

The court has thus decided to dissolve the marriage ... The child ... should continue residing with [the applicant]."

18. Mr O.A. later asked the police to institute criminal proceedings against the applicant, claiming that she had hired a hitman to kill him. On 6 March 2009 the authorities dismissed the request and refused to open a criminal investigation against the applicant.

19. Mr O.A. sent letters to child welfare authorities claiming that the applicant was trying to kill him. At some point he alleged that he had been beaten up on the street by persons hired by the applicant. Criminal proceedings instituted in this respect were suspended owing to the authorities' inability to identify those responsible.

20. At some point the Kuzminki child welfare authority changed its view and produced another report stating that M. should live with his mother.

21. On an unspecified date Mr O.A. appealed against the district court judgment and sought the withdrawal of the applicant's parental rights because she had allegedly organised an attempt on his life.

22. On 22 January 2009 the Moscow City Court ("the city court") quashed the district court judgment of 13 November 2008 in part as regards the child's place of residence for the reason that the two child care authorities had issued conflicting reports and remitted the case for fresh examination at first instance.

23. On 17 April 2009 the district court again decided that M. should reside with his mother. The judgment read, in so far as relevant, as follows:

"The representative of the Kuzminki child welfare authority ... considers it appropriate [for the court] to order that the child's place of residence should be with his mother, but does not support [the applicant's] claim to have the child removed [from his father] and considers it unsubstantiated.

The representative of the Kuzminki child welfare authority supports [the applicant's] claims and considers it necessary to order that the child live with his mother, having removed him from his father.

... The court grants the claims in part ...

Under Article 73 of the Family Code of Russia a court ... may decide to remove a child from [his or her] parents (or one of them) without a withdrawal of parental rights. [Such a] restriction of parental rights is permissible where it is dangerous for a child to stay with [his or her] parents (or a parent) because of circumstances out of the parent(s) control, such as a mental illness or other disease or distressing circumstances.

The Khimki and Kuzminki child welfare authorities established that ... [the applicant]'s room was equipped with everything necessary for the child ...

The court has established that the defendant has impeded the claimant's contact with the child, has breached the child's rights to know who his mother is and to be brought up by his mother and has thus breached Articles 55, 56, 61 and 63 of the Family Code of Russia, while under the law in force he as a parent is obliged to protect the child's rights and interests ... and not to breach the claimant's rights concerning the child.

Taking into account all the circumstances as a whole, the court finds no reason to order that the child's place of residence be with his father, because it has been proven that his father has been violating the child's rights and those of the claimant. For a lengthy period the child has been living with his father without the claimant's consent, the defendant has impeded the child's contacts with his mother. The defendant has not ensured that the claimant could stay in full contact with the child, [and] has not ensured the child's right to be brought up by his mother ...

Taking into account all the circumstances of the case and the evidence, the age of the child and the willingness of his mother to bring him up, [and] the conclusions of the child welfare authorities, the court considers it appropriate to order that the child live with his mother, while ensuring the father's rights as a separately-residing parent. The claim to remove the child from his father is not granted [on that basis that it is] unsubstantiated, since the plaintiff has not shown, as required by Article 73 of the Family Code of Russia, that [the defendant] suffers from a mental or other illness or is in distressing circumstances.

The court has decided to order that M., born in 2004, reside with his mother, [the applicant].

The remainder of the claims is dismissed."

24. Mr O.A. appealed against the judgment.

25. On 6 August 2009 the city court upheld on appeal the judgment of 17 April 2009, which became final.

26. On 31 August 2009 the applicant was issued a writ of execution on the basis of the judgment of 17 April 2009 stating that the child should reside with his mother. The writ was issued on a form which was no longer in use after 15 August 2009.

27. The applicant sent the writ to the circuit bailiffs' office. On 3 September 2009 the bailiffs' service for the South-Eastern Circuit of Moscow ("the circuit bailiffs' office") delivered a decision refusing to institute enforcement proceedings because the writ was issued on an old form. They sent the decision to the applicant by post. She received it on 29 September 2009.

28. It appears that on a number of occasions the applicant visited the circuit bailiffs' office premises in person.

29. On 15 September 2009, during one of those visits, bailiffs showed the applicant their office's undated decision not to commence the enforcement proceedings but refused to officially serve it on the applicant, claiming that she would receive it by post.

30. The circuit bailiffs' office did not return the writ of execution issued on the old form to the applicant, thus precluding her from immediately applying to the district court for a writ in the new form.

31. On 21 September and 28 October 2009 the applicant requested the district court to issue a writ of execution in the new form.

32. On 21 September 2009 the applicant's representative requested the district court to order the immediate enforcement of the judgment of 17 April 2009.

33. In October 2009 a deputy head of the circuit bailiffs' office notified the applicant in writing that their decision of 3 September 2009 had been unfounded.

34. On 19 November 2009 the district court issued a new writ of execution and the applicant received it on an unspecified date upon her request.

35. The applicant complained to a prosecutor's office about the failure to institute enforcement proceedings. On 4 December 2009 the prosecutor's office for the South-Eastern Circuit of Moscow dismissed her complaint, stating that a decision making an order in respect of a child's place of residence was of a factual nature and could not be enforced under the Federal Enforcement Act 1997.

36. Nevertheless, on 11 December 2009 the circuit bailiffs' office instituted enforcement proceedings but delivered a decision to postpone the use of enforcement measures for the reason that the manner in which the judgment required to be executed was not clear. For this reason, on 16 December 2009 the circuit bailiffs' office requested the district court to clarify the requirements of the writ of execution and to specify the manner in which it should be enforced.

37. While awaiting the district court's decision, the circuit bailiffs' office postponed the use of enforcement measures because the writ of execution was unclear on 25 December 2009 and 18 January 2010.

38. On 28 January 2010 the Federal Migration Service issued M., upon his father's request, with a passport enabling him to leave the territory of the Russian Federation.

39. On 29 January 2010 the district court dismissed the circuit bailiffs' office's request for clarification stating that, when performing his duties, a bailiff should use all powers provided for by law.

40. On 4 February 2010 the circuit bailiffs' office sent an official summons to Mr O.A.'s address and also sent him an order to immediately comply with the judgment of 17 April 2009 as upheld on appeal on 6 August 2009. Furthermore, on 3 and 11 February and 21 April 2010 bailiffs from the circuit bailiffs' office visited Mr O.A.'s place of residence indicated in the writ of execution on Zelenodolskaya Street in Moscow ("the Zelenodolskaya flat"). Mr O.A. was absent on all three occasions. The bailiffs established that Mr O.A. resided at the address in question and that M. was absent.

41. On 11 February 2010 the circuit bailiffs' office received a request for termination of the enforcement proceedings from Mr O.A. for the reason that M. had moved from Moscow to the village of Nikitskoe, in the Ramenskiy District of the Moscow Region.

42. On 25 February 2010 Mr O.A.'s representative was served with an order requiring Mr O.A. to comply with the court judgment. The representative explained that Mr O.A. resided together with his son M. in the village of Nikitskoe. The representative asked the circuit bailiffs' office to terminate the enforcement proceedings for the reason that Mr O.A. had moved away from Moscow, which resulted in a delay in the execution of the judgment.

43. On the following day the circuit bailiffs' office asked the bailiffs' service for the Ramenskiy District of the Moscow Region ("the Ramenskoe bailiffs' office") to visit Mr O.A. at the Nikitskoe residence. A bailiff from that office visited the Nikitskoe residence on 19 March 2010. Nobody was home but the bailiff established that both Mr O.A. and M. resided there.

44. On 7 and 10 April 2010 the applicant notified the police that her son had been kidnapped.

45. On 20 April 2010 a bailiff from the Ramenskoe bailiffs' office again visited the Nikitskoe residence. Nobody was home but the bailiff established that Mr O.A. resided there and M. was absent. On the same day, however, police officers paid a visit to Mr O.A.'s house in Nikitskoe. Both Mr O.A. and M. were there. M.'s identity was confirmed by his passport, which Mr O.A. presented to the police. A police officer talked to M. in the presence of Mr O.A.'s adult family members. No further action was taken.

46. Towards the end of April 2010 the applicant visited the Moscow City Department of the Interior. Officers P. and O. told her that they had gone to Nikitskoe on 20 April 2010 and had seen her son. They produced a picture of a boy. The applicant did not recognise her son in that picture.

47. On 21 April 2010 a bailiff from the circuit bailiffs' office visited Mr O.A.'s flat at 11 Ferganskaya Street in Moscow. Nobody opened the door at first. Mr O.A. later appeared and told the bailiff that M. was absent from the flat. He refused to receive a copy of the decision ordering the commencement of enforcement proceedings and requiring him to comply with the judgment.

48. On 19 May 2010 an investigator from the South-Eastern Circuit Investigative Unit of the Investigative Committee of the Russian Prosecutor's Office ("the investigator") visited the village of Nikitskoe. He met Mr O.A., his father, as well as M.'s aunt, uncle and cousin near a café not far from the Nikitskoe residence. The investigator talked to M. and his minor cousin in the presence of the adults. M. said that he lived with his father and the latter's wife and that he did not want to live with his mother. The investigator made a video of M. and his minor cousin.

49. On 20 May 2010 the police unit in charge of cases involving minors paid a visit to the Nikitskoe residence and issued a certificate upon its examination confirming that Mr O.A. and his son M. lived in good conditions. The following day the Ramenskoe Town Prosecutor's Office notified the applicant of the following. Mr O.A., his wife, parents and M. were residing in Nikitskoe in a six-room house. M. did not go to kindergarten but was receiving daily private lessons from a teacher hired by Mr O.A. In the event of M. having medical problems Mr O.A. personally took him to a Moscow hospital. Mr O.A. performed his parental duties in full and the child had a separate bedroom. M. resided in Mr O.A.'s house in Nikitskoe on a permanent basis.

50. On 22 May 2010 the investigator issued a decision not to institute a criminal investigation into the alleged kidnapping for lack of a criminal event, because the child lived with his father.

51. On 3 June 2010 the circuit bailiffs' office issued a decision to search for the applicant's son which was forwarded to the police on 29 June 2010.

52. On 8 July 2010 the applicant and a journalist went to Nikitskoe and saw Mr M.A. and M.'s cousin. Mr M.A. told the applicant that her son was not in the village. On the same date the police established that M. resided at the Nikitskoe residence confirmed by a photo of a police officer together with M. and his cousin. On 12 July 2010 the police communicated this information to the circuit bailiffs' office.

53. The decision of 22 May 2010 not to institute criminal proceedings into the kidnapping was quashed on 30 July 2010 by the Moscow City Investigative Committee of the Russian Prosecutor's Office. On 6 August 2010 a new decision not to open an investigation into M.'s kidnapping was taken but this decision was also quashed.

54. On 13 August 2010 Mr O.A. came to the Ramenskoe Town Prosecutor's Office to give "explanations" concerning his son.

55. On 25 August 2010 a bailiff from the Ramenskoe bailiffs' office again visited the Nikitskoe residence. Nobody was home. The bailiff established that Mr O.A. resided there and M. was absent.

56. On 2 September 2010 the Ramenskoe bailiffs' office took over the case, having received the writ of execution, and opened enforcement proceedings.

57. On 9 September and 2 and 25 November 2010 bailiffs from the Ramenskoe bailiffs' office visited the Nikitskoe residence. Nobody was home on these dates.

58. On 18 October 2010 the Ramenskoe District Council Child Welfare Authority ("the child welfare authority") paid a visit to the Nikitskoe residence and established that M. lived there with his father.

59. On 2 November 2010 the investigator together with a bailiff from the Ramenskoe bailiffs' office, a representative of the child welfare authority, the applicant and her mother came to the Nikitskoe residence. Nobody was home. The investigator questioned the neighbours, who confirmed that Mr. O.A.'s family lived there most of the time. The authorities established that Mr O.A. might reside at three other Moscow addresses.

60. On 9 November 2010 the investigator visited two flats in Moscow: one at 11 Ferganskaya, and another one at 13 Ferganskaya Street. It was established that Mr O.A.'s brother lived at 11 Ferganskaya Street, while Mr O.A.'s sister resided at 13 Ferganskaya Street. Both explained that Mr O.A. lived at the Nikitskoe residence.

61. On 10 November 2010 the investigator again decided not to open a criminal case concerning the allegation of kidnapping.

62. On 29 November 2010 the Ramenskoe bailiffs's office summoned Mr O.A. to their premises on 1 December 2010. Mr O.A. failed to appear.

63. On 30 November 2010 the applicant complained to the district court about the investigator's decision of 10 November 2010 not to open criminal proceedings. The complaint was returned to the applicant in order for her to eliminate defects in the document.

64. On 2, 17, 25, 26, 27 and 29 December 2010 bailiffs from the Ramenskoe bailiffs' office, accompanied on some occasions by the police and the applicant, visited the Nikitskoe residence. Nobody was home.

65. On 23 December 2010 the Ramenskoe bailiffs' office ordered a temporarily limit on Mr O.A.'s freedom to leave the Russian Federation and forwarded the order to the border control service. On the same date the Ramenskoe bailiffs' office decided to search for the child and forwarded a decision in that regard to the police. They repeated their request on 28 December 2010.

66. On 29 December 2010 a bailiff from the Ramenskoe bailiffs' office imposed a fine of 1,000 Russian roubles (approximately 25 euros) on

Mr O.A. for a continuing failure to comply with the requirements of the writ of execution.

67. On 4 January 2011 the district court dismissed the applicant's complaint about the prosecutors' refusal of 10 November 2010 to institute criminal proceedings in connection with her son's kidnapping.

68. On 5, 12 and 17 January 2011 bailiffs from the Ramenskoe bailiffs' office visited the Nikitskoe residence. Nobody was home. They also asked the police to send a police officer on a daily basis to the Nikitskoe residence in order to check whether Mr O.A. and M. resided there.

69. On 18 January 2011 the applicant lodged another complaint with the district court about the investigator's decision of 10 November 2010. On 4 February 2011 the complaint was dismissed. On 23 March 2011 the Moscow City Court upheld the first-instance decision at final instance.

70. It appears that on an unspecified date the Ramenskoe district department of the interior decided to resume the investigation into the applicant's allegations of kidnapping. In the course of this investigation, on 2 February 2011 an official from the unit in charge of cases involving minors questioned M. in the presence of his father. M.'s identity was confirmed by his passport. M. told the official that he wanted to live with his father.

71. On 7 February 2011 it was decided once more not to institute criminal proceedings into the alleged kidnapping. The applicant did not challenge the decision.

72. On an unspecified date the transport police informed the Ramenskoe bailiffs' office that Mr O.A. had purchased a plane ticket to Sochi for 27 February 2011. On 27 February 2011 bailiffs came to the airport to question Mr. O.A. but he was not among the passengers boarding the plane. On the same date the bailiffs went to the Nikitskoe residence but Mr O.A. and M. were not there.

73. On 2 March 2011 the Khimki Town Police Department opened a file concerning the search for M. and put him on the federal search list.

74. On 10 March 2011 the Ramenskoe bailiffs' office requested the district court to clarify the manner in which the execution of its judgment of 17 April 2009 should be carried out. On 21 March 2011 the district court issued a clarification concerning the execution of its judgment of 17 April 2009, stating that Mr O.A. was under an obligation to take M. to the applicant's place of residence.

75. On 26 April 2011 the bailiffs suspended the execution proceedings in the absence of Mr O.A. and M.

76. On 10 May 2011 the police visited the Nikitskoe residence. Mr O.A. and M. were absent. Mr O.A.'s father explained that they were in the Zelenodolskaya flat.

77. On 11 May 2011 Mr O.A. talked to a prosecutor on the phone and stated that he and his family were on vacation until the end of May 2011 and refused to give the particulars of M.'s whereabouts.

78. According to the Government's submissions of 30 May 2011, M.'s whereabouts remained unknown to that date.

79. According to the information provided by the applicant on 13 September 2012, the judgment of 17 April 2009 remains unenforced to that date and M. continues to live with his father. The applicant submitted that she had not seen her son for several years.

II. RELEVANT DOMESTIC LAW

A. Family Code of Russia of 1995

80. Both parents have equal parental rights (Article 61 § 1). Parents have a right and an obligation to bring up their children. The parents' right to bring up their children has precedence over such a right of any other person (Article 63 § 1). A child's place of residence in case of separation of the parents should be established by an agreement between the parents. If the parents disagree on a child's place of residence, the dispute should be resolved by a court, taking into account the child's best interests and their opinion. The court should consider how attached a child is to each parent, his or her age, the moral qualities of the parents, their material welfare, family status, and so forth (Article 65 § 3). A parent residing separately from his or her child has a right to contact him or her and to participate in his or her upbringing (Article 66 § 1). A court may restrict parental rights ("to remove the child from the parent") if a parent could be dangerous to his or her child because of circumstances out of their control (a mental or other illness, distressing circumstances) or where their behaviour is dangerous for the child but not to the extent necessary to warrant withdrawal of parental rights (Article 73 § 2).

B. The Federal Law "On Enforcement Proceedings" of 2 October 2007

81. A bailiff must issue a decision to open enforcement proceedings or to refuse to do so within three days of receipt of a writ of execution (Article 30). The creditor, the debtor and the bailiff can ask the court which issued the writ of execution to clarify its provisions and the manner of its enforcement (Article 32 § 1). If the debtor fails to fulfil the obligations contained in the writ of execution within the time-limit established for doing so voluntarily, the bailiff shall recover an execution fee from the debtor and set up a new time-limit for the execution of those obligations (Article 105

§ 1). If the debtor does not fulfil the obligations within the newly established time-limit, the bailiff shall impose a fine on the debtor (Article 105 § 2). The court must examine complaints about the decisions, actions or inaction of bailiffs within a ten-day time-limit (Article 128 § 4).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

82. The applicant complained that the State had failed to take appropriate actions to reunite her with her son and that the lengthy non-enforcement of the writ of execution had breached her right to family life. She relied upon Articles 6, 8 and 13 of the Convention. The Court considers that the applicant's complaint of the authorities' failure to comply with their positive obligation to secure her right to respect for her family life is at the heart of the case and thus will examine the complaints under Article 8 of the Convention (see *Mihailova v. Bulgaria*, no. 35978/02, § 107, 12 January 2006, and *Cristescu v. Romania*, no. 13589/07, § 50, 10 January 2012).

Article 8 of the Convention, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... family life ... .
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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. The parties' submissions

1. The Government

83. The Government claimed that Mr O.A.'s refusal to comply with the judgment in question was not imputable to the State and did not entail State responsibility. They underlined that Mr O.A. had been hiding from the authorities, who had spent a considerable period of time looking for him before they had been able to establish that Mr O.A. lived at the Nikitskoe residence.

84. The Government insisted that the State authorities, in particular, the police, the prosecutor's office and the bailiffs, had taken all relevant measures available under domestic law to ensure that the judgment of

17 April 2009 was enforced. They asserted that text of the judgment of 17 April 2009 had been sufficiently clear to allow for its enforcement.

85. The Government stated that the applicant had confirmed in writing that she had no complaints about the bailiffs' actions and claimed that the applicant's motion for immediate execution of the judgment of 17 April 2009 had been rejected for the reason that there were no grounds for an order to that effect in domestic law.

2. The applicant

86. The applicant disagreed with the Government's claim that the non-enforcement of the judgment of 17 April 2009 had been exclusively attributable to Mr O.A.'s behaviour and his unwillingness to comply with the judgment. She claimed that the State authorities had taken no tangible steps to enforce it. The text of the judgment had been unclear to the bailiffs, as they had requested clarifications from the district court. The prosecutors had wrongfully refused to institute criminal proceedings into the alleged kidnapping of her son and to protect her interests. The Federal Migration Service had issued her son with a passport without her consent.

87. The applicant further submitted that there had been significant delays in the enforcement proceedings which were attributable to the State. For instance, the refusal to institute enforcement proceedings of 29 September 2009 had lacked grounds. The refusal of the domestic authorities to order the immediate execution of the judgment of 17 April 2009 had protracted the enforcement proceedings. Between September 2009 and February 2010 – that is, for five months – the circuit bailiffs' office had taken no steps whatsoever to ensure the enforcement of the judgment of 17 April 2009.

88. The applicant contested the Government's claim that Mr O.A. had been hiding from the authorities and submitted that both her ex-husband and his representative had contacted the circuit bailiffs' office on numerous occasions. Furthermore, although the Ramenskoe bailiffs' office had been unable to contact Mr O.A. for a while, agents from the prosecutor's office and the police had visited him and her son.

89. The Ramenskoe bailiffs' office had failed to hold Mr O.A. responsible for his continuous failure to comply with the judgment of 17 April 2009. The prosecutors had refused to institute an investigation into the kidnapping solely on the basis of the fact that M. lived with his father. The applicant further stated that she had written her statement concerning her lack of complaints about the bailiffs' actions under pressure.

90. The applicant claimed that the police had falsified the video materials and the report on the visit to the Nikitskoe residence of 20 April 2010, suggesting that the visit had taken place on another date and that the child interviewed was not her son. She also submitted that a police interview of a minor in the absence of a child psychologist was unlawful.

The applicant had not been allowed to take part in the police visit and to identify her son in person. The applicant also challenged the veracity of the video footage of 19 May 2010, stating that the weather on that date had not corresponded to that shown on the video.

B. The Court's assessment

1. Admissibility

91. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

92. The Court notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, among other authorities, *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

93. The Court reiterates that the essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. There may be, in addition, positive obligations inherent in an effective "respect" for family life (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290). In cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family, the Court's case-law has consistently held that this Convention provision includes, among other things, the right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation on the national authorities to take such measures (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and *Zawadka v. Poland*, no. 48542/99, § 55, 23 June 2005).

94. At the same time, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always important ingredients. Whilst the national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited, since the interests as well as the rights

and freedoms of all concerned must be taken into account, as should, more particularly, the best interests of the child and his or her rights under Article 8 of the Convention (see *P.P. v. Poland*, no. 8677/03, § 82, 8 January 2008; *Hokkanen*, cited above, § 53; and *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 96, ECHR 2000-I). The adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent (see *P.P. v. Poland*, cited above, § 83).

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

95. The Court notes that it was not disputed between the parties that the ties between the applicant and her son constituted "family life" for the purposes of Article 8 of the Convention. The Court next notes that the district court's judgment of 17 April 2009 ordering that M., then aged four years and eight months, live with his mother, the applicant, remains unenforced. Accordingly, it has to be determined whether the national authorities took all the necessary steps to facilitate the enforcement which they can reasonably have been expected to take in the particular circumstances of the case.

96. The Court observes at the outset that the Government's argument that the protracted non-enforcement of the judgment of 17 April 2009 resulted from the fact that Mr O.A. was in hiding from the State authorities does not withstand any scrutiny. It follows from the materials at the Court's disposal that at no point in time were Mr O.A.'s whereabouts unknown to State agents. His permanent place of residence was registered at the Nikitskoe residence, where he has actually lived most of the time since August 2008 (see paragraph 14 above). The authorities had his mobile phone number and knew where his close family members lived. The investigator and the police officers interviewed Mr O.A. in person on several occasions. Moreover, in 2010 the authorities issued M. with a passport (see paragraph 38 above). In such circumstances, it is clear that the non-enforcement of the judgment of 17 April 2009 was not caused by a lack of information on Mr O.A.'s and M.'s whereabouts.

97. The Court further points out that despite the applicant's request for immediate execution of the judgment and the pressing need to reunite the young child with his mother in accordance with the court judgment, there were significant delays in the commencement and conduct of the enforcement proceedings.

98. It is noteworthy that shortly after the judgment of 17 April 2009 became final the circuit bailiffs' office attributed their refusal to commence enforcement proceedings to the fact that the writ had been issued on an old form (see paragraph 27 above). The Court considers such an explanation scarcely plausible, given the fact that the district court issued a writ of execution on an old form two weeks after such forms had been replaced by

new ones (see paragraph 26 above). In the Court's view, it was for the domestic authorities to ensure that they issued lay people with up-to-date forms of official documents.

99. Furthermore, on two occasions the bailiffs addressed the district court asking it to clarify the text of the judgment of 17 April 2009 (see paragraphs 36 and 74 above). It appears from the wording of the judgment (see paragraph 23 above) and the two clarifications issued by the district court (see paragraphs 39 and 74 above) that the judgment's meaning was clear enough for a reasonable person on the face of it, without additional explanation. The Court cannot but conclude that the failure to timely interpret the manner in which the execution of a rather uncomplicated court judgment was to be conducted is attributable to the bailiffs.

100. As to the conduct of the enforcement proceedings, the Court notes that throughout the enforcement proceedings bailiffs from different offices repeatedly attempted to visit various addresses at which they expected to find Mr O.A. Thus it cannot be said that the bailiffs were entirely idle in the performance of their duties. However, the Court observes that the domestic authorities failed to take very basic steps to coordinate the activities of the bailiffs, the prosecutor's office and the police. In its view, it was incumbent on the State to ensure cooperation between its various agencies in such a manner as would guarantee the effectiveness of the enforcement proceedings (see, *mutatis mutandis*, *Takhayeva and Others v. Russia*, no. 23286/04, § 90, 18 September 2008).

101. The Court observes, for instance, that while the bailiffs were allegedly unable to see Mr O.A. on 20 April 2010, the police interviewed M. in Mr O.A.'s presence at the Nikitskoe residence on the very same date (see paragraph 45 above). Even assuming that M.'s forcible removal by the police from his father would have been detrimental for the child's psychological state, the police could have contacted the Ramenskoe bailiffs' office to notify them of the child's whereabouts.

102. The lack of cooperation between the investigator and the bailiffs is even more striking. The investigator failed to communicate to the bailiffs a basic piece of information concerning the two flats on Ferganskaya Street where Mr O.A.'s siblings resided, which would have saved precious time and ensured the prompt enforcement of the judgment of 17 April 2009 (see paragraph 60 above). It is also noteworthy that Mr O.A.'s sister's submissions concerning who resided in each of the flats on Ferganskaya Street were different when she was interviewed by the investigator and by the bailiffs. Such uncoordinated acts on the part of the State agencies inevitably led to the excessive protraction of the enforcement proceedings.

103. The Court further observes that the domestic authorities made no attempts to assess the psychological state of the child in the course of the enforcement proceedings. The fact that on two occasions, in May 2010 and February 2011, M., then aged between six and seven years' old, told the

investigator and the police officer that he wanted to live with his father's family in his father's presence (see paragraphs 48 and 70 above) is insufficient to conclude that it was in his best interests to remain with his father in breach of a court order. Both the investigator and the police officer were ill-placed to substitute for a child psychologist capable of assessing whether a very young child was stating his mind or merely complying with the orders of his elders. Moreover, the Court points out that by the time of those interviews M. had lived with his father for more than two years and his contact with the applicant had been quasi inexistent. In such circumstances, it does not come as a surprise that a child separated from his mother at the age of three years and eight months expressed the preference for the existing situation.

104. In any event, were the national authorities to deem it necessary in the best interests of the child to review the custody arrangements, it would have not been for law-enforcement agents – who are by definition ill-equipped to replace child welfare authorities – to make conclusions as to whether a child should stay with his father, contrary to what had been decided by competent domestic courts.

105. The Court is mindful of the fact that child custody disputes by their very nature are extremely sensitive for all the parties concerned and it is not necessarily an easy task for the domestic authorities to ensure execution of a court judgment in such a dispute where one or both parents' behaviour is far from constructive. Nonetheless, it observes that no effective measures were taken by the authorities to create the necessary conditions for executing the judgment in question, whether meaningful coercive measures against Mr O.A. or steps to prepare for the return of the child to the applicant. Although coercive measures involving a child are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the child lives (see *Ignaccolo-Zenide*, cited above, §§ 105-06).

106. It is noteworthy in this respect that the applicant's former husband, who refused to voluntarily comply with the judgment and who obstructed its enforcement, was only fined the rather insignificant amount of 25 euros once (see paragraph 66 above) and that the police and the investigator made no efforts to bring pressure to bear on him (see, by contrast, *Mihailova*, cited above, § 98).

107. Lastly, the Court notes that the legitimate interest of the applicant in developing a bond with her child, as well as the latter's long-term interest to the same effect, were not duly considered by the police and the prosecutors who refused to assist her in obtaining the execution of the valid court order (see *Görgülü v. Germany*, no. 74969/01, § 46, 26 February 2004, and *Tomić v. Serbia*, no. 25959/06, § 104, 26 June 2007).

108. Overall, the Court considers that throughout the enforcement proceedings the bailiffs failed to display due diligence in handling the

applicant's request for assistance. The bailiffs appeared unprepared to face the task and had no clear idea or plan of action as to what could and should be done (see *Khanamirova v. Russia*, no. 21353/10, § 56, 14 June 2011).

109. The foregoing considerations are sufficient to enable the Court to conclude that the Russian authorities failed to take, without delay, all the measures that they could reasonably have been expected to take to enforce the judgment concerning the applicant's custody of her son and that they thereby breached the applicant's right to respect for her family life, as guaranteed by Article 8.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

111. The applicant further complained under Article 2 of the Convention that her son's life was in peril; under Article 3 of the Convention that she had been subjected to degrading treatment while waiting in queues to get into the circuit bailiffs' office premises; and under Article 10 of the Convention that journalists willing to cover her story had been experiencing pressure from State officials.

112. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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."

114. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

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.

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President