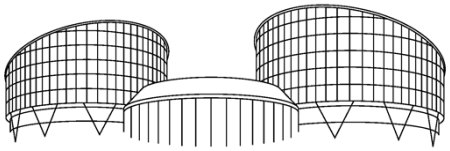

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VERES v. SPAIN

(Application no. 57906/18)

JUDGMENT

Art 8 • Positive obligations • Family life • Excessive length of recognition and enforcement proceedings in respect of return order of the applicant's child to Hungary under Brussels IIa Regulation • Serious consequences for the relationship between the applicant, with no custody at the time, and his child and for custody proceedings

STRASBOURG

8 November 2022

FINAL

08/02/2023

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

In the case of Veres v. Spain,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Frédéric Krenc, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 57906/18) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Márton Veres ("the applicant"), on 4 December 2018;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Article 6 § 1, Article 8 and Article 13 of the Convention and to declare the remainder of the application inadmissible;

the decision of the Hungarian Government not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated in private on 4 October 2022,

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

INTRODUCTION

1. The present case mainly concerns an alleged violation of the applicant's right to respect for his family life under Article 8 of the Convention as a result of the excessive length of the recognition and enforcement proceedings in Spain in respect of a Hungarian court decision ordering the applicant's ex-wife to return back to Hungary their daughter, with whom she had moved to Spain.

THE FACTS

2. The applicant was born in 1967 and lives in Pomáz (Hungary). He was represented before the Court by Mr M. Gaál, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Ms H.E. Nicolás Martínez, State Attorney (*abogado del Estado*).

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

I. BACKGROUND TO THE CASE AND THE INSTITUTION OF CUSTODY PROCEEDINGS IN HUNGARY

5. In 2005 the applicant formed a relationship with Ms K.P. They lived in Budapest, Hungary. On 4 September 2006 K.P. gave birth to their daughter, Z.

6. In May 2010, as the applicant and K.P. were ending their relationship, they signed an agreement to regulate custody over Z. They agreed that the mother would hold sole custody, that the applicant would have visiting rights and that the applicant would make monthly alimony payments in respect of the child. However, the agreement did not come into effect because the applicant and K.P. agreed that it would only become applicable when they stopped living together, whereas they continued to do so.

7. In January 2015, after their relationship had deteriorated, K.P. moved to her parents' home with Z. She applied to the Buda Central District Court (*Budai Kôzponti Kerületi Birôsâg*) for custody over Z.

8. In July 2015, while custody proceedings were pending in Hungary, K.P. moved with Z. to Palma de Mallorca, Spain, without informing the applicant. The applicant requested that interim measures be adopted.

9. By a decision of 11 April 2016, the Budapest Metropolitan Court (*Fővárosi Törvényszék*) adopted three interim measures, to be applied until the final judgment was given in the custody proceedings: the establishment of Z.'s residence in her mother's home in Hungary; the obligation for K.P. to bring the child back to Hungary within eight days; and the obligation for K.P. to prove the registration of Z. in school in Hungary within the same period.

II. CRIMINAL PROCEEDINGS IN SPAIN AGAINST THE APPLICANT

10. After her arrival in Spain, K.P. reported the applicant to the Spanish authorities for domestic violence and making threats against her.

11. On 11 August 2015 the Palma de Mallorca Violence against Women Court no. 2 ("the Violence against Women Court") heard K.P.'s evidence concerning the reported allegations.

12. On 11 January 2016 the Violence against Women Court issued a restraining order against the applicant, prohibiting him from approaching K.P. within a distance of 500 metres and from contacting her by any means.

13. On 11 January 2017 the Violence against Women Court lifted the restraining order and struck out the case on account of a lack of supporting evidence in respect of K.P.'s allegations against the applicant.

III. RECOGNITION AND ENFORCEMENT PROCEEDINGS IN SPAIN

14. On 1 July 2016 the applicant applied to the Palma de Mallorca Civil Court for recognition and enforcement in Spain of the 11 April 2016 decision of the Budapest Metropolitan Court.

15. On 8 July 2016 the Palma de Mallorca First-Instance Court no. 12 ("the first-instance court") invited the applicant to correct certain shortcomings in his application within five days.

16. On 18 July 2016 the applicant's representative requested an extension of the time-limit for correcting the shortcomings.

17. On 21 July 2016 the court granted the extension.

18. On 27 July 2016 the applicant submitted documents.

19. On 29 July 2016 the court invited the applicant to submit evidence that the Budapest Metropolitan Court's decision was final and enforceable.

20. On 2 September 2016 the applicant explained that he could not prove that the decision of the Budapest Metropolitan Court had become final and enforceable.

21. On 13 September 2016 the first-instance court stated that the shortcomings in the applicant's application had been corrected.

22. On 14 September 2016 the court declared the application admissible and gave K.P. thirty days to object to the enforcement claim.

23. On 20 October 2016 K.P. objected to the application for the recognition and enforcement of the Budapest Metropolitan Court's decision.

24. On 4 November 2016 the first-instance court declined jurisdiction in favour of the Violence against Women Court.

25. On 21 December 2016 the Violence against Women Court accepted jurisdiction and granted leave to the public prosecutor's office to submit observations.

26. On 10 February 2017 the public prosecutor's office submitted its observations.

27. On 27 February 2017 the Violence against Women Court dismissed the applicant's application, finding that Article 23 (b) of Regulation (EC) No 2201/2003 (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, p. 1–29, known as the Brussels IIa Regulation; see paragraph 50 below), requiring that Z. be given an opportunity to be heard before the Budapest Metropolitan Court, had not been complied with. That omission also ran counter to the principle of the child's best interests as recognised under Spanish law. Consequently, it concluded that the decision of 11 April 2016 of the Budapest Metropolitan Court was not enforceable in Spain.

28. On 4 April 2017 the applicant lodged an appeal against the judgment of the Violence against Women Court.

29. On 12 April 2017 the court granted leave to K.P. to object to the enforcement of the decision.

30. On 17 May 2017, after receiving K.P.'s objection, the Violence against Women Court submitted the file to the Palma de Mallorca *Audiencia Provincial* for a decision.

31. On 17 July 2017 the *Audiencia Provincial* overturned the first-instance court's judgment and allowed the applicant's appeal. It dismissed K.P.'s arguments objecting to the recognition and enforcement of the Budapest Metropolitan Court's decision of 11 April 2016 and declared the decision enforceable. It considered that the requirements of Article 23 of the Brussels IIa Regulation were to be narrowly construed and that, given Z.'s age, it was justified not to hear her evidence. It ordered that the measures taken by the Budapest Metropolitan Court in the decision of 11 April 2016 be complied with.

32. K.P. lodged an appeal against the judgment of the Palma de Mallorca *Audiencia Provincial* with the Supreme Court.

33. On 19 July 2018 the Supreme Court dismissed K.P.'s appeal, accepting the findings of the *Audiencia Provincial*. That judgment became final with immediate effect.

34. On 24 September 2018 the applicant applied to the Violence against Women Court for the enforcement of the Budapest Metropolitan Court's decision.

35. On 3 October 2018 the Violence against Women Court accepted the enforcement request and ordered K.P. to take Z. back to Hungary within eight days, to establish Z.'s residence in Hungary and to register her in school in Hungary. The court warned K.P. of the penalties which could be imposed on her in the event that she failed to comply with the order.

36. On 11 October 2018 the applicant requested the Violence against Women Court to issue an interim measure prohibiting K.P. from leaving Spain with Z., save their returning to Hungary.

37. On 16 October 2018 the Violence against Women Court granted the applicant's request for the interim measure.

38. On 29 October 2018 the applicant and K.P. met at the Violence against Women Court and agreed that K.P. would take Z. back to Hungary on 1 November 2018 and that she would register her in school in Hungary within ten days.

39. On 1 November 2018 K.P. travelled to Hungary with Z.

40. On 29 November 2018 the Violence against Women Court stated that the decision of 11 April 2016 of the Budapest Metropolitan Court, as recognised by the judgment of 17 July 2017 of the Palma de Mallorca *Audiencia Provincial*, had been fully complied with and decided to close the enforcement proceedings.

41. The applicant appealed against that decision, arguing that the enforcement proceedings should only be closed when the Hungarian courts had delivered a final decision concerning Z's custody.

42. On 10 July 2019 the Palma de Mallorca *Audiencia Provincial* dismissed the applicant's appeal. It considered that the measures adopted in the decision of 11 April 2016 of the Budapest Metropolitan Court had no longer remained in force after the subsequent decisions and judgments of the Hungarian courts had overturned the decision of 11 April 2016 (see paragraphs 43-49 below).

IV. SUBSEQUENT CUSTODY PROCEEDINGS IN HUNGARY

43. On 9 March 2018 the Buda Central District Court granted custody over Z. to the applicant and visiting rights to K.P.

44. K.P. lodged an appeal against that judgment with the Budapest Metropolitan Court.

45. On 13 July 2018 the Budapest Metropolitan Court issued an interim measure to the effect that, while the appeal proceedings were pending, K.P. would have custody over Z., given that Z. lived in Spain with her mother, and granted visiting rights to the applicant.

46. On 21 November 2018 the Budapest Metropolitan Court granted custody over Z. to K.P. and visiting rights to the applicant. It delivered that decision in view of, among other circumstances, the fact that the child had been living with the mother for several years and that her relationship with the mother was closer than that with the father. That decision became final with immediate effect.

47. The applicant lodged an application with the *Kúria* (Supreme Court of Hungary) for a review of that judgment.

48. On 8 October 2019 the *Kúria* varied the visiting regime in favour of the applicant, but it upheld the decision of the Budapest Metropolitan Court to grant custody over Z. to the mother, considering that, all circumstances taken together, that arrangement was the most beneficial for the child.

49. Following the *Kúria*'s decision, the applicant's visiting regime was established as follows: (i) regular visits in Palma de Mallorca, Spain, from the second Thursday of each month from 4 p.m. until Sunday at 11 a.m., excluding December, July and August; (ii) temporary visits in Hungary (with the applicant travelling with Z. to Hungary) in even-numbered years during the Christmas holidays from 22 December at 7 p.m. until 2 January at 10 a.m. and in odd-numbered years during the Easter holidays from 7 p.m. on the first day of the holidays until 10 a.m. on the last day; (iii) three weeks during the summer holidays each year; and (iv) communication to take place by telephone between 6 p.m. and 7 p.m. every Sunday for fifteen minutes. Additionally, K.P. was obliged to reimburse the applicant for travel and

accommodation expenses which he might incur up to seven times per year with a limit of 350 euros (EUR) each time.

RELEVANT LEGAL FRAMEWORK

50. Among the member States of the European Union (EU), the recognition and enforcement of judgments given in another member State concerning matters of parental responsibility were at the material time regulated under the Brussels IIa Regulation (for full reference see paragraph 27 above), replaced by Brussels IIb Regulation from 1 August 2022. The relevant provisions of Brussels IIa Regulation read as follows:

Article 21. Recognition of a judgment

"1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

...

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

...

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue."

Article 23. Grounds of non-recognition for judgments relating to parental responsibility

"A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

(c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;

(d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the

child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

(g) if the procedure laid down in Article 56 has not been complied with."

Article 26. Non-review as to substance

"Under no circumstances may a judgment be reviewed as to its substance."

51. Under Spanish legislation, the enforcement of civil decisions and judgments is regulated in Book III, on compulsory enforcement and injunctions, of Law 1/2000 of 7 January 2000 on civil procedure (*Ley de Enjuiciamiento Civil*). The relevant sections read as follows:

Section 517. Enforcement action and enforcement titles

"1. Enforcement action shall be grounded on a title entailing enforcement.

2. Only the following titles shall involve enforcement:

(i) final judgments;

...

(iii) court rulings which approve or validate court settlements and agreements reached in the proceedings, accompanied, if necessary in order to record their specific content, by the corresponding records of the proceedings.

..."

Section 523. Enforceability in Spain. Law applicable to the procedure

"1. For final judgments and other foreign enforcement titles that entail enforcement in Spain, the provisions of international treaties and the legal provisions on international judicial cooperation shall apply.

2. In any event, the enforcement of foreign judgments and enforcement titles shall be carried out in Spain in accordance with the provisions herein, unless otherwise provided in the international treaties in force in Spain."

Section 524. Provisional enforcement: application and content

"1. Provisional enforcement shall be sought through an application or a simple request, as set forth in section 549 of this Law.

...

5. The provisional enforcement of judgments in which fundamental rights are involved shall be given priority."

Section 525. Judgments that are not provisionally enforceable

"The following shall never be subject to provisional enforcement:

(a) judgments given in proceedings relating to paternity, maternity, kinship, annulment of marriage, separation and divorce, civil capacity and marital status, objections to administrative orders on the protection of minors, or on measures relating

to the restitution or return of minors in cases of international abduction and the right to honour, except for rulings governing family relations and obligations which relate to the main object of the proceedings.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. Relying on Article 6 § 1 and Article 8 of the Convention, the applicant complained that the recognition and enforcement proceedings in Spain aimed at returning his daughter back to Hungary had not complied with the "reasonable time" requirement, thus interfering with his right to respect for his family life, as his relationship with his daughter had been interrupted during a period of more than two years.

53. The Court reiterates that there is a difference in the nature of the interests protected by Article 6 § 1 and Article 8. Thus, Article 6 § 1 affords a procedural safeguard including the right to have a determination of one's "civil rights and obligations" within a "reasonable time", while Article 8, including the procedural requirements inherent in it, is aimed at the wider purpose of ensuring proper respect for family life (see, *mutatis mutandis*, *McMichael v. the United Kingdom*, 24 February 1995, § 91, Series A no. 307-B, and *M.A. v. Austria*, no. 4097/13, § 81, 15 January 2015). Accordingly, while Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, among other authorities, *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I).

54. Having regard to its current case-law and the nature of the applicant's complaints, the Court, being master of the characterisation to be given in law to the facts of a case, considers that the issues raised in the present case should be examined solely from the perspective of Article 8 of the Convention (compare *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, § 41, 22 April 2010, and *Bergmann v. the Czech Republic*, no. 8857/08, § 39, 27 October 2011), which reads as follows:

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

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

A. Admissibility

1. Abuse of the right of individual application

55. The Government argued that the application should be declared inadmissible as an abuse of the right of individual application because the applicant had not submitted to the Court all the relevant facts and documents concerning the proceedings conducted in Spain and in Hungary.

56. The applicant contested the Government's arguments.

57. The Court reiterates that the concept of "abuse" within the meaning of Article 35 § 3 (a) of the Convention must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right for purposes other than those for which it is designed (see *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, § 79, 16 July 2019).

58. The Court further reiterates that it has applied that provision, *inter alia*, when incomplete and therefore misleading information was submitted to it, especially if the information concerned the very core of the case and no sufficient explanation was provided for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Martins Alves v. Portugal* (dec.), no. 56297/11, 21 January 2014; *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; and *Basileo v. Italy* (dec.), no. 11303/02, 23 August 2011). Additionally, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross*, cited above, § 28).

59. In the present case, the Court notes that what the Government considered to be abusive behaviour on the part of the applicant was no more than a diverging view of the facts of the case and of the sufficiency of the documents initially submitted with the application. In the Court's opinion, the case file contained sufficient information to enable it to identify the core of the applicant's complaints. Additionally, in the light of the Government's allegations, the applicant promptly submitted, with his second set of observations, those additional documents concerning the proceedings in Hungary that the Government had considered to be relevant to the case.

60. It follows that the Government's objection of abuse of the right of application must be dismissed.

2. Exhaustion of domestic remedies

(a) The parties' submissions

61. The Government argued that the applicant had not exhausted all available remedies. In that connection they argued that he had had two options. Firstly, as soon as the Court of Appeal had adopted its decision on the recognition and enforcement of the Budapest Metropolitan Court's decision of 11 April 2016, even though it had not been final since an appeal on points of law with the Supreme Court had still been pending, the applicant

should have brought provisional enforcement proceedings in order to expedite the return of his daughter to Hungary. Secondly, the Government alleged that the applicant could have brought an action against the authorities to establish pecuniary liability and to obtain redress in respect of his complaints under Article 6 § 1 and Article 8 of the Convention.

62. The applicant submitted that he had duly exhausted domestic remedies.

(b) The Court's assessment

63. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted. An applicant must have provided the domestic courts with the opportunity which is in principle intended to be afforded to Contracting States, namely the opportunity to prevent or put right the violations alleged against them. That rule is based on the assumption, reflected in Article 13 of the Convention, that there is an effective remedy available in the domestic system in respect of the alleged breach. The only remedies which Article 35 of the Convention requires to be exhausted are those which relate to the breaches alleged and which, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

64. The Court further reiterates that in cases where the length of the proceedings has a clear impact on the applicant's family life, States are obliged to put into place a remedy which is at the same time preventive and compensatory. More specifically, the Court has held that the State's positive obligation to take appropriate measures to ensure the applicant's right to respect for family life risks becoming illusory if the interested parties only have at their disposal a compensatory remedy, which could only lead to an *a posteriori* award of monetary compensation (see *Macready*, cited above, §§ 46-49; *Bergmann*, cited above, §§ 45-52; and *Mansour v. Slovakia*, no. 60399/15, § 69, 21 November 2017).

(i) Preventive remedies

65. In the light of above, the Court is not convinced that the provisional enforcement of the decision delivered by the Court of Appeal granting enforceability of the decision of 11 April 2016 of the Budapest Metropolitan Court could be seen as an effective preventive remedy to be used in order to expedite the proceedings.

66. As matter of fact, the Court notes that the Brussels IIa Regulation does not contain any provisions regarding the possibility of provisionally

enforcing a judgment given in an EU member State while the proceedings for a declaration of enforceability are still pending in the member State of enforcement. Furthermore, under domestic law, specifically section 525 of the Spanish Civil Procedure Act, it is not possible to provisionally enforce judgments adopted in proceedings relating to, *inter alia*, separation and divorce or measures concerning the restitution or return of minors in cases of international abduction. It is not for the Court to construe either EU law or domestic law, but rather for the Government to provide the Court with any example of a decision demonstrating the alleged viability and effectivity of the remedy to be used in order to expedite proceedings (compare *Bergmann*, cited above, § 49, and *Furman v. Slovenia and Austria*, no. 16608/09, § 94, 5 February 2015). In the instant case, the respondent Government have not produced any evidence in this regard; that being so, the Court has serious doubts as to whether, in the present case, provisional enforcement was actually an effective preventive remedy.

67. Furthermore, the Court notes that not only is it questionable whether provisional enforcement could be seen as an effective remedy to be used to expedite the proceedings, but it additionally entails the risk that in the event that the enforced decision is subsequently overruled, it might be necessary to undo that which had been provisionally enforced. Therefore, the applicant cannot be criticised for not attempting to use this remedy.

(ii) Compensatory remedies

68. As for the objection concerning the fact that the applicant did not bring an action to establish pecuniary liability on the part of the authorities prior to lodging the current application, the Court notes that this remedy is of an exclusively compensatory nature which could only lead to an *a posteriori* award of monetary compensation (see *Bergmann*, cited above, §§ 47-48, and *Mansour*, cited above, § 69). Accordingly, since the Government have not adequately demonstrated the existence of an effective preventive remedy, the sole existence of a compensatory remedy does not fulfil the above-mentioned requirements in order to be considered effective in the light of Article 8 of the Convention. The Government's objections as to the exhaustion of domestic remedies must therefore be dismissed.

3. Conclusion

69. The Court notes that this 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.

B. Merits

1. The parties' submissions

70. The applicant alleged that, even though the recognition and enforcement proceedings could not be considered complex, their length had been unreasonable. He asserted that, as a result, his family life had suffered irreparable damage. For as long as those proceedings had been pending, he had been unable to have any relationship with his daughter. The lengthy process in Spain had also resulted in the Hungarian courts granting custody over Z. to K.P. on the grounds, *inter alia*, that the child had been living with the mother for several years and had thus formed a closer relationship with her than with the applicant.

71. The Government asserted that the domestic courts had conducted the enforcement proceedings within a reasonable time. They stressed that, even though the applicant had lodged the application for a declaration of enforceability on 1 July 2016, it had not been complete and, accordingly, he had been requested to submit additional documents. Consequently, it had not been until 14 September 2016, when the shortcomings had been corrected, that the application had been declared admissible. The Government argued that that date should therefore have been considered the *dies a quo* in assessing whether the length of the proceedings had been excessive. They submitted that the proceedings before the first-instance court had been concluded on 27 February 2017 and thus had lasted about five months. Subsequently, the applicant had lodged an appeal with the Court of Appeal on 4 April 2017 and a decision had been given about three months later, on 17 July 2017.

72. The Government insisted that, after the Court of Appeal's decision, the applicant could have requested the provisional enforcement of the Hungarian decision even though his ex-wife had lodged an appeal on points of law with the Supreme Court, which had been decided on 19 July 2018. Eventually, the applicant's daughter had returned to Hungary on 1 November 2018.

73. They also alleged that, irrespective of the length of proceedings, it could not be said that that had been the main reason why the Hungarian courts had granted custody over Z. to the applicant's ex-wife. They asserted that the applicant and his ex-wife had signed an agreement in 2010 by which the mother would hold custody of the child and, later, in April 2016, the Budapest Metropolitan Court had adopted interim measures by which custody had been provisionally granted to the mother. In the light of this, the Government submitted that a clear causal link could not be drawn between the proceedings in Spain and the fact that the applicant's ex-wife had been granted custody over the child. Additionally, they alleged that it had been the Hungarian courts and not the Spanish authorities which had ultimately granted custody to the mother, irrespective of the abduction of the child by the mother.

74. Lastly, the Government asserted that it was unclear whether the granting of custody over Z. to the applicant's ex-wife by the Hungarian courts had final effect. They submitted that the applicant had brought criminal proceedings in Spain against his ex-wife for the criminal offence of child abduction and that he had also instituted administrative proceedings in Hungary, seeking a sanction against K.P. on account of the infringement of his right of access to his daughter. They further submitted that the applicant had stated that he had brought proceedings in Hungary for a judicial review of the final judgment adopted by the *Kúria* on 8 October 2019, alleging that custody over the child had been granted to the mother on the basis of, among other things, an expert report in which the applicable rules of professional ethics had not been observed. Therefore, in the Government's view, it was possible that, in the future, custody over the child might be granted to the applicant.

2. The Court's assessment

75. The Court notes that the existence of family life between the applicant and his daughter is not in dispute (compare *M.A. v. Austria*, cited above, § 103).

(a) General principles

76. The Court must examine whether there has been a failure on the part of the Spanish authorities to respect the applicant's family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, *Raw and Others v. France*, no. 10131/11, § 78, 7 March 2013; *Maire v. Portugal*, no. 48206/99, § 69, ECHR 2003-VII; *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 55, 24 April 2003; and *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I).

77. In relation to the State's positive obligations, the Court has repeatedly held that Article 8 includes a parent's right to have measures taken with a view to being reunited with his or her child and an obligation on the national authorities to take such measures (see *Raw and Others*, § 79; *Maire*, § 70; *Sylvester*, § 58; and *Ignaccolo-Zenide*, § 94, all cited above).

78. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly held that what is decisive is whether the

national authorities have taken all necessary steps to facilitate the execution as can reasonably be demanded in the special circumstances of each case (see *Hokkanen v. Finland*, 23 September 1994, § 53, Series A no. 299-A; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII; and *Sylvester*, cited above, § 59).

79. In any event, the Court reiterates that 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 with whom he or she does not live (see *Cavani v. Hungary*, no. 5493/13, § 51, 28 October 2014, and *M.A. v. Austria*, cited above, § 109).

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

80. First of all, the Court observes that the applicant did not bring proceedings before the Spanish courts under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction or under Article 11 of the Brussels IIa Regulation, but rather under Articles 21 et seq. of the latter, with the aim of securing the recognition and enforcement of the Hungarian judgment adopted on 11 April 2016. The main purpose of the applicant's attempts was the return of his daughter to Hungary, from where her mother had removed her without informing the applicant, thereby putting at risk the family life that had existed between the applicant and his daughter, Z. In these circumstances, swift and adequate measures were needed in order to execute the Hungarian court's decision ordering the applicant's ex-wife to bring the child back to Hungary.

81. Unlike proceedings brought under the Hague Convention or Article 11 of the Brussels IIa Regulation, where domestic courts are required to rule on a case no later than six weeks after an application has been lodged, neither the Brussels IIa Regulation nor domestic law sets out a specific time-limit for the national courts to rule on the recognition of a judgment given in another EU member State. However, Article 31 of the Brussels IIa Regulation clearly states that the court is to give its decision without delay. Accordingly, the domestic courts are expected to deal swiftly with applications lodged under that Regulation (see, *mutatis mutandis*, *Shaw v. Hungary*, no. 6457/09, § 66, 26 July 2011, and *Cavani*, cited above, § 51).

82. Additionally, in accordance with Article 31 of the Brussels IIa Regulation, neither the person against whom enforcement is sought nor the child is entitled to make any submissions before the first-instance court. The power of the national courts is limited to verifying whether any of the grounds of non-recognition set out in Article 23 exist, which are predominantly of a procedural nature, since the review as to the substance is expressly excluded by Article 26 and Article 31 § 3 of the Regulation.

83. It is indisputable that the application lodged by the applicant with Palma de Mallorca First-Instance Civil Court no. 12 for the recognition and enforcement of the decision of 11 April 2016 of the Budapest Metropolitan

Court had some shortcomings, which were duly corrected, with the result that it was not possible for the application to be declared admissible until 14 September 2016. The Court notes that those shortcomings certainly delayed the proceedings at its initial stage; however, it also observes that the applicant diligently corrected those shortcomings when required to do so by the court (see *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, § 35, Series A no. 157). Even though this initial delay cannot be attributed to the national courts, the manner in which the applicant's request was dealt with has to be analysed in the light of the subsequent conduct of those courts and by taking into account the total duration of the proceedings.

84. The Court notes that, contrary to Article 31 of the Brussels IIa Regulation, the first-instance court set a thirty-day time-limit for K.P. to object to the enforcement and, afterwards, the Palma de Mallorca Violence against Women Court No. 2, to which jurisdiction had been transferred, granted leave to the public prosecutor's office to submit observations. Calculated from the date on which the applicant's application had been declared admissible, namely 14 September 2016, the first-instance judgment was delivered five months later, on 27 February 2017. The subsequent proceedings, first before the Court of Appeal and then before the Supreme Court, were concluded with final effect on 19 July 2018. Thus, the proceedings for the recognition of the Hungarian judgment lasted about two years. The enforcement phase, which was more expeditious, was completed on 1 November 2018. It follows that it took the Spanish courts more than two years to enforce the decision of the Budapest Metropolitan Court, even though it should have been recognised and enforced in Spain without delay in accordance with the Brussels IIa Regulation.

85. In the light of the above, even if the applicant could be held responsible for a four-month delay during the initial phase of the proceedings, the Court notes that the two-year delay in adopting a final decision was essentially attributable to the national courts. Taking into account what was at stake for the applicant, namely his family ties and contact with his daughter, the Court considers that the national courts did not take swift and adequate measures in order to enforce the Hungarian decision ordering the applicant's ex-wife to return the child back to Hungary (compare, *mutatis mutandis*, *Marcready*, cited above, § 73; *Shaw*, cited above, § 64; *Ferrari v. Romania*, no. 1714/10, § 54, 28 April 2015; and *Vilenchik v. Ukraine*, no. 21267/14, § 55, 3 October 2017).

86. The Court does not accept the Government's assertion that the excessive length of proceedings was to a decisive degree attributable to the complexity of the case. Notwithstanding the fact that the applicant's ex-wife had brought criminal proceedings against him in respect of allegations that he had inflicted violence on her, the Violence against Women Court, which conducted the proceedings for the recognition and enforcement of the Hungarian judgment, did not take into account the criminal proceedings K.P.

had brought against the applicant when it dismissed the application for the recognition and enforcement of the Hungarian decision. The only reason the application was dismissed by that court was that the Hungarian courts had not given the applicant's child the opportunity to be heard. It follows that the Violence against Women Court only assessed the grounds for non-recognition set forth in Article 23 of the Brussels IIa Regulation, a matter that could have easily been assessed on the basis of the case file. Both the Court of Appeal, which overruled the first-instance decision, and the Supreme Court, which upheld that decision, limited their assessment to an analysis of the above-mentioned grounds for non-recognition.

87. Given the above considerations, the Court finds that the overall length of the proceedings was not justified in the circumstances of the case. The State therefore failed to deal with the case in an expeditious manner as required by the Convention in this type of dispute.

88. Irrespective of the fact that it was the Hungarian courts which eventually granted custody over the child to the applicant's ex-wife, the Court considers that the excessive length of the recognition and enforcement proceedings had serious consequences for the relationship between the child and the applicant, even if in the future custody over the child might be granted to the applicant. The excessive length of the proceedings in Spain not only affected the relationship between the applicant and his daughter by interrupting it for two years, but it also affected the decision of the Hungarian courts to eventually grant custody over the child to her mother, since they found that the passage of time had strengthened the bonds between the child and her mother and weakened the child's connection with the applicant.

89. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

90. The applicant further complained under Article 13 of the Convention that he did not have at his disposal an effective remedy to be used in order to expedite the proceedings and redress the alleged violation of the rights enshrined in Article 8 of the Convention. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

91. The Court considers that the issue raised under this Article overlaps with the merits of the applicant's complaint under Article 8 and has already been addressed in paragraphs 61-68 above. Therefore, the complaint should be declared admissible. However, having regard to its conclusions above under Article 8 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (compare

Bronda v. Italy, 9 June 1998, § 65, *Reports of Judgments and Decisions* 1998-IV; Copland *v. the United Kingdom*, no. 62617/00, § 51, ECHR 2007-I; and *Meimanis v. Latvia*, no. 70597/11, § 79, 21 July 2015).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 2,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, without making any clear distinction between those two heads. He alleged that, since July 2015, he had not been able to see his daughter in Hungary at all. After the Budapest Metropolitan Court had adopted its judgment on 21 November 2018 granting custody over their daughter to his ex-wife, he had only been able to visit his daughter in Spain, which had entailed enormous costs to him for flights, hotels and restaurants. He contended that even though his ex-wife had been ordered to contribute to those travelling expenses in accordance with the above-mentioned judgment (see paragraph 49 above), he doubted that she would actually abide by it. He submitted further that in the event that his economic situation should change, he would not be able to visit his daughter in Spain. Given all those circumstances, he argued that EUR 2,000,000 was an adequate amount of money which would allow him to buy a house in Spain in order to spend quality time with his daughter.

94. The Government alleged that the applicant's claims were disproportionate and based on a hypothesis which he had not proven.

95. As for pecuniary damage, the Court considers that the applicant's claims are essentially speculative since they are based on future hypothetical circumstances and therefore there is not a clear causal link between the violation found and the pecuniary damage claimed by the applicant. Accordingly, the applicant's claim under this head must be dismissed.

96. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 24,000 under that head, plus any tax that may be chargeable.

B. Costs and expenses

97. The applicant also claimed a total of EUR 67,000 for the costs and expenses incurred before the domestic courts – both the Spanish

(EUR 50,000) and the Hungarian (EUR 5,000) courts – and for those incurred before the Court (EUR 12,000).

98. The Government alleged that the applicant had not submitted documents showing that he had paid or was under a legal obligation to pay the fees charged or the expenses incurred. They also contended that the only documents submitted by the applicant in that regard were decisions given by the Spanish and Hungarian courts ordering the applicant's ex-wife to pay the costs and expenses of the proceedings.

99. The Court reiterates that when an applicant has not submitted documents showing that he or she has paid or was under a legal obligation to pay the fees charged or the expenses incurred, the claims must be rejected (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-72, 28 November 2017). In the instant case, no documents were submitted by the applicant; accordingly, the claim must be rejected.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 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, EUR 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georges Ravarani President