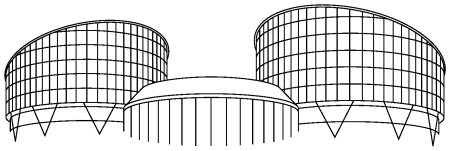

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF E.K. v. LATVIA

(Application no. 25942/20)

JUDGMENT

Art 8 • Positive obligations • Family life • Failure of domestic authorities to take necessary and timely steps to enforce the applicants' contact rights with his daughter seeking to overcome the mother's obstructive attitude and reconciling the parties' conflicting interests

STRASBOURG

13 April 2023

FINAL

13/07/2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of E.K. v. Latvia,

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

Georges Ravarani*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 25942/20) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr E. K. ("the applicant"), on 25 June 2020;

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

the parties' observations;

the decision to grant the applicant anonymity under Rule 47 § 4 of the Rules of Court *ex proprio motu*;

Having deliberated in private on 21 March 2023,

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

INTRODUCTION

1. The case concerns a complaint about non-enforcement of a judgment granting the applicant contact rights with his daughter, allegedly in breach of his right to respect for his family life guaranteed under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1983 and lives in Saldus County. He was represented by Ms I. Nikuļceva, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

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

I. PROCEEDINGS SETTING OUT CONTACT ARRANGEMENTS

5. The applicant was married to I.B. Their daughter D.K. was born on 6 August 2013. In October 2016 I.B. moved out of the family home and took up residence in a town more than 200 km away, taking D.K. with her. On 10 January 2017 I.B. filed for divorce.

6. On 10 May 2017 a guardianship and curatorship institution established by Cēsis Municipality (*Cēsu novada bāriņtiesa* – hereinafter "the Guardianship Institution") held a meeting during which the applicant met D.K. The minutes of the meeting state that D.K. approached the applicant with genuine surprise and joy and started showing him her drawings. She showed positive emotions and was talking to him a lot, she was sitting on his lap and cuddling him, and she did not want him to leave at the end of the meeting.

7. On 22 May 2017, within the divorce proceedings, the Cēsis District Court adopted an interim order determining the applicant's contact rights with D.K., allowing him unsupervised contact every other Saturday from 11 a.m. to 6 p.m., except for nap times, during which she was supposed to sleep at home. On 17 July 2017 the Vidzeme Regional Court changed the contact sessions to every other Friday from 8.30 a.m. to 1 p.m., to be commenced at the preschool, in view of reports from the applicant and the Guardianship Institution that I.B. was placing obstacles to the exercise of contact rights. After that, I.B. removed D.K. from the preschool and began homeschooling.

8. On 5 March 2018 the Vidzeme District Court dissolved the marriage and determined the applicant's contact rights. The parents retained shared parental authority, and the applicant was granted the right to meet D.K. alone every other Saturday from 11 a.m. to 6 p.m., except for nap times, by picking her up at a car park near her home. It also provided for a gradual increase of the contact sessions starting from the age of six, which included weekend overnight stays at the father's home and shared public and other holidays. The court noted that since 17 July 2017, when the Vidzeme Regional Court had changed the interim order regarding contact rights (see paragraph 7 above), the applicant had been unable to exercise those rights as set out in the order. The court concluded that I.B. had been trying to place obstacles to the applicant's contact with his daughter and noted that the parties were unable to resolve their conflicts without the involvement of the competent institutions. The judgment was appealed against with respect to the applicant's contact rights.

9. On 5 June 2018 the Vidzeme Regional Court, in its appeal judgment, approved a similar contact order indicating that the applicant had to pick up D.K. at the car park near her home, but that the gradual increase of contact including weekend sleepovers at the father's home would instead commence at the age of five (hereinafter "the Judgment") (see paragraph 10 below). The court did not hear the views of D.K. directly, but assessed her best interests and referred to several psychological assessments and Guardianship Institution assessments prepared following meetings with the applicant, D.K. and I.B. indicating that there was a conflict between the parents which negatively affected their ability to communicate productively, and that contact was being exercised through conflicts. While the child expressed her emotions to the parents equally, equally sought their contact and expressed

joy, I.B.'s negative attitude towards the applicant and the fact that the child lived with her could create or enhance the child's ambivalent attitude towards the father. The ongoing conflicts negatively affected the child, who was becoming a victim of emotional violence. The parents were unable to resolve their conflict by themselves and both had to take responsibility for the situation.

10. The Vidzeme Regional Court determined the applicant's contact rights with D.K. as follows:

(1) until the age of five, the applicant could meet his daughter every other Saturday from 10 a.m. to 7 p.m., except for nap time from 1 to 3 p.m., which would take place at her home (to be postponed to the following Saturday in case of illness);

(2) from the age of five - every third week, from 10 a.m. on Saturday to 7 p.m. on Sunday (to be postponed to the following week in case of illness);

(3) from the age of seven - every other week, from 10 a.m. on Saturday to 7.p.m. on Sunday (to be postponed to the following week in the case of illness);

(4) as of 1 January 2019 - two weeks in summer, when the applicant had summer holidays, and, after D.K. started school, half of her school holidays;

(5) from the age of five - every even-numbered year, the Christmas and Midsummer holidays, from 10 a.m. on the first day of the holidays to 7 p.m. on the last day of the holidays;

(6) from the age of five - every odd-numbered year, New Year's Eve, New Year's Day and the Easter holidays, from 10 a.m. on the first day of holidays to 7 p.m. on the last day of the holidays;

(7) the applicant could contact D.K. on I.B.'s telephone every Thursday from 8 to 8.30 p.m., as well as on D.K.'s birthday and name day;

(8) I.B. had to provide monthly information to the applicant about D.K.'s development, health, progress at school, interests and living conditions at home (by e-mail);

(9) the contact rights had to be exercised taking into account the child's opinion and best interests; and

(10) the parties, if they agreed, could make other arrangements for the exercise of the applicant's contact rights.

The court warned the parties that failure to comply with the Judgment could result in a fine, suspension or removal of parental authority, and criminal liability for malicious failure to comply with a judgment. The Judgment took effect on 15 November 2018 following a refusal to institute proceedings on points of law.

II. INITIAL ATTEMPTS TO EXERCISE CONTACT RIGHTS

11. During the divorce proceedings, the contact sessions primarily took place in I.B.'s home in her presence and sometimes also in the presence of

the maternal grandparents. The environment was confrontational, and D.K. frequently expressed unwillingness to see the applicant.

12. Following the entry in force of the Judgment, D.K. was said to be ill for multiple sessions, and the applicant was not allowed to see her (8, 15, 22 and 29 December 2018, and 12 and 19 January, 2 and 9 February, 4 May and 15 June 2019). As of 5 January 2019, D.K. was taken to the meeting place – located only some 100 metres from I.B.'s home – in a car seated between several other people (lawyers, maternal relatives, other adults) and those sessions would routinely not result in any actual contact, as D.K. would state that she did not want to meet the applicant and would be immediately driven away (5 and 26 January, 16 and 23 March, 13 April, and 11 and 25 May 2019). At times, D.K. was accompanied to the meeting place on foot by I.B. but was later driven away in a car by her maternal grandfather (22 June 2019). On other occasions, D.K. ran away or refused to go with the applicant (6 July, 17, 21 and 24 August, and 7 September 2019). Sometimes, I.B. would inform the applicant that D.K. would not be coming to the meeting place, without giving a specific reason (16 and 23 February, 1, 8 and 30 March, and 19 April 2019). The applicant's contact with his daughter by telephone was also frequently limited or not ensured, including missed calls on D.K.'s birthday.

13. On 16 October 2018 the applicant requested the Guardianship Institution to suspend I.B.'s parental authority owing to her failure to comply with the interim order setting out his contact rights (see paragraphs 7 and 8 above). These proceedings were eventually terminated on 15 October 2019 after the applicant withdrew his complaint, as he and I.B., under the auspices of the Guardianship Institution, had reached an agreement (see paragraph 16 below). During these proceedings, the Guardianship Institution referred I.B., D.K. and the applicant to a psychologist for consultations and resolved some specific issues the parents had been unable to agree upon, such as the choice of general practitioner and the question of whether D.K. should start attending primary school a year early. It also drew up several family assessments indicating that D.K. manifested inexplicable behaviour, such as hitting and biting her father and calling him names, to which the mother did not react, and concluded that the parental conflict had caused emotional damage to the child. It considered that I.B. lacked the understanding that the child needed contact with the other parent and that she had to facilitate contact with the parent living separately by preparing her daughter for the meetings. I.B. was acting incomprehensibly by continuously taking D.K. to see various mental health specialists without ensuring systematic care, and she was not cooperating with the Guardianship Institution.

14. During this time, D.K. was assessed by several specialists. On 2 November 2018 neurologist B.T. found that D.K. had neurotic reactions, neurotic dysuria and cerebro-asthenic syndrome, and it was recommended that she have an emotionally stable environment. On 28 January 2019 psychologist N.R., following two sessions, concluded that D.K. had

situational anxiety and neurotic manifestations depending on the topic, particularly in relation to the father, which were caused by the conflicting environment and family circumstances. On 21 March 2019 psychologist I.T., after two sessions of sand therapy, advised I.B. to teach D.K. social boundaries and to learn how to direct the child's emotions in a positive manner. On 4 March 2019 child neurologist I.C., following three sessions, reported that D.K. needed stability and regular sessions with a psychologist, and that the child could not be forced to have contact, it had to be created in a positive environment. The current situation in which the child felt endangered created a risk of developing a psychological pathology. On 20 May 2019 general practitioner D.G. attested that D.K. was in reasonably good health and did not require specialist consultations. On 6 August 2019 D.K. commenced consultations with psychologist G.T., who, following five sessions, stopped seeing her because the parents were "unable to stop their war in which there [would] be no winners".

15. The applicant was able to have some contact with his daughter on a couple of occasions but it was significantly limited, having taken place in I.B.'s presence and mostly at her home (27 July and 10 August 2019).

16. On 15 October 2019 the applicant and I.B. reached an agreement whereby the applicant would gradually start to exercise contact rights with D.K. in accordance with the Judgment. I.B. initially complied with that agreement and the applicant was able to meet his daughter on a couple of occasions. However, soon after she started obstructing contact (see paragraph 22 below).

III. ENFORCEMENT ATTEMPTS THROUGH A BAILIFF

17. On 26 November 2018 the Vidzeme Regional Court issued an enforcement order with respect to the Judgment, and on 16 January 2019 the applicant applied to a bailiff for its enforcement.

18. The bailiff sent a notification to I.B. regarding her obligation to comply with the Judgment, in respect of which she filed a complaint. The bailiff subsequently suspended the enforcement proceedings until a court decision was made. On 10 May 2019 the Vidzeme Regional Court dismissed the complaint, noting that there were no doubts that I.B. had not complied with the Judgment (reference was made to the events of 5 January 2019, see paragraph 12 above), as she had not ensured that D.K. would stay with her father and had not emotionally prepared her. A five-year-old child's openly negative attitude towards the father could not be regarded as an objective ground for not complying with the Judgment. That decision was upheld on appeal on 26 June 2019.

19. In July 2019 the bailiff resumed the enforcement proceedings and sent I.B. more notifications regarding her obligation to comply with the Judgment. On 6 July, 17, 21 and 24 August and 7 September 2019 the bailiff drew up

five reports concerning I.B.'s failure to comply with the Judgment on those dates (see paragraph 12 above), indicating that while D.K. had been taken to the place specified, she had refused to approach the applicant and had been running away. The reports stated that I.B. had failed to ensure that D.K. would be handed over. On 30 September 2019 the Vidzeme District Court dismissed I.B.'s complaint about the first of those reports, concluding that she had not handed over the child and ensured the applicant's contact with her. Moreover, I.B. had not submitted evidence or provided any explanation as to the obstacles preventing the exercise of contact rights. The child's dismissive attitude could not be regarded as an obstacle, as there was no evidence showing that it had an objective basis and was not correlated with I.B.'s own conduct or influence.

20. On 20 December 2019 the Vidzeme Regional Court annulled that decision. It concluded that the bailiff had a duty to determine "whether a judgment determining contact rights was being complied with and not whether its enforcement was being ensured". The Civil Procedure Law clearly provided that the bailiff could only draw up a report on failure to comply with the judgment if the child was not present at the time and place specified. I.B. had taken the child to the place specified at the relevant time but contact rights had not been exercised because the child herself had refused to go with the father. The child could not be forced to comply with the Judgment against her will, which could amount to violence against the child. The bailiff was not competent to resolve the conflict about whether the mother was responsible for influencing the child's opinion. Failure to comply with the judgment had to be distinguished from circumstances encumbering enforcement, and in the latter case recourse had to be had to the mechanism for reviewing the arrangements for the exercise of contact rights under the Civil Procedure Law (see paragraph 51 below). Only in those proceedings, or in new proceedings concerning contact rights, would the court analyse the reasons for the child's opinion and evaluate the circumstances connected with the exercise of the parent's rights and obligations. Subsequently, on 10 January 2020 the other bailiff's reports were annulled on the same grounds.

21. On 9 October 2019 the State Inspectorate for the Protection of Children's Rights (*Valsts bērnu tiesību aizsardzības inspekcija*) expressed a similar opinion stating that neither the bailiff in the enforcement proceedings nor the court when reviewing the bailiff's actions could resolve a situation where a child did not want to go with a parent or assess such a complex and important issue as the reasons for this refusal. The appropriate mechanism was seeking a review of the contact arrangements and requesting that the sessions be organised in the presence of a contact person. In addition, the Guardianship Institution had the competence to assess whether or not parental authority was being exercised maliciously and to decide on the suspension of parental authority, if appropriate.

22. Between September 2019 and January 2020, while the appeals against the decisions of the Vidzeme District Court were pending (see paragraphs 19-20 above), the scheduled contact sessions took place in I.B.'s presence, mostly in her home and sometimes in the presence of the maternal grandmother (28 September, 5 and 19 October, 2, 9, 16, 23 and 30 November, 7, 14, 21 and 28 December 2019, and 4 January 2020). On 24 and 30 December 2019 I.B. refused to take D.K. to sessions scheduled in Saldus, claiming that the child was ill. On 11 January 2020 D.K. was taken to Saldus together with a bailiff and I.B.'s sister. D.K. stated that she did not want to meet the applicant and was immediately taken away. On 18 January 2020 a contact session took place in I.B.'s home in a heated atmosphere. From then on, I.B. either did not take D.K. to the place specified, claiming that she was ill (25 January and 20 March 2020), or took her to the meeting place in a car, immediately driving away without anyone getting out (1 February 2020). On 22 February 2020 the applicant's car had a technical problem, so he could not attend a contact session scheduled to take place in Cēsis. The applicant's contact with his daughter by telephone was also frequently limited or not ensured.

23. On 11 March 2020 the applicant had contact with D.K. in her home, but I.B. did not allow him to stay longer than thirty minutes, claiming that D.K. was ill. There is no information about subsequent contact sessions between the applicant and D.K. On 28 March 2020 a scheduled session was postponed owing to the Covid-19 pandemic. On 16 May 2020 another session did not take place as I.B. took D.K. to the meeting place by car, but immediately drove away without anyone getting out.

24. On 5 September 2020 a contact session was organised at the premises of the Guardianship Institution (see paragraph 26 below) in the presence of a bailiff. After the session, the bailiff reported that I.B. and D.K. had arrived at the time and place specified but D.K. had shouted and refused to enter the room, after which I.B. and D.K. had left. When the bailiff had called I.B., she had responded that they would not be returning to the Guardianship Institution as she was unable to calm her daughter down. The bailiff concluded that the situation could not be classified as failure to comply with the Judgment, as the child could not be forced to have contact against her will. The bailiff had no legal grounds to assess the reasons for the child's refusal to meet the father, as the law did not provide that the bailiff could carry out a thorough assessment of the circumstances if the child was present at the time and place specified. The institutions responsible had to assess the family situation and find the solution most suitable for the child. The Guardianship Institution had to assess whether either of the parents were using their parental authority maliciously. Accordingly, in this situation, there were circumstances encumbering enforcement of the Judgment, and the enforcement order had to be returned to the applicant so that he could ask the court to review the arrangements for exercising contact rights. The bailiff's

decision to return the enforcement order to the applicant was upheld by the Vidzeme District Court on 10 November 2020 and by the Vidzeme Regional Court on 2 January 2021, noting that the applicant had the right to request a review of the arrangements for the exercise of contact rights.

IV. REQUESTS TO REVIEW THE ARRANGEMENTS FOR THE EXERCISE OF CONTACT RIGHTS

25. On 4 April 2019 the applicant requested the Vidzeme Regional Court to review the arrangements for the exercise of contact rights set out in the Judgment. He asked the court to impose specific obligations on I.B. with a view to convincing D.K. to go with him during the contact sessions, allowing I.B. and D.K. to leave the contact place only if these attempts had been unsuccessful for three hours, as well as imposing an obligation on I.B. to attend psychological support sessions. On 16 May 2019 the Vidzeme Regional Court, following a written procedure, acknowledged that the Judgment was not being enforced and that the applicant had had no real possibility of meeting and communicating with his daughter. While the court considered the claim that I.B. was unlawfully preventing contact unproven for lack of evidence, noting that the applicant's requests to institute criminal proceedings against I.B. had been refused, it concluded that she was not doing everything in her power to facilitate the successful exercise of contact – she had not taken any active steps in that regard. The court added that the mother had to prepare the child emotionally for contact sessions in order not to create additional stress. The court granted the applicant's request with respect to the wording in the contact order requiring D.K. to be "handed over" by I.B. rather than her being "picked up" by the applicant "as in that manner the child's mother [I.B.] would possibly be expected to take more active steps to facilitate the exercise of [the applicant's] contact with his daughter [D.K.]", imposing the requirement for I.B. to take D.K. to the contact place without third parties being present, and – with respect to weekly telephone calls – that I.B. had to ensure that the applicant could make video calls via WhatsApp. It also clarified the arrangements to be made when D.K. was ill, including the applicant's right to have contact with her on those occasions for thirty minutes at her home. The Vidzeme Regional Court dismissed the request to impose an obligation on I.B. to attend psychological support sessions owing to the fact that she was employed and such an obligation could lead to complications with her employer and create new conflicts, while also noting that such sessions should be considered by the parties in order to ensure contact.

26. On 8 June 2020 the Vidzeme Regional Court partly granted a new request by the applicant to review the arrangements for the exercise of contact rights. It assessed the best interests of the child and noted that they did not necessary coincide with her views. On the one hand, family ties had to be preserved and relationships restored. On the other hand, it was in the child's

best interests to be in a safe environment and the parents should not harm her health and development. The contact rights had to be made in the child's best interests. It concluded that the applicant's contact rights with D.K. were not being carried out in the manner set out in the Judgment since the child had refused to meet the father and that there had to be identifiable reasons for that. Accordingly, it ruled that the contact sessions should be commenced at the premises of the Guardianship Institution in the presence of a contact person designated by it, and that after one hour they should be continued in the manner set out in the Judgment. It was necessary to continue taking steps with a view to stabilising the child's psychological and emotional state, which – as noted by the Guardianship Institution – was being affected by the child's mother. The child's opinion of the applicant would be more positive if not influenced by the mother. The court emphasised that the child's views were important but that the need to consider her best interests could not be simply reduced to following her wishes. In that regard, the court noted that the role of a contact person – who had to be neutral from both parties involved – was to take active steps with a view to facilitating the exercise of contact. That person had to ensure the presence of an appropriate specialist during the contact sessions.

27. On 28 April 2021 the Guardianship Institution applied to the Vidzeme Regional Court, requesting it to change the arrangements for the exercise of contact rights so that the sessions would be commenced at the office of a psychologist chosen by the parents (they indicated A.S., see paragraph 38 below), rather than at the Guardianship Institution. The Guardianship Institution noted that its representative had acted as the contact person on twenty-three occasions but that contact had never taken place as the child had refused to meet her father or had not gone to the meeting at all. On 27 May 2021 the Vidzeme Regional Court dismissed the request, noting that the psychologist did not wish to be given the status of a contact person, she had preferred that their cooperation be continued on a voluntary basis and not be ordered by the court. Moreover, the duties of a psychologist and a contact person differed. The court held that both parents together with the child should continue using the help provided by a psychologist (and not a contact person). The court also pointed to the Guardianship Institution's indecisiveness and contradictions in its application and expressed concerns that it was trying to evade its duties under law to participate in the contact sessions in this specific case. The court reminded the Guardianship Institution of its duty to participate in the contact sessions in cases where parents could not agree on a contact person to be designated (see paragraph 50 *in fine* below). The Guardianship Institution could not relieve itself of this duty.

V. ATTEMPTS TO EXERCISE CONTACT RIGHTS THROUGH THE INVOLVEMENT OF THE GUARDIANSHIP INSTITUTION

28. In view of the applicant's complaint that I.B.'s actions were preventing the exercise of his contact rights, the Guardianship Institution carried out an assessment of the family situation from 16 to 27 January 2020. The conclusions were largely the same as during the previous assessments (see paragraph 13 above). I.B. was instructed to remove the obstacles to her daughter's development by 27 March 2020. In an assessment carried out from 1 May to 8 June 2020, the same conclusions were reached again. The Guardianship Institution found that I.B. had not provided the applicant with the possibility of meeting his daughter without other people being present and that she had not agreed to go for walks or events outside of the house. During the contact sessions, she had not encouraged improvement of the relationship and had continued to take no action to facilitate contact. I.B. had also provided insufficient information concerning the child's health, education, development and pastimes to the applicant. I.B. had not complied with the previous agreement reached at the Guardianship Institution concerning gradual enforcement of the Judgment (see paragraph 13 above).

29. After the court's order that the contact sessions be coordinated by the Guardianship Institution (see paragraph 26 above), the latter designated a contact person and from June 2020 to January 2021 organised at least twenty-three sessions at its premises, including the session of 5 September 2020 (see paragraph 24 above). It reported that none of those sessions had resulted in any actual contact, as I.B. would either announce that the child did not want to meet the applicant and would either not attend or would take the child to the meeting place only to immediately take her away after the child announced that she did not want to meet the applicant.

30. On 5 and 14 October 2020 respectively the Guardianship Institution and I.B. filed an application seeking to suspend enforcement of the Judgment while the proceedings to change the applicant's contact rights (see paragraph 44 below) were pending before the civil courts. On 4 November 2020 the Vidzeme Regional Court dismissed the request.

31. On 12 October 2020 the Guardianship Institution addressed the State Inspectorate for the Protection of Children's Rights for an explanation as to the role and obligations of a contact person. The Inspectorate forwarded this enquiry to the Ministry of Welfare, which responded that the obligations differed from case to case and that, in the particular circumstances of the case at hand, the obligations had to be determined in accordance with the reasons laid out in the Judgment. The Inspectorate also provided a response of its own, stating that in situations where the child was dismissive, the contact person's duty was to get involved and propose specific activities to facilitate contact. In order to avoid potential conflicts of interest and dissatisfaction of the parents, only in cases of absolute necessity should the Guardianship

Institution's employee fulfil the role of a contact person, the most appropriate person being a psychologist with specialist knowledge. The Inspectorate advised the Guardianship Institution to address the Vidzeme Regional Court for an explanation of the Judgment.

32. On 28 December 2020 the Guardianship Institution provided its assessment of the family situation in the civil proceedings lodged by I.B. (see paragraph 44 below). It noted that while D.K. had been in her mother's care, the specialists' recommendations had not been complied with, there was no indication that D.K. received regular psychologist consultations, and the help of a mediator or a psychotherapist was not being used. I.B. was not cooperating with the Guardianship Institution or the specialists, she had ignored the family doctor's advice and was sending D.K. to an incomprehensible number of specialists. The father's contact rights were not being ensured owing to the parental conflicts. The Guardianship Institution considered that there would be no conflicts if the father could exercise his contact rights at least partially. The child was being influenced by the mother's attitude and mood. The longer contact rights were not being exercised, the less objective the child's opinion became. I.B.'s conduct indicated that, according to her, meeting the father was not in D.K.'s interests, and that she was satisfied with the fact that D.K. refused to meet her father. The child was not being prepared for the meetings and contact was not being facilitated, which was not compatible with the best interests of the child. The applicant had requested the Guardianship Institution to ensure his contact rights as provided for by the Judgment, but it had no competence to control enforcement of the Judgment. It had taken all the action required of it by law – the parents had been informed of the need to comply with specialists' recommendations and create a positive attitude in the child with respect to the contact sessions.

VI. PROCEEDINGS TO SUSPEND I.B.'S PARENTAL AUTHORITY

33. On 15 January 2020 the applicant repeatedly requested the Guardianship Institution to suspend I.B.'s parental authority on account of her failure to comply with the Judgment (see paragraph 13 as regards his previous request). On 5 March 2020 I.B. filed a similar request with respect to the applicant, citing his insistence on meeting his daughter. Within those proceedings, the Guardianship Institution sought to hear the views of D.K. During the first meeting in January 2019, they noted that D.K. was a well-developed, open, and friendly child, but that she also sought undivided attention. I.B. was seen as attempting to control what D.K. said. The child's views had to be heard without others present, however, I.B. did not cooperate in this regard and did not let the Guardianship Institution meet D.K. without her present. In the second meeting, in June 2020, D.K. refused to talk to the representatives of the Guardianship Institution and only said that she refused

to meet her father. On 11 June 2020 the Guardianship Institution dismissed the requests with respect to both parents. It concluded that the situation had not changed since 7 August 2017 and that the ongoing parental conflict was emotionally harmful to the child. With respect to the applicant, the Guardianship Institution noted that there were no indications that he had abused his parental authority. As to I.B., the Guardianship Institution concluded that she was not exercising shared parental custody, as she was taking all decisions unilaterally; she was also not facilitating enforcement of the Judgment, citing the child's unwillingness to meet the father as a pretext. Her conduct demonstrated her resistance to the father meeting their daughter, and she was trying to prevent their contact. I.B. was speaking negatively about the father in the presence of their daughter and blaming him for unpleasant situations. A couple of years earlier, the daughter had been happy to meet the father but now refused to meet him and go with him. However, this negative attitude in itself did not demonstrate that it had been created by the mother alone, as it could have also been caused by the parental conflicts and the child's observations. At the same time, I.B.'s conduct in unnecessarily subjecting D.K. to treatment by many different specialists in an attempt to obtain a conclusion that would serve her interests was traumatising the child. The Guardianship Institution concluded that I.B. was using her parental authority maliciously by not complying with the Judgment. However, the harm that would be caused by suspension of her parental authority and the child's separation from her would be even greater. Accordingly, the Guardianship institution ruled against the suspension of parental authority and advised the parents to set their conflicts aside to find a solution in the child's interests. Both parents appealed against that decision.

34. On 1 July 2020 the applicant addressed the Guardianship Institution to ask what he was supposed to do to exercise his contact rights and what it intended to do to facilitate contact. On 22 July 2020 the Guardianship Institution responded that the question concerned enforcement of a judgment in a civil case. Contact rights were determined by a court, not a guardianship institution, and if the applicant considered that the Judgment was not being enforced, he could have recourse to a bailiff. Criminal liability was also envisaged for failure to comply with a contact order, and any disputes on contact rights could also be brought before arbitration tribunals or mediators. The Guardianship Institution invited the applicant and I.B. to resort to conflict resolution methods that ensured the best interests of the child. In view of the court order (see paragraph 26 above), the Guardianship Institution had provided safe premises and appointed a contact person.

35. On 30 December 2020 the Administrative District Court allowed the applicant's complaint and ordered the Guardianship Institution to suspend I.B.'s parental authority. It noted that I.B. had already been placing obstacles to the exercise of the applicant's contact rights during the divorce proceedings, and that the Judgment had never been complied with, as I.B. had

not facilitated but had instead hampered the applicant's contact with their daughter. In January 2020, when the applicant had sought the suspension of I.B.'s parental authority, the Guardianship Institution had already been well aware of the family history, including I.B.'s failure to ensure the applicant's contact with his daughter. It had itself identified the risks, including I.B.'s attempts to evade enforcement of the Judgment, and had therefore been obliged to act with greater urgency. The longer the child did not meet one of the parents, the more her opinion could be influenced by the parent with whom the child lived. Prolonged failure to comply with the Judgment created an unjustified advantage for the parent who unlawfully failed to comply with it. Currently, even though it was recognised that contact rights were not being ensured, none of the institutions involved were capable of ensuring them.

36. The Administrative District Court further considered that the daughter's unwillingness to meet the applicant was not a conscientious opinion of the child and that invoking it for failure to comply with the Judgment would not ensure the child's best interests. The child's opinion had been influenced by I.B. She had always stayed with her daughter during the contact sessions, thereby increasing the tension and not allowing the father and daughter to meet alone. The child had already evidently been traumatised by this situation. It had also not been explained why the child had been continuously taken to see various specialists, rather than one who would prepare her for contact with the father, while also working with the mother. I.B.'s conduct demonstrated that she was trying to have it recognised that meeting the father would not be in the child's interests, and that she was content with a situation in which the child was refusing to meet the father. In view of the evidence before it, the court concluded that I.B. had consciously created fear in her daughter's mind of her father.

37. The Administrative District Court also noted that I.B. was not heeding the advice of the specialists and was not cooperating with the Guardianship Institution. She had not allowed the latter's representatives to speak to the child alone, instead participating in the meeting together with the lawyer and trying to control what the child was saying. As I.B. was purposefully trying to influence the child's opinion and prevent any meetings between the father and child, her behaviour was not compatible with the child's best interests and constituted abuse of her parental authority. Such a situation had already caused and kept causing harm to the child, which was grounds for suspending I.B.'s parental authority. Both I.B. and the Guardianship Institution appealed against that judgment.

38. While the appeal was pending, the parents, by mutual agreement, started attending couples therapy and to see a mediator and a psychologist, either separately or together with D.K. Between 9 January and 3 April 2021 six sessions took place. After two of those sessions, the applicant, I.B. and D.K. spend some time together outside the therapy setting. On 6 April 2021 the psychologist, A.S., reported that the parents had agreed on contact at her

office every other Saturday. Both parties were currently cooperating, even though I.B. and the applicant had difficulties trusting each other. Owing to the ongoing psychological tension between the parents, D.K. had difficulty controlling her emotions and there were anger outbursts and behavioural problems (such as shouting, physically attacking the father, tearing up the worksheet). The current difficulties included the father's lack of knowledge and skills in establishing contact, the mother's inability to motivate the daughter to communicate with the father and D.K.' s difficulty in complying with the rules and respecting other people's boundaries.

39. On 13 July 2021 the Administrative Regional Court reversed the Administrative District Court's judgment and dismissed the applicant's request seeking suspension of I.B.'s parental authority. It agreed that I.B. was not exercising joint parental custody, that she was taking the most important decisions concerning the child alone (e.g. concerning preschool, schooling and various specialist appointments), that the applicant could not exercise his contact rights, and that I.B. was not motivating the child or facilitating contact. However, transferring D.K. to the care of the parent whom she did not want to meet would cause greater harm than I.B.'s refusal to ensure the applicant's contact rights. D.K. did not accept any contact with her father and forcing her to have such contact would subject her to a psychologically traumatising situation. The court also found that both parents were at fault for the situation hampering the child's contact with the father, as D.K. did not want to meet the applicant owing to the bad relationship between the parents. The court also referred to the progress made since the adoption of the first-instance court's judgment. The real dispute in the case concerned contact rights, which had to be resolved through civil proceedings. The judgment was upheld on 29 December 2021 by the Senate of the Supreme Court.

VII. FURTHER PSYCHOLOGICAL TREATMENT AND ASSESSMENT OF D.K.

40. On 19 May 2020 psychologist N.S.P. indicated that D.K. had attended three sessions with her and that she did not want to cooperate because she had seen too many psychologists. N.S.P. concluded that continuing the sessions would serve no purpose.

41. On 4 June 2020 a psychological assessment of D.K. was carried out within the criminal proceedings (see paragraph 46 below). The report stated that during the psychological examination, the child had not been available for productive contact, had acted inappropriately and had not reacted to the remarks made by her mother (she had pretended to be a cat, hissed and growled at the psychologist). Her opinion was subject to the influence of I.B., including with respect to the applicant, in relation to whom the child was unable to formulate her own opinion. D.K. was showing a negative and hostile attitude towards the father and acting inappropriately by shouting,

hitting him and calling him names. There was a possibility that I.B. had influenced the child's opinion. The child was described as intelligent, active and emotional, with tendencies towards provocative behaviour, and in need of boundaries.

42. On 14 July 2020 the applicant suggested that in view of her diagnoses, D.K. should be treated in hospital. On 14 August 2020 psychiatrist I.C. responded to the Guardianship Institution that D.K. should certainly not be treated in a psychiatric hospital, as this would only increase her stress and worsen her condition. The patient had to be treated in a calm environment, with the parents understanding the child's emotional needs.

43. Between 21 and 29 September 2020, on the basis of a referral by psychiatrist I.C., D.K. was treated in a children's psychiatric hospital. The diagnosis was acute stress reaction, severe dissociation, enuresis and encopresis (soiling oneself), sleep disorders, nail biting and an atypical parental situation. In the hospital, a psychological assessment concluded that the child's thoughts and opinions derived from the statements of other people. The child felt threatened and feared that she would be placed in an orphanage. The medical panel concluded that D.K. had neurotic symptoms with emotional and behavioural disturbances and possibly dissociative disorder. When she was discharged, it was recommended that she attend outpatient psychiatric consultations and regular psychologist/psychotherapist consultations. Couples therapy, mediation and family psychotherapy for the parents were indicated as desirable.

VIII. OTHER PROCEEDINGS

44. In December 2018 I.B. instituted civil proceedings seeking different arrangements for the exercise of the applicant's contact rights than those established by the Judgment (see paragraph 9 above). Her claim was dismissed on 11 June 2021 and was not appealed against.

45. On 17 January 2019 I.B. applied for a restraining order against the applicant on the grounds that he was systematically attempting to exercise his contact rights with D.K. in disregard of the child's wishes. The following day, the Vidzeme District Court dismissed the request, noting that the applicant's conduct showed no signs of emotional or psychological abuse and that he was merely trying to restore contact with his daughter. The difficulties in exercising contact rights could only be prevented by a truly supportive attitude from I.B., which, in the current situation, could not be observed. I.B. filed a repeated request, which was dismissed on the same grounds on 6 October 2020.

46. Although initially the applicant's requests to institute criminal proceedings were refused on numerous occasions, on 7 June 2019 criminal proceedings were instituted against I.B. for malicious failure to comply with the Judgment. On 12 July 2019 she was declared a suspect. On 21 March

2021 the applicant was recognised as a victim in those proceedings. On 16 April 2021 criminal charges were brought against I.B. The Court has received no further information on the progress of those proceedings.

47. On 24 September 2019 the Administrative District Court refused to consider the applicant's complaint concerning the inaction of the Guardianship Institution in enforcement of its own decision to refer I.B. to a psychologist. On 18 December 2019 that decision was upheld by the Supreme Court. The courts noted that the referral to a psychologist was not an administrative decision, as it did not contain a final settlement of the case, and therefore could not be enforced. It was an interim decision in the proceedings, which would be concluded with a decision on whether to suspend parental authority. Suspension of parental authority was the most extreme measure, and failure to comply with the Guardianship Institution's decisions would not necessarily lead to it; it would be one of the considerations in the decision-making process. As to the failure to act, the Guardianship Institution had no obligation to supervise enforcement of its decision referring I.B. to a psychologist or organise enforcement of that decision.

48. On 16 March 2021 the Administrative District Court refused to examine the applicant's application of 12 October 2020 relating to the Guardianship Institution's failure to act in the protection of the child's interests following the report of 4 June 2020 (see paragraph 41 above). The court considered that it was not a separate claim but was still directed at the termination of I.B.'s parental authority. As such proceedings were already pending before the administrative courts (see paragraph 35 above), this application was left without examination. The applicant failed to lodge an ancillary complaint against that decision on time and asked for that time-limit to be extended. It was refused by a final decision of 9 June 2021.

49. On 3 March 2021 the Administrative District Court dismissed I.B.'s complaint about the Guardianship Institution's decision of 11 June 2020 (see paragraph 33 above) in so far as it had refused to suspend the applicant's parental authority. It noted that the conflict primarily concerned the exercise of contact rights and that the removal of parental authority would not remove those rights. Disputes concerning contact rights had to be resolved in civil proceedings. On 5 April 2021 that decision was upheld by the Administrative Regional Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CIVIL LAW

50. Section 178 of the Civil Law provides that parents who live separately retain shared custody of the child. If the parents are unable to agree on issues that may significantly affect the development of the child, the disputes are

resolved by a guardianship institution. Section 182 of the Civil Law provides that in the event of a dispute concerning contact rights, the arrangements for the exercise of contact rights are determined by a court, after obtaining an opinion from the guardianship institution. If necessary, the court may decide that contact rights should be exercised in the presence of a contact person, at a place suggested by the guardianship institution, or may impose an obligation to take the child to the guardianship institution at a specified time. If the parents cannot agree on the contact person or the guardianship institution does not agree with the choice made, contact rights can be exercised in the presence of a representative of the guardianship institution or a person designated by it. A contact person can be a physical or a legal person who has agreed to take on this role.

II. THE CIVIL PROCEDURE LAW

51. Section 244^{13} of the Civil Procedure Law regulates applications arising from inability to enforce a contact order. It provides that if the bailiff concludes that enforcement of a contact order is not possible, the enforcer can ask the court to review the time and place specified for the exercise of contact rights. The court then requests information about the child's daily routine from the guardianship institution responsible and examines the application to change the time and place of the contact sessions at a hearing. It can also request additional information from the bailiff, particularly with respect to the identified obstacles to enforcement of the order. If the court, either at the request of a party or of its own motion, concludes that contact rights should be exercised in the presence of a contact person, it invites the contact person to take part in the hearing and verifies whether that person agrees to the exercise of contact rights in his or her presence. The decision on reviewing the time and place for the exercise of contact rights should be taken within one month, unless this is impossible owing to exceptional circumstances. If the court concludes that there are circumstances encumbering or rendering enforcement of the contact order impossible, it may set out different arrangements for the exercise of contact rights. If the court concludes that the circumstances have changed so significantly that it is not possible to adopt a decision reviewing the time and place for the exercise of contact rights, it dismisses the application and informs the enforcer of his or her rights to bring a new claim before the civil courts. A change in the time and place for the exercise of contact rights is not regarded as a significant change of circumstances, if contact rights remain at the previous level.

52. Chapter 74^{5} of the Civil Procedure Law sets out the rules for of the enforcement of contact orders. Section 620^{24} provides that if at the time and place specified by the bailiff the parent against whom enforcement is sought ensures the enforcer's contact with the child in accordance with the arrangements set out in the order, the bailiff draws up a report that the

judgment is being complied with. If, however, the child is not present at the time and place specified by the bailiff and the parent against whom enforcement is sought has not given reasons for the child's absence, or the bailiff finds such reasons unjustified, or the parent refuses to comply with the order on the basis or reasons the bailiff finds unjustified, the bailiff draws up a report on failure to comply with the order. If the bailiff finds the reasons given for the child's absence or the refusal to comply with the judgment justified, he or she draws up a report on non-enforcement of the order for justified reasons and sets a new time and place for enforcement of the order.

53. Section 620^{25} of the Civil Procedure Law provides that the bailiff's report on failure to comply with the order is sent to the court. The judge may then impose a fine of up to 1,500 euros (EUR). Section 620^{26} provides that if the parent against whom enforcement is sought continues to fail to comply with the court's order, the bailiff refers the question to the prosecutor's office to decide whether criminal proceedings should be opened. Section 620^{27} provides that if there are circumstances encumbering enforcement or rendering it impossible, the bailiff returns the writ of execution to the enforcer, informing him or her of the possibility of lodging an application under section 244^{13} of the Civil Procedure Law (see paragraph 51 above).

III. THE GUARDIANSHIP INSTITUTION LAW

54. Section 17 of the Guardianship Institution Law lists the general obligations of the guardianship institution, which include protecting the rights and interests of children and examining complaints about the conduct of parents. It also specifies an obligation to assess whether a parent is using his or her parental authority maliciously and inform a bailiff of its conclusions and decisions, if the latter has sent a report that a contact order was not complied with or a report that the child was not present at the time and place specified. Section 18 provides that when protecting the child's rights in the relationship with the parents, the guardianship institution may refer the child, the person with whom he or she lives and the person with whom he or she has the right to have contact to have consultations with a general practitioner, psychologist or other specialist. Section 19 provides that the guardianship institution may adopt decisions resolving parental conflicts concerning custody issues, except for the place of residence.

55. Section 22 of the Guardianship Institution Law grants the guardianship institution the authority to suspend parental authority on grounds such as factual circumstances preventing the parent from caring for the child, endangering the child's health or life, violence against the child, and also abuse of parental authority. If the guardianship institution has instituted proceedings for the suspension of parental authority, it informs the parent of the consequences and invites him or her to remove the obstacles unfavourable to the child's development. If the parent within the deadline set

does not remove these circumstances and staying with the family may endanger the child's life and health, the guardianship institution may decide to suspend parental authority and remove the child from the family.

IV. DOMESTIC CASE-LAW

56. On 22 March 2021 the heads of departments of the Senate of the Supreme Court issued a decision with respect to determining the jurisdiction of different courts in relation to the actions of guardianship institutions. Guardianship institutions have the competence to take part in ensuring contact rights that have been determined by civil courts. They may assess the contact person's compatibility with his or her duties and delegate another person. The law provides for the guardianship institution's direct participation in the exercise of contact rights when it is not possible to assign a contact person. In this process, guardianship institutions exercise their public functions to protect the child's rights and interests. Any complaints about the legality of the guardianship institution's actions when ensuring the exercise of contact rights has to be examined by the administrative courts.

THE LAW

I. PRELIMINARY REMARKS

57. The Government submitted that the application should be struck out of the list of cases pursuant to Article 37 § 1 (b) of the Convention on the grounds that the matter had been resolved, as following the measures taken by the domestic authorities the applicant had been able to have meaningful contact with his daughter. The applicant submitted that the Judgment granting his contact rights (see paragraph 9 above) had never been enforced. There had also been no recognition of a violation or appropriate redress, thus the requirements for striking the case out had not been met.

58. The Court reiterates that in order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b), it must establish: (i) whether the circumstances complained of by the applicant still obtain and (ii) whether the effects of a possible violation of the Convention on account of those circumstances have been redressed (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 87, ECHR 2012 (extracts), and *R.M. v. Latvia*, no. 53487/13, § 135, 9 December 2021). In the present case, the applicant complained that the Latvian authorities have breached his Convention rights by failing to ensure over several years that the Judgment is enforced. The information provided to the Court shows that in 2021 the parents started cooperating and seeking specialist help. In particular, six family therapy sessions took place and on two occasions the applicant met his daughter outside the therapy environment (see paragraph 38 above). While the Court

commends this positive development, it also considers that a finding that the circumstances complained of no longer obtain would be, at the very least, premature. It also notes that there is no indication that the effects of the possible violation have been redressed.

59. Accordingly, the Court dismisses the Government's objection in this regard.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

60. The applicant complained that the judgment granting him contact rights with his daughter had not been enforced, in violation of his right to respect for his family life. He relied solely on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

61. The Government argued that the application should be declared inadmissible for failure to exhaust the effective domestic remedies in view of the remedies the applicant should have pursued, as well as in the light of the proceedings still pending before the domestic authorities. The applicant contested the Government's position.

62. Firstly, the Government submitted that the applicant should have brought a complaint before the Constitutional Court challenging section 620^{24} of the Civil Procedure Law, which only allowed the bailiff to conclude that a contact order had not been complied with if the child was not present at the time and place specified (see paragraph 52 above).

63. The applicant submitted that the alleged violation had resulted from an erroneous interpretation of this legal provision rather than its constitutionality and that, therefore, a complaint to the Constitutional Court was not an effective remedy (see, for example, *Savickis and Others v. Latvia* [GC], no. 49270/11, § 134, 9 June 2022).

64. The Court considers that the Government's objection in this regard is so closely linked to the substance of the applicant's complaint that it should be joined to the merits of the case.

65. Secondly, the Government argued that the applicant should have instituted administrative proceedings concerning the Guardianship Institution's failure to act. The Court notes that he did in fact attempt to institute such administrative proceedings (see paragraphs 47-48 above) and

that the administrative courts' refusals to examine those claims have taken effect. The Court has no reason to consider that another application lodged for the same purpose could be more successful.

66. Thirdly, with respect to the proceedings pending at the time of submission of the observations, the Government pointed to (i) the civil proceedings brought by I.B. to change the contact arrangements (see paragraph 44 above); (ii) the administrative proceedings for suspension of I.B.'s parental authority (see paragraphs 33-39 above); (iii) the administrative proceedings for suspension of the applicant's parental authority (see paragraph 49 above); (iv) the administrative proceedings regarding the alleged inaction of the Guardianship Institution (see paragraph 48 above); and (v) the criminal proceedings regarding the mother's alleged failure to comply with the Judgment (see paragraph 46 above). The applicant responded that he had not been required to pursue all possible ways of protecting his rights, and that the most appropriate remedy had been the civil proceedings concerning the bailiff's reports about I.B.'s alleged failure to comply with the Judgment, which had been completed (see paragraph 20 above).

67. The Court notes that almost all of these proceedings have been completed and have either been unsuccessful or could not have had the effect of remedying the violation complained of. The only proceedings still seemingly pending are the criminal proceedings, in relation to which, however, no relevant information has been provided to the Court (see paragraph 46 above). Nonetheless, in the light of all the other remedies pursued by the applicant, he could not have been expected to await the outcome of the criminal proceedings before lodging his application with the Court.

68. Accordingly, the Court dismisses the Government's objections concerning the non-exhaustion of domestic remedies, except for the part in which the issue has been joined to the merits of the case.

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

B. Merits

1. The parties' submissions

70. The applicant argued that the Latvian authorities had not complied with their positive duty to help him enforce his contact rights with his daughter in view of the mother's opposition. They had not adopted measures to facilitate his contact and ensure the mother's cooperation. They had also denied formal enforcement of the Judgment through the bailiff procedure. In 2017 the applicant had had an excellent relationship with his daughter; however, over time her opinion had changed owing to the mother's influence. The domestic authorities had confounded the child's opinion with her best

interests. They had not acted sufficiently promptly, and he had lost four very important years of the child's life. The Guardianship Institution had been inactive, had not carried out an in-depth assessment of the entire family situation and had not provided any help. It had tried to avoid its obligation to participate in enforcement of his contact rights with his daughter and repeatedly pointed out that the parents themselves had to resolve their conflict and find solutions. Thus, the competent Latvian authorities had made no reasonable efforts to facilitate his contact rights. On the contrary, their inaction had placed a burden on him to have constant recourse to a succession of time-consuming and ultimately ineffective remedies to enforce his rights.

71. The Government argued that the authorities had taken all the steps that could reasonably have been expected of them to enforce the applicant's contact rights. They referred, in particular, to the efforts of the bailiff, the review of the arrangements for the exercise of contact rights by the civil courts, the Guardianship Institution's attempts to reconcile the parents, the first-instance administrative court's decision ordering the Guardianship Institution to suspend the mother's parental authority and the institution of criminal proceedings. The Government argued that the measures taken had been prompt and effective, and that the domestic courts' decision-making process in the present case had provided the requisite protection of parental interests and allowed the best interests of the child to be ensured.

2. The Court's assessment

(a) The general principles

72. The general principles applicable to cases involving child welfare measures are set out in the case of *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-13, 10 September 2019).

73. While the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, there are also positive obligations inherent in effective "respect" for private or family life (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A). These obligations entail the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see *Zelikha Magomadova v. Russia*, no. 58724/14, § 107, 8 October 2019; *Kosmopoulou v. Greece*, no. 60457/00, § 43, 5 February 2004; and *Glaser v. the United Kingdom*, no. 32346/96, § 63, 19 September 2000). The right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation for the national authorities to take such measures, applies also to cases where contact and residence disputes concerning children arise between parents or other members of the children's family (see, for example, *Hokkanen*, § 55; *Glaser*,

§ 65; and *Kosmopoulou*, § 44, all cited above; see also *Suur v. Estonia*, no. 41736/18, § 75, 20 October 2020).

74. While the Court's case-law requires children's views to be taken into account, those views are not necessarily immutable and children's objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child (see *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). In particular, the right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination being carried out to determine their best interests (see *C. v. Finland*, no. 8249/02, §§ 57-59, 9 May 2006); such interests normally dictate that the child's ties with his or her family must be maintained, except in cases where this would harm his or her health and development (see, for example, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010).

75. The obligation of the national authorities to take measures to facilitate meetings between a parent and his or her child is not absolute. The establishment of contact between a non-custodial parent and children after separation may not be able to take place immediately and may require preparatory or phased measures. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an important ingredient (see *Hokkanen*, § 58, and *Kosmopoulou*, § 45, both cited above). However, a lack of cooperation between the separated parents is not a circumstance which can in itself exempt the authorities from their positive obligations under Article 8. It rather imposes on them an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see *Z. v. Poland*, no. 34694/06, § 75, 20 April 2010, and *G.B. v. Lithuania*, no. 36137/13, § 93, 19 January 2016), which, depending on the circumstances, may override those of the parent (see *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII).

76. The key consideration for the Court is whether the authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (see *Hokkanen*, cited above, § 58, and *Pisică v. the Republic of Moldova*, no. 23641/17, § 64, 29 October 2019). The Court also takes into account that in proceedings concerning children, time takes on a particular significance as there is always a danger that any procedural delay will result in the *de facto* determination of the issue before the court (see *H. v. the United Kingdom*, 8 July 1987, §§ 89-90, Series A no. 120, and *Ribić v. Croatia*, no. 27148/12, § 93, 2 April 2015). The Court further reiterates that although coercive measures against children 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 against whom enforcement is

sought (see *Ignacollo-Zenide v. Romania*, no. 31679/96, § 106, ECHR 2000-I, and *Karadžić v. Croatia*, no. 35030/04, § 61, 15 December 2005).

77. Where the measures in issue concern disputes between parents over their children, it is not for the Court to substitute itself for the competent domestic authorities in regulating contact and residence disputes, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their discretion. Undoubtedly, consideration of what lies in the best interest of the child is of crucial importance (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 174, 27 September 2011; see also, *inter alia*, *Hokkanen*, cited above, § 55).

(b) Application of those principles to the present case

78. The Court observes that the present case concerns separated parents who have shared custody of their daughter. The applicant and I.B., following their separation in October 2016, were unable to reach an agreement on contact arrangements and the domestic courts made an interim order determining the applicant's contact rights with D.K. Nevertheless, the applicant could not exercise those rights (see paragraphs 5-7 above).

79. At the time when the Judgment determining the applicant's contact rights entered into force in November 2018, his daughter was five years old. Disregarding the court's order, the child's mother obstructed the applicant's contact (see paragraphs 12 and 22 above). Although initially D.K. had shown positive emotions towards the applicant and had been willing to see him, the situation changed over time and she refused to meet him (see paragraphs 6 and 33 above).

80. That situation lasted more than four years; during this period the applicant was able to meet his daughter on only a couple of occasions. Within that period, in October to December 2019 I.B. had briefly agreed to let the applicant meet his daughter. However, in January 2020 she started obstructing their contact again (see paragraphs 15, 22-23 above).

81. The applicant tried to obtain contact by resorting to several domestic mechanisms, which included enforcement attempts by the bailiff, the involvement of the Guardianship Institution, and various applications lodged with and rulings given by the domestic courts. Accordingly, the Court will examine whether the domestic authorities took all the necessary measures to facilitate contact between the applicant and D.K. as ordered in the Judgment and whether the reasons given in that respect were relevant and sufficient, having regard in particular to the best interests of the child. In making this assessment, the Court will take into account not only the decisions taken, but also the acts and omissions of the domestic authorities.

82. As soon as the Judgment setting out the applicant's contact rights with D.K. had entered into effect, in January 2019 the applicant involved the bailiff to obtain enforcement of the Judgment (see paragraphs 17-18 above). Initially, the bailiff took a number of steps to facilitate contact and drew up

several reports concerning I.B.'s failure to comply with the Judgment, which, if approved by the domestic courts, could have led to a fine of up to EUR 1,500 being imposed (see paragraphs 19, 52-53 above). However, in December 2019 and January 2020, one year after the enforcement proceedings had started, the Vidzeme Regional Court – in contrast to its earlier conclusion in May 2019 – held that the child's presence at the time and place specified did not amount to failure to comply with the Judgment; the bailiff could only draw up a negative report if the child was not present (see paragraphs 18 and 20 above).

83. The Government submitted that this limitation emanated from the wording of the Civil Procedure Law and had to be challenged before the Constitutional Court (see paragraph 62 above). However, the Court does not consider that a complaint before the Constitutional Court regarding the constitutionality of the bailiff's seemingly limited competence under Latvian law, which, moreover, rests on the interpretation of the relevant provision, would in itself have been capable of addressing the issue complained of, that is, the alleged failure by various authorities to take all necessary steps with a view to facilitating contact and, accordingly, dismisses the Government's objection in that regard.

84. The Court does not consider that the limitations that Latvian law put on bailiffs, who, as noted by the Vidzeme Regional Court and the State Inspectorate for the Protection of Children's Rights, could not resolve situations in which a child refused to go with a parent or determine the reasons for such a refusal, and were not competent to resolve conflicts about whether a parent was responsible for influencing a child's opinion (see paragraphs 20-21 above), should actually be seen as a deficiency from the point of view of the State's positive duties under Article 8 of the Convention. Nevertheless, the Court finds, for the reasons set out below, that the domestic authorities and courts' approach in this case was overly formalistic. Even if the bailiff did not have competence to determine such issues, the same cannot be said with respect to other domestic authorities and the courts.

85. The Court notes that the domestic authorities and courts were faced with an undeniably complex situation which merited serious consideration. The question before them was which solution, given the particular circumstances of the case, would, on the one hand, take into account the best interests of the child and, on the other hand, permit the applicant to maintain a relationship with the child.

86. The Court finds it difficult to accept that in December 2019 and January 2020, when the Vidzeme Regional Court annulled the bailiff's reports, it was prevented from deciding whether I.B. had failed to comply with the Judgment and whether she was liable to pay a fine for non-compliance. That court - instead of examining the conflicting interests of the parties and considering the best interests of the child, if necessary, with the assistance of other domestic authorities such as the relevant guardianship

institution and the bailiff - opted for suggesting the applicant to use another mechanism laid down in the Civil Procedure Law (see paragraphs 20 and 51 above). In the Court's view, the approach taken by the Vidzeme Regional Court was overly formalistic since the applicant had, in fact, already used the mechanism suggested as early as in April 2019, and it had been already examined by the Vidzeme Regional Court with no significant changes being made in the arrangements for the exercise of contact rights.

87. In that regard, the Court observes that the applicant applied to the Vidzeme Regional Court, for the first time, in April 2019, to review the arrangements for the exercise of contact rights (see paragraph 25 above). In May 2019 the court acknowledged that the Judgment in relation to the exercise of the applicant's contact rights was not being enforced but made only minor practical changes to the contact arrangements (ibid.). The court reached that conclusion despite its finding that I.B. was not sufficiently facilitating the exercise of contact and had not taken any active steps in that regard. The court did not consider it necessary to order the other steps sought by the applicant with a view to facilitating contact and reconciling the conflicting interests of the parties, including an obligation on I.B. to attend psychological support sessions (ibid.).

88. After I.B. started obstructing the applicant's contact with his daughter again in January 2020 (see paragraph 22-23 above), the applicant applied to the Vidzeme Regional Court for a second time to review the arrangements for the exercise of contact rights. In June 2020 the court again concluded that contact rights were not being carried out in the manner set out in the Judgment but, despite that conclusion, only ordered changes as regards the meeting place – the meetings were to commence at the Guardianship Institution with its representative acting as a contact person (see paragraph 26 above). The court relied on the Guardianship Institution to take some steps with a view to ensuring contact between the applicant and his daughter, however, as the events unfolded, it was already then clear that the Guardianship Institution was not in a position to take sufficient measures to facilitate contact in this particular case (see paragraphs 28 and 33 above). Moreover, like in its previous ruling, the court did not order that any further steps be taken with a view to reconciling the conflicting interests of the parties and did not order any specialist help or any other measures.

89. The Court considers that the facts of the case clearly indicate that a more sensitive approach by the domestic authorities and courts towards both parents and the child was needed for the successful implementation of the applicant's contact rights. The Court is not persuaded that the domestic authorities and courts used all available means to facilitate the maintenance of the ties between the applicant and his daughter, whether with the involvement of social services, specialists or otherwise. While the Guardianship Institution could assess the family situation and was obliged to ensure a contact person, it could not ensure that its decisions or

recommendations (including for specialist help) were followed through. It was recorded that I.B. had not complied with the specialists' recommendations and was not cooperating with the Guardianship Institution and the specialists, and the domestic courts were also made aware of that in various domestic proceedings (see paragraphs 13, 28, 32 and 34 above). Taking into account that I.B. showed unwillingness to follow the recommendations made by the Guardianship Institution, the Court considers that the domestic courts should have taken on a more active role in such circumstances.

90. From June 2020 to January 2021, the Guardianship Institution organised at least twenty-three contact sessions, however, no actual contact took place during any of those sessions. In the absence of any court-ordered specialist help, it does not appear that the Guardianship Institution could impose any further measures to facilitate contact in this particular case. As the child was not prepared for contact, she would refuse to enter the room and would be taken away by her mother or, alternatively, would not even be taken to the contact session, without any consequences on the mother for disregarding the exercise of contact rights as set out in the Judgment (see paragraphs 27 and 29 above; compare *I.S. and Others v. Malta* [Committee], no. 9410/20, § 121, 18 March 2021; compare also, *mutatis mutandis*, *Makhmudova v. Russia*, no. 61984/17, § 75, 1 December 2020).

91. Against that background, in April 2021 the Guardianship Institution applied to the Vidzeme Regional Court seeking to review the arrangements for the exercise of contact rights and to remove itself from its role as facilitator of contact. However, the court refused the Guardianship Institution's request to appoint a psychologist as the contact person and hold the contact sessions at her office instead; it held that the parents' cooperation with the psychologist had to continue on a voluntary basis (see paragraph 27 above). At the same time, in the absence of any court-ordered specialist help, it does not appear that the Guardianship Institution could impose any further measures to facilitate contact in this particular case. There is no indication in the case material that the domestic court, being well aware of the difficulties faced by the Guardianship Institution arising from I.B.'s failure to cooperate with them and other specialists, considered the possibility of enhancing the cooperation by resorting to such measures as therapy or mediation, *inter alia*, educating the parents on the effect of their behaviour on the child, or imposing a fine on the uncooperative parent.

92. The Court further notes that the applicant also instituted proceedings with a view to suspending I.B.'s parental authority and even criminal proceedings. The refusal of the domestic courts to pursue such steps was based on relevant and sufficient reasons (see paragraph 39 above). The Court has had the occasion to hold that such harsh measures can only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests (see, for

example, *Zelikha Magomadova*, cited above, § 101). As noted by the Administrative Regional Court in July 2021 – while I.B. was not properly exercising joint parental custody and was not facilitating contact – transferring D.K. to the care of the parent whom she did not want to meet would cause greater harm to her than I.B.'s refusal to ensure the applicant's contact rights (see paragraph 39 above). Despite the above, while the Court can agree that such an assessment was made in the best interests of the child, it must nevertheless be noted that the child refused to meet the applicant owing to the obstruction on the part of I.B. to the exercise of the applicant's contact rights. No other, more appropriate, steps were taken to facilitate the applicant's contact with his daughter such as, for example, ordering specialist help. The Court observes that in the present case the parent who consistently hampered the exercise of contact rights remained unconstrained.

93. The Court notes that the applicant displayed the requisite diligence despite being required to have constant recourse to a succession of time-consuming and ultimately ineffective remedies to enforce his rights (compare *Hokkanen*, cited above, § 61). Not only did he continuously pursue all the available domestic mechanisms, including those suggested by the domestic authorities, but he also persistently invested considerable efforts with a view to exercising contact, despite the futility of those efforts at certain stages (compare *Brunner v. Poland* [Committee], no. 71021/13, § 66, 9 July 2020, and contrast *Cristescu v. Romania*, no. 13589/07, § 69, 10 January 2012).

94. The Court also draws attention to the delays in the decision-making process and the handling of the situation. Despite being aware of the problem for several years, the Guardianship Institution did not show special diligence upon receiving the applicant's repeated complaints, as was also pointed out by the Administrative District Court (see paragraph 35 above). During a period of four years the relationship between the father and child, as well as the child's well-being, seriously deteriorated. The Court has repeatedly held that in cases concerning custody and contact rights time takes on a particular significance (see, for example, *Zawadka v. Poland*, no. 48542/99, § 56, 23 June 2005). This is particularly so when the custodial parent is trying to turn the child against the parent living separately. While the domestic authorities' opinions differed on whether the child's mother was actively trying to influence her opinion, this was nonetheless a significant consideration at all stages of proceedings. The Court further emphasises that in the present case also the interests of the child required the matter to be resolved quickly, not just because of the child's interest in having contact with the parent living separately, but also because the uncertainty and prolonged conflict situation had harmful effect on the child's state of health (see paragraphs 40-43 above).

95. Accordingly, the domestic authorities and courts cannot be said to have taken all necessary steps with a view to facilitating contact and reconciling the conflicting interests of the parties. The domestic authorities

and courts' duty is to address the issue of what steps can be taken to remove existing barriers and to facilitate contact between the child and the non-custodial parent (see, for example, *Kacper Nowakowski v. Poland*, no. 32407/13, § 95, 10 January 2017). However, in the instant case the domestic authorities and courts failed to take such steps in a timely fashion to enforce the applicant's contact rights with his daughter seeking to overcome I.B.'s obstructive attitude and reconciling the conflicting interests of the parties.

96. The Court, therefore, concludes that, notwithstanding the State's margin of appreciation, the authorities failed to adequately secure the applicant's right to respect for his family life as regards his contact rights with his daughter.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 25,000 euros (EUR) in respect of non- pecuniary damage.

100. The Government regarded this sum as excessive.

101. Making its assessment on equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

102. The applicant also claimed EUR 400 for the costs and expenses incurred before the domestic courts and EUR 3,000.40 for those incurred before the Court. The claim for costs incurred before the Court was composed of: (1) EUR 1,500.40 with respect to the initial application form, supported by an invoice issued by an attorney J.S. and dated 1 June 2021; and (2) EUR 1,500 with respect to the submissions after the communication of the case, supported by an invoice issued by the applicant's legal representative, indicating that EUR 750 had to be paid by 25 June 2021 (a proof of payment was submitted) and the remainder had to be paid after the receipt of the Court's judgment.

103. The Government contested part of these claims. In relation to the legal costs incurred before the Court in order to lodge the application, the

Government submitted that this invoice had been issued already after the case had been communicated to the Government. With respect to the legal costs following the communication of the case, the Government pointed out that only EUR 750 had been paid and could be regarded as actually incurred. In relation to the costs and expenses incurred before the domestic courts, the Government pointed out that EUR 90 of those costs were not connected with the violations alleged before the Court, as they concerned proceedings on different topics (the appointment of a general practitioner to D.K., a decision to transfer I.B.' s complaint to a different Guardianship Institution, and the decision to indicate psychologist counselling to the applicant).

104. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 50, ECHR 2014).

105. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds the Government's objections with respect to the costs before the domestic courts justified. Accordingly, it awards the applicant EUR 310 under this head, plus any tax that may be chargeable.

106. In relation to the costs incurred in order to lodge the application, the Court accepts the Government's objection that the invoice considerably postdates the legal service allegedly rendered. Furthermore, the Court notes that this invoice was issued by an attorney who did not represent the applicant before the Court at any stage of the proceedings. The Court therefore dismisses this part of the claim.

107. With respect to the costs incurred before the Court following the communication of the case, the Court reiterates that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the Court accepts that the applicant has actually incurred EUR 750 in legal fees but – in the absence of any further information or documents indicating that there is a contractual obligation in that regard – it cannot accept that he is liable to pay the remainder of the sum claimed in respect of legal fees (compare and contrast *L.H. v. Latvia*, no. 52019/07, § 68, 29 April 2014). The Court therefore awards the applicant EUR 750, plus any tax that may be chargeable, and dismisses the remainder of his claim under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the preliminary objection concerning the exhaustion of the domestic remedies and, having examined it, *dismisses* it;

2. *Declares* the application admissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,060 (one thousand and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
      (iii) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President