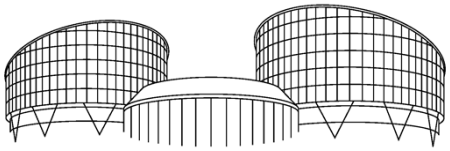

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ANAGNOSTAKIS v. GREECE

(Application no. 26504/20)

JUDGMENT

Art 8 • Positive obligations • Family life • Non-enforcement of judicial decisions granting applicant contact rights with his child not attributed to a lack of diligence on the part of the relevant authorities • Authorities' efforts in vain owing to tense relationship between parents and their behaviour, including applicant's unaccommodating conduct

STRASBOURG

10 October 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Anagnostakis v. Greece,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 26504/20) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Nikolaos Anagnostakis ("the applicant"), on 10 June 2020;

the decision to grant priority to the case under Rule 41 of the Rules of Court;

the decision to give notice to the Greek Government ("the Government") of the complaint concerning the lack of assistance of the domestic authorities in respect of the enforcement of court decisions setting the contact schedule between the applicant and his child and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 19 September 2023,

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

INTRODUCTION

1. The application concerns non-enforcement of court decisions setting the contact schedule between the applicant and his child, who was under the custody of his mother. According to the applicant, the mother had alienated the child from him, and the authorities had not been sufficiently active in helping him restore his relationship with his child, even though he had submitted several requests to that effect. In its judgment *Anagnostakis and Others v. Greece* (no. 46075/16, 23 September 2021), the Court had found a violation of Article 8 of the Convention on account of the delay in the proceedings setting the contact schedule between the applicant and his child.

THE FACTS

2. The applicant was born in 1983 and lives in Athens. He was represented by Mr Andreas Anagnostakis and Mr Andreas-Alexios Anagnostakis, lawyers practising in Athens.

3. The Government were represented by their Agent's delegate, Ms O. Patsopoulou, Senior Adviser at the State Legal Council.

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

I. BACKGROUND TO THE CASE

5. On 23 September 2014 Ms E.K. and the applicant had a son who was born outside marriage.

6. On 20 October 2014 the applicant voluntarily recognised the child as his own through a declaration before a notary with E.K.'s consent. By this act, the parents agreed that their son would have the applicant's last name and that they would exercise joint parental responsibility.

7. The applicants lived together until the beginning of October 2014 when, according to the applicant, E.K. forced him to leave. The child continued to live with his mother and the applicant visited him on a daily basis. It is apparent from the material in the case file that the contact between the applicant and his child did not evolve smoothly. From November 2018, the applicant was unable to see his child, as the child refused to accompany the applicant when he arrived to pick him up. The applicant stopped visiting after February 2019 to avoid putting his son through the difficulty of refusing to come with him for their contact.

II. DOMESTIC PROCEEDINGS

8. Following various proceedings between 2015 and 2017 concerning alimony and contact hours, as well as those which were aimed at determining the child's name, on 16 April 2018 the applicant lodged an application requesting shared custody between the parents, fifteen days each, or alternatively, the definitive determination of his contact schedule with their child.

9. On 10 September 2018 the Athens Court of First Instance delivered decision no. 585/2018, which partly granted the mother's application for alimony, setting it at the amount of 540 euros (EUR) per month. It rejected the applicant's request to share custody with E.K., as such an arrangement was liable to cause problems in their son's everyday life and to upset him, given that he was well adapted to living with his mother, who offered him affection and security.

10. The first-instance court also set the applicant's contact schedule with his son, which included two visits per week for three hours each, and two weekends per month with one overnight stay, valid until 31 October 2018.

For the five months following that date, the schedule would be modified to include two overnight stays on those weekends which the applicant and his child would spend together, and after that period, the schedule would include three overnight stays on those weekends. The applicant would also spend on an alternate basis, Christmas, Easter and summer vacations with his child.

11. Both the applicant and E.K. lodged appeals against decision no. 585/2018. On 21 March 2019 the Athens Court of Appeal delivered decision no. 1600/2019 by which it dismissed E.K.'s appeal and partly granted the applicant's appeal by reducing the amount of alimony to EUR 380 per month. As regards the applicant's appeal against the part of the decision concerning shared custody, the appellate court dismissed it, considering that it would not serve the child's best interests. The court noted that such an arrangement might work if the parents had common understanding as regards the exercise of custody and the education of their child but in the circumstances of the present case, the relationship between the parents was very tense and was characterised by mistrust and intense rivalry. The contact schedule remained the same.

12. The applicant lodged an appeal on points of law against that decision. On 11 August 2021 the Court of Cassation delivered decision no. 1020/2021. The court held that the part of the first-instance court's decision concerning custody had not been open to appeal and thus the appeal should have been rejected as inadmissible by the appellate court. It dismissed the remaining grounds of the appeal on points of law. The applicant subsequently lodged an application concerning the impossibility of lodging an appeal against the part of the decision concerning custody and that application is currently pending before the Court (application no. 56693/21).

13. It is apparent from the material in the case file that there are criminal proceedings currently pending against E.K. in respect of a breach of Article 232 (a) of the former Criminal Code (breach of a domestic decision) and concerning false testimony and slanderous defamation and a set of proceedings against the applicant for which there is no additional information.

III. ACTIONS TAKEN BY THE PUBLIC PROSECUTOR

14. On 1 June 2016 the applicant met with the Athens public prosecutor in charge of cases concerning children (hereinafter "the prosecutor"), complaining that, since 5 October 2015, he had been unable to see his son in accordance with the schedule agreed with the mother because she was impeding communication. A social services file was opened, and the prosecutor ordered a report on the child's living conditions in the mother's house.

15. On 29 June and 11 July 2016, the applicant submitted another complaint to the prosecutor that he had been abroad for six months for professional reasons and, upon his return, the mother had refused to allow

him to compensate for the time lost with their child. The prosecutor transmitted the relevant complaint to the social services office in charge of the applicant's file.

16. On 4 October 2016 the applicant lodged another complaint with the prosecutor, requesting a medical examination of the child.

17. On 5 December 2016 the applicant requested that the prosecutor order a psychiatric evaluation of the child and to execute his previous requests.

18. On 16 January 2017 the applicant requested that the prosecutor order the mother to hand over to the applicant an insurance certificate and the child's health records. His request was granted.

19. In the meantime, on 11 July 2017 the social services of the Athens municipality conducted an investigation into the child's living conditions with his mother and submitted a report to the prosecutor on 26 September 2017. The report described the social background, living conditions and financial situation and gave its conclusions and made proposals. According to the applicant, the conclusions were that both parents should be referred for counselling support in order to work on their interpersonal relations and other personal issues. Following this, the prosecutor requested that the social services recommend the appropriate authorities to the two parents for consultation.

20. The applicant was informed of the relevant report and the recommendation. On 7 May 2018 he requested that another social report be drawn up on the living conditions of the child in the applicant's home so as to submit it to the domestic courts in charge of determining the issue of custody. The prosecutor granted that request, ordering a second social report on 16 May 2018 to be conducted by the social services of the Ilioupolis municipality. On 23 May 2018 the prosecutor requested the acceleration of that report, which was completed and transmitted to the prosecutor on 30 May 2018. The social worker concluded that the applicant's house sufficiently met the child's needs, that the applicant appeared to care about and love his son and that he could also rely on the assistance of his broader family for support in the upbringing of the child.

21. On 30 May 2018 the applicant requested that the prosecutor order another social report on the child's living conditions with his mother, arguing that the child might be in danger; the prosecutor rejected the request on the basis that there was no indication that the child was in danger.

22. The prosecutor transmitted the two social reports and all the material in the case file to the domestic courts in charge of determining the issue of custody and the contact rights of the father, on the basis of which decision no. 585/2018 was delivered (see paragraph 9 above).

23. On 13 November 2018 the prosecutor summoned the mother in order to make recommendations to her to facilitate the communication between the child and the applicant and to request that she not influence the child negatively in that regard. On 27 November 2018 the mother appeared before the prosecutor and submitted that the child had expressed negative views on

the issue of contact with his father and that, for that reason, he was attending consultations with a specialist. She further submitted that the applicant had also been invited but had refused to participate. Nevertheless, the mother remained hopeful on the issue of joint consultation for her, the applicant and their child, as had been suggested by the social services and the prosecutor.

24. On 23 November 2018 the applicant requested that the prosecutor hold a joint consultation with both parents. That request was rejected by the prosecutor, who, on 29 November 2018, referred the two parents for consultation in respect of the child to the non-governmental organisation GONIS. The two parents initially participated separately in consultations with the experts of the association, however they began to argue. The consultations were ultimately discontinued by the applicant, who alleged that he could not trust GONIS, as he considered that it was biased in favour of E.K.

25. On 20 December 2018 the applicant submitted two further requests to the prosecutor. In the first one, the applicant requested that another social report be drawn up on the child's living conditions with his mother. The prosecutor refused, stating that if another social report were to be drawn up, it should be ordered by the domestic courts in charge of the case. In the second request, the applicant asked that the prosecutor send a psychologist from the GONIS organisation or any other competent authority to the pick-up and drop-off location so as to ascertain the conditions under which the child refused to accompany him for their contact. That request was also refused by the prosecutor, who noted that there was no reason for the intervention. The relevant file was, however, transmitted to the public prosecutor in charge of criminal proceedings to investigate whether there was any reason for initiating criminal proceedings for breach of Article 232 (a) of the Criminal Code.

26. On 17 December 2018 the mother requested that the prosecutor order a psychiatric evaluation of the child, given his continued refusal to meet with his father. On 21 December 2018 the prosecutor granted the request and ordered a psychiatric evaluation of the child by the Hellenic Centre for Mental Health (henceforth "the Centre"), without specifically mentioning in the order the reasons behind the child's refusal to meet with his father.

27. The Centre invited the two parents jointly to a first session with the social worker of the Centre in order to obtain the history of the case. The meeting was supposed to take place on 29 January 2019; however, the applicant did not appear, informing the Centre that he had asked the prosecutor to revoke the order, as the applicant had not been consulted prior to its adoption. The applicant also did not attend the next session scheduled for 13 February 2019.

28. On 17 January 2019 the applicant submitted a new request to the prosecutor. He explained that he had been unable to exercise his contact rights on account of the mother's behaviour and cited several incidents that had taken place in November and December 2018. He informed the prosecutor that he had made an appointment for a psychiatric evaluation of his child,

scheduled for 23 January 2019, at the relevant department of the Aglaia Kyriakou Children's Hospital and requested that the prosecutor order the evaluation so that the mother would be compelled to attend. The prosecutor noted at the top of the order "provide a copy".

29. On 21 January 2019 the applicant requested that the prosecutor revoke his order to have the child examined by the psychiatrists at the Centre, indicating that the child did not need another psychiatric evaluation, as one had already been scheduled by him (the applicant). The prosecutor asked for the request to be transmitted to the public prosecutor in charge of initiating criminal proceedings in order to initiate an investigation into an offence under Article 232 (a) of the Criminal Code. On 12 February 2019 the applicant submitted an additional request asking that the prosecutor indicate which organisation would eventually conduct the evaluation of the child, specifying that the child did not have any mental problems, and that the assessment should solely be conducted with reference to the reasons behind his refusal to meet with his father. On the request, the prosecutor noted "pending information from the Centre for Mental Health".

30. Following the applicant's latter requests, the prosecutor requested information from the Centre as to the progress of the evaluation. On 19 February 2019 the director of the Centre informed the prosecutor that the applicant had refused to participate in the sessions and in the evaluation of the child, which had taken place on 22 September 2019. The psychiatrists of the Centre concluded that the child did not present any symptoms of mental problems or behavioural issues. The relevant report was transmitted to the prosecutor on 25 April 2019 and to the applicant on 17 July 2019 through his lawyer.

31. In the meantime, the applicant submitted two further requests to the prosecutor. In the first, dated 21 February 2019, he cited the circumstances that had led him to lose trust in the GONIS organisation, to which the prosecutor had referred him. In particular, Ms E.K. had informed him that GONIS had proposed that during contact hours they all meet together (the applicant, the mother and the child) in playgrounds so that contact between the applicant and the child could be restored. In the applicant's view, that recommendation, if it had indeed come from the association, was in breach of the contact rights as defined in the relevant court decisions and undermined his right to contact with his child. Moreover, in the court proceedings concerning custody, he had realised that the mother had been accompanied by a volunteer lawyer of GONIS, who had manifestly chosen the mother's side in the proceedings. When he had tried to confront the director of the association in respect of the two issues – the recommendations which were in breach of the court decisions and the presence of a volunteer in favour of the mother in the proceedings – he had gotten no convincing replies and the meeting had ended in a fight. He had received no reply to letters he had sent requesting confirmation of the above-mentioned facts. He concluded that GONIS did not have anything to offer him in respect of the difficulties he was

encountering concerning contact with his child and was biased against him, despite the seven sessions he had attended with the experts thereof. He therefore requested that the prosecutor revoke the order for consultations with the GONIS organisation, at least in respect of him; that request was rejected. In the second request, dated 24 April 2019, he asked that the prosecutor act on the execution of decision no. 585/2018 of the Athens Court of First Instance. That request was partly refused, but a copy was sent to the prosecutor in charge of criminal proceedings to investigate possible actions to be taken by virtue of Article 232 (a) of the Criminal Code.

32. The applicant also submitted multiple requests to the police department to have the refusals of his child to accompany him recorded with the registry of Incidents and Offences and to assist him in so far as the police were competent to restore communication with his child. The former was granted; as regards the latter, he never received a reply. The police did, however, transmit the file to the prosecutor in charge of criminal charges to investigate whether the offence of breach of a court decision had been committed.

IV. THE GREEK OMBUDSMAN

33. On 27 December 2018 the applicant submitted a request to the Greek Ombudsman for assistance in respect of the execution of the decision granting him contact rights with his child. According to that request, the mother had been impeding communication. The Greek Ombudsman contacted the mother and drew her attention to the fact that in general, the parent with whom a child is living has an additional responsibility of facilitating communication between the child and the other parent by inspiring in him or her feelings which would ease communication. In addition, general experience had shown that in circumstances in which the child was of such a young age, as in this particular case in which the child was four years old and had been even younger when the parents had separated, he or she could easily be influenced by the cohabiting parent. The Ombudsman further requested the mother's observations on the issue of communication between the applicant and the child as well as information on any initiative she might have taken or intended to take to restore the child's communication with his father.

34. Ms E.K. replied, acknowledging the lack of communication between the child and the applicant, but insisted that, despite his young age, it was the child who refused to meet with his father. She also informed the Ombudsman that, following the prosecutor's recommendation, she had contacted the GONIS organisation to resolve the problem concerning the applicant's communication with his child; nevertheless, the applicant had expressed reservations as regards the role and impartiality of the organisation because one of its volunteer lawyers had provided legal assistance to her at the trial concerning the applicant's request for alternate custody between the parents.

35. In view of that information, on 22 March 2019 the Ombudsman considered that it was no longer useful to continue attempts at parental cooperation through the GONIS organisation. He thus proposed that further attempts be made through public law organisations specialising in children's mental health and recommended several of them. However, the mother, whose participation was a prerequisite for the intervention, did not respond to that proposal. The applicant, in a document dated 29 March 2019, refused to cooperate, contending that there had been a systematic mishandling of the child owing to the continual change of mental health experts, who had dealt with the case but had provided no effective assistance in the restoration of the communication between him and the child. On 8 April 2019 the Ombudsman replied to the father that even though his hesitation as to the further involvement of psychiatric experts had a scientific basis, in his view the intervention of mental health experts would be useful for the resolution of the issue of the applicant's communication with the child.

36. In view of the two parents' tacit or explicit refusal of his recommendation, the Ombudsman did not interfere further with the case.

RELEVANT LEGAL FRAMEWORK

37. The relevant domestic law may be found in *Katsikeros v. Greece* (no. 2303/19, § 21, 21 July 2022), and *I.S. v. Greece* (no. 19165/20, § 51, 23 May 2023).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant complained that the non-enforcement of the domestic decisions granting him contact rights with his child had constituted a breach of his right to respect for his family life enshrined in Article 8 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

39. The Government submitted that the applicant had failed to exhaust domestic remedies. In particular, they argued that Article 1532 of the Civil Code provided that, if a father or mother exercised his or her duties improperly, the courts could order any appropriate measure, such as to remove, fully or partially, parental responsibility from the parent and award it to the other parent. However, the applicant had never applied to the domestic courts seeking the implementation of Article 1532 of the Civil Code nor had he ever requested that the authorities order measures for the re-establishment of the family links. The Government also noted that the judges dealing with family-law cases were experienced judges specialised in that field who could freely assess all the evidence, including the child's opinion, if his or her age allowed it, in order to discern whether the parent residing with the child had impeded the other parent's communication and order any necessary measures. However, the applicant had only submitted requests to the prosecutor and the Ombudsman who, in accordance with domestic law, could not order the necessary measures and could only take the role of helping to support the parents in the exercise of their duties. Specifically in respect of the prosecutor, he had been entitled to order a social or psychiatric report in respect of the child or make recommendations through the police, all of which he had done. As regards the execution of a decision regulating the contact rights of a parent with his or her child, however, the prosecutor could only take a complimentary role, as the law did not provide that the execution of civil decisions was among a prosecutor's competences.

40. In addition, the Government argued that the application had been lodged prematurely, on 10 June 2020, even though the hearing of the applicant's appeal on points of law on the issue of alternate custody had been held on 11 January 2021. In his appeal on points of law, the applicant had also raised his arguments regarding the effective exercise of his communication rights with his son and had complained about the mother's behaviour. The domestic courts had been required to examine the case, having as their primary consideration the child's best interests, pursuant to national and international legal provisions, and respect for equality between the parents; the courts were in general better placed than the Court to evaluate the elements in the file.

41. The applicant, relying on *Fourkiotis v. Greece*, (no. 74758/11, §§ 68-69, 16 June 2016), contended that the measure provided for in Article 1532 of the Civil Code was ineffective and inappropriate in circumstances such as those in the present case, as it constituted a compulsory measure that could not be imposed in such a sensitive field as the communication between a parent and a child. In any event, the removal of parental responsibility and custody had not been causally linked to the

enforcement of the domestic court's decisions regarding his rights of visitation. Moreover, such proposed action would be extremely time-consuming, whereas, according to the Court's case-law, the adequacy of domestic remedies in the field of communication between children and their parents was to be judged on the basis of their speediness.

42. As regards the Government's objection that the application was premature, the applicant replied that his appeal on points of law had only concerned the matters of custody and alimony, not the matter of his contact rights with his child, which, therefore, had become final and irrevocable prior to the lodging of the application with the Court.

2. The Court's assessment

43. The general principles concerning the requirement to exhaust domestic remedies have been summarised in *Vučković and Others v. Serbi*a ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Akdivar and Others v. Turkey* (16 September 1996, §§ 65-69, *Reports of Judgments and Decisions* 1996-IV).

44. Turning to the circumstances of the present case, the Court has already considered the remedy provided for in Article 1532 of the Civil Code to be ineffective in situations similar to that of the applicant (see *Fourkiotis*, cited above, § 68, and *I.S. v. Greece*, cited above, § 63). The Government have not put forward any fact or argument capable of persuading the Court to depart from its position regarding the effectiveness of that remedy. The Court therefore considers that the remedy provided for in Article 1532 of the Civil Code would not have provided any redress to the applicant and he was not required to pursue it.

45. Lastly, as regards the Government's objection that the application was premature, the Court notes that the main proceedings concerning the final determination of the contact schedule and the award of parental responsibility are not related to the applicant's complaint that he was unable to exercise his contact rights in accordance with the contact schedule defined by the domestic courts and that, therefore, this part of the Government's objection must be rejected (see *Fourkiotis*, cited above, § 47).

46. 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

47. The applicant submitted that none of the measures taken by the domestic authorities, namely the social investigations, counselling and meetings in which recommendations were made to the parents, had been aimed at ensuring effective intervention to restore communication and

address the causes of the child's negative attitude towards him. The root cause had been incitement by the mother, who had persuaded the child to play roles and to refuse to meet with him. However, the social investigations had been aimed at assessing the child's living conditions, rather than at urging the mother to stop their child refusing communication with the applicant. No conciliation measures focusing on the best interests of the child and on family unification had been carried out.

48. As regards the counselling provided by the GONIS organisation, the relevant order by the prosecutor had not specified its objectives. In particular, the restoration of communication by addressing the reasons behind the child's refusal to meet with his father had not been laid down as the concrete objective of the counselling ordered. Moreover, the above-mentioned procedure had failed to include any measures in respect of urging the mother to stop inciting the child to refuse communication or any conciliation procedure or joint session with the social services.

49. In respect of the psychiatric evaluation ordered by the prosecutor on 21 December 2018, it had been irrelevant and inappropriate, as the child was mentally healthy. The issue that should have been examined was the cause of the child's refusal to accept communication with the applicant and, for that reason, the applicant had scheduled an evaluation in Aglaia Kyriakou Children's Hospital. However, that evaluation had not been conducted.

50. Relying on *A.V. v. Slovenia* (no. 878/13, 9 April 2019), the applicant submitted that the Greek authorities had failed to apply any meaningful measures to overcome the absence of cooperation on the part of the mother and the child's refusal to meet with him, or to act in the child's best interests, which were to prevent the gradual dissolution of his relationship with his father. The tense atmosphere between the applicant and the mother of their child could not serve as an excuse for the authorities' failure, as the Court had already held in its case-law.

51. The Government argued that the authorities had taken all the necessary measures to comply with their positive obligation under Article 8 of the Convention to ensure that the family ties between the applicant and his child were maintained. In particular, a complete system of judicial protection had been put in place, which, on the one hand, had been aimed at regulating the exercise of parental responsibility, including custody and contact rights of parents with their children, and, on the other hand, had served as a way of remedying parents' communication with their children when family disputes made this difficult.

52. The authorities had done everything in their power to restore communication between the applicant and his child. Unlike other applications that have raised similar issues before the Court, under no circumstances could it be said that the authorities had been indifferent or inactive. On the contrary, from the first moment the applicant had reached out to them, they had ordered two social reports and, subsequently, they had directed the applicant and the child's mother to the competent organisations for consultation. In addition, a

psychiatric evaluation of the child had been ordered and completed and meetings had been held with both parents, who had received strict recommendations. In that regard, all relevant actors who were implicated, that is to say the prosecutor, the staff of the Centre and the Ombudsman, had made considerable efforts to examine the issues raised before them with diligence and had sufficiently motivated their decisions.

53. The Government contended that, nevertheless, all these efforts had been in vain on account of the tense relationship between the two parents and their respective families. It had not been up to the authorities to judge or instruct the parents on their actions; however, in the circumstances it had been very difficult to produce results from any effort to establish a spirit of collaboration, as the two parents had not collaborated at all with each other or the experts. The mother should have made all possible efforts to facilitate the communication between the applicant and their child and the applicant should have adapted his programme to that of the child and his needs, which, however, had not taken place despite the support provided by the relevant authorities and mental health experts. The applicant himself had played a role in the failure of the efforts deployed by the competent authorities, as he had refused to cooperate and attend the consultations with the experts of GONIS or the Centre and had always wanted to impose his choices.

54. The Government lastly emphasised that the applicant had failed to indicate any measure that the authorities had omitted to take that would have contributed to the improvement of his relationship with his son or would have forced the mother to cooperate. What the applicant had called "omissions" on the part of the authorities had been the refusal of the prosecutor to satisfy each one of his demands. In view of the above, the Government were of the view that the State authorities had fully satisfied the positive obligations deriving from Article 8 of the Convention.

2. The Court's assessment

(a) General principles

55. The Court notes that the present case concerns the non-enforcement of judicial decisions whereby the applicant was granted contact rights. As a result, he was unable to see his son or establish regular and meaningful contact with him. The relevant principles regarding the State's positive obligation under Article 8 of the Convention in cases concerning the enforcement of contact rights are summarised in *Ribić v. Croatia* (no. 27148/12, §§ 88-89 and 92-95, 2 April 2015, and the cases cited therein). Accordingly, in the present case, the Court's task consists of examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to maintain the relationship between the applicant and his son (see *Bondavalli v. Italy*, no. 35532/12, § 75, 17 November 2015) and to examine the way they intervened to facilitate contact between them, as defined by the relevant

domestic decisions (see *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A). The adequacy of the measures is to be judged by the swiftness of their implementation, as the passage of time could have irremediable consequences for relations between the applicant and his son and might result in a *de facto* determination of the matter (see *A.T. v. Italy*, no. 40910/19, § 69, 24 June 2021).

56. The Court has also held that in cases such as the present one, where children resist contact with one parent, Article 8 of the Convention requires States to try to identify the causes of such resistance and address them accordingly (see *K.B. and Others v. Croatia*, no. 36216/13, § 144, 14 March 2017). It is an obligation of means, not of result, and may require preparatory or phased measures (see *Ribić*, cited above, § 94). The cooperation and understanding of all concerned will always be an important ingredient (ibid.). However, since the authorities must do their utmost to facilitate such cooperation, the positive obligations under Article 8 require them to take measures to reconcile the conflicting interests, keeping in mind the best interests of the child as a primary consideration (ibid.; see also *K.B. and Others v. Croatia*, cited above, § 144).

57. The Court would further reiterate that 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 *K.B. and Others v. Croatia*, cited above, § 143).

58. Moreover, the Court has had occasion to hold that lack of cooperation between separated parents is not a factor which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 176, 27 September 2011).

(b) Application of those principles in the present case

59. Turning to the present case, the Court notes that the applicant has been unable to exercise his contact rights with his son in a meaningful way since at least November 2018, despite decision no. 585/2018 of the Athens Court of First Instance setting out a detailed contact schedule. While the applicant complained about the enforcement of the latter decision and the period from November 2018 onwards, it is evident that the intense litigation between the applicant and the mother of his child had already started at an earlier stage, given that on 1 June 2016 the applicant had already complained to the prosecutor that he had been unable to see his child in accordance with the agreed schedule (see paragraph 14 above). The Court will necessarily have regard to the authorities' responses in the entire period from 2016 onwards,

as they are inextricably linked to the applicant's complaint, and some of their actions were taken with a view to transmitting the relevant results to the domestic courts which were in charge of the case and which delivered decisions nos. 585/2018 and 1600/2019.

60. The Court is aware of the fact that contact disputes are by their very nature extremely sensitive for all the parties concerned, and it is not necessarily an easy task for the domestic authorities to ensure enforcement of a court order where one or both parents' behaviour is far from constructive (see *Krasicki v. Poland*, no. 17254/11, § 90, 15 April 2014). The domestic authorities' task in the present case has been made particularly difficult by the tense relationship between the parents and the fact that the child refused to meet with his father. However, the Court notes that the domestic authorities took a number of steps towards enabling the applicant's contact with his son.

61. More particularly, as regards the applicant's recourse to the domestic courts, the Court takes note of the gradual increase in the frequency of communication set out in decision no. 585/2018 of the Athens Court of First Instance, which included more overnight stays as time passed, whereby the estrangement between the applicant and his child would fade. It considers it in line with the Court's case-law, according to which phased measures may be necessary when children resist contact with their parents (see *Ribić*, cited above, § 94). However, it appears that the above-mentioned decision was never enforced, as the applicant's son refused to accompany him during all his attempts to collect him in accordance with the schedule set out by the domestic courts. In November 2019 the Court of Appeal confirmed the contact schedule as it had been set out by the first-instance court. Again, in a well-reasoned decision, the court examined the family situation as a whole, noting the parents' very poor relationship and their failure to cooperate.

62. Turning to the criminal proceedings against E.K., the Court does not possess sufficient information about them, although it appears that the proceedings are still pending; in any event, it reiterates that while the national authorities must do their utmost to facilitate cooperation between separated parents, any obligation to apply coercion in this area must be limited, since the interests, as well as the rights and freedoms, of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention (ibid., § 95).

63. As regards the actions of the public prosecutor, the Court notes that the applicant submitted at least twenty requests to the prosecutor in the period from 2016 to 2019; the requests concerned, *inter alia*, having his son's health records delivered to him, having social reports drawn up and requesting the psychiatric evaluation of the child by experts to identify the root causes of his resistance to meeting with the applicant. Some of these requests were granted (see, for example, paragraphs 18 and 20 above) and others were refused (see, for example, paragraphs 25 and 27 above). However, the Court cannot but note that the prosecutor did not remain indifferent to the applicant's requests, but tried within the extent of his competences to provide assistance so that

the applicant could maintain his relationship with his son. In particular, in the period from 2016 to 2019, the public prosecutor ordered two social reports to be drawn up – one in respect of the mother's residence and one in respect of the applicant's residence (see paragraphs 14 and 20 above) – ordered a psychiatric evaluation of the child by the Centre (see paragraph 26 above), called the mother to make recommendations (see paragraph 23 above), referred the entire family to GONIS for consultation (see paragraph 24 above) and transmitted the file to the public prosecutor in charge of criminal proceedings to investigate whether there was reason for initiating criminal proceedings under Article 232 (a) of the Criminal Code (see paragraph 25 above). Moreover, he followed up on those requests on various occasions, such as by requesting the acceleration of the conduct of the social report or by requesting information on the progress of the psychiatric evaluation by the Centre (see paragraph 30 above). The steps appear to have been taken swiftly and the Court notes that the applicant did not complain about any delay in the actions taken by the prosecutor.

64. The Court takes note of the applicant's argument that the steps taken by the authorities had not been tailored to address the root causes of the child's refusal to meet with him, which in his view had been the result of the mother's behaviour. Nevertheless, there is no material in the case file supporting his allegations that the mother had incited their son not to meet with the applicant. In any event, in the Court's view, those steps were appropriate and could have contributed to the discovery of the reasons behind the child's refusal to meet with the applicant, which in its turn could have led to more specific and tailored measures aimed at enabling the restoration of their contact.

65. The same considerations apply to the actions of the Greek Ombudsman, who acted immediately upon the applicant's complaint by making contact with E.K., addressing her recommendations and requesting her observations on the issue of the child's refusal to meet with the applicant (see paragraph 33 above). Moreover, he acknowledged the applicant's concerns regarding the involvement of the GONIS association in the family dispute and proposed certain public law organisations specialised in children's mental health, whose intervention might have been useful for the resolution of the issue of the applicant's communication with the child.

66. Nevertheless, all the domestic authorities' efforts were in vain, owing to the tense relationship between the parents and their behaviour, as noted by the relevant domestic courts (see paragraph 11 above). The Court notes in particular that, despite the prosecutor's order to have a psychiatric evaluation of the child carried out by the Centre (see paragraph 26 above), the applicant refused to attend and requested that the order be revoked because, on the one hand, he had not been consulted prior to the adoption of that decision and, on the other hand, the order should have been given with specific instructions to focus the investigation on the reasons behind the child's refusal to meet with him. Moreover, he insisted that a psychiatric evaluation of the child be

conducted in Aglaia Kyriakou Children's Hospital, where he himself had made an appointment (see paragraph 28 above). He further refused the recommendation of the Greek Ombudsman to contact organisations specialising in children's mental health, stating that his son was mentally healthy. In the circumstances, it is difficult for the Court to accept such an unaccommodating attitude on the part of the applicant, whose participation in the sessions would have undoubtedly contributed toward orienting the psychiatric session with the child in the direction he wished and addressing the root causes of his child's refusal to meet with him. The Court cannot speculate as to whether the psychiatric evaluation of the child would have brought results and would have been capable of remedying the contact between the applicant and his son; nevertheless, it considers the involvement of child-psychology experts a step in the right direction to enable the applicant to restore his communication with his child.

67. Bearing in mind that the positive obligations of the State in cases of this kind are those of means and not of result, and also taking into consideration the efforts deployed by the various domestic authorities and in the light of the applicant's own questionable conduct as described above, the Court finds that the failure to enforce the applicant's contact rights cannot be attributed to a lack of diligence on the part of the relevant authorities (compare *Jurišić v. Croatia (no. 2)*, no. 8000/21, § 48, 7 July 2022).

68. It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 10 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
M.B.

DISSENTING OPINION OF JUDGE SERGHIDES

1. The case concerns the non-enforcement of a decision of the Athens Court of First Instance of 10 September 2018 granting the applicant contact rights with his under-age son (who was under the custody of his mother, E.K.), contrary to the applicant's right to respect for his family life under Article 8 of the Convention. That decision became final, as the Court of Appeal rejected the applicant's and E.K.'s appeals regarding custody (see paragraph 11 of the judgment).

2. I respectfully dissent from the judgment, as I firmly believe that there has been a violation of Article 8 of the Convention; hence, I voted against point 2 of the operative provisions of the judgment. I briefly outline the reasons for my disagreement below.

3. While bearing in mind that member States' positive obligations under Article 8 of the Convention to restore contact between a parent and a child are ones of means and not of result (see paragraphs 56 and 67 of the judgment), it is evident that any measures taken to that end should be practical, effective and meaningful (see, *inter alia*, *A.V. v. Slovenia*, no. 878/13, § 79, 9 April 2019; *Hokkanen v. Finland*, 23 September 1994, §§ 58-59 and 62, Series A no. 299-A; and *Fourkotis v. Greece*, no. 74758/11, § 60, 16 June 2016). The lack of cooperation between separated parents is not a factor which by itself exempts the authorities from their positive obligations under Article 8 (see paragraph 58 of the judgment).

4. In the present case, the domestic authorities took a number of steps towards the enforcement of the decision of the Athens Court of First Instance of 2018, focusing, however, on ordering the preparation of social reports (mainly on the child's living conditions) and a psychiatric evaluation. I do not wish to imply that such measures may not be necessary, but I would expect the domestic authorities to have taken more practical, effective and meaningful measures to restore contact between the father and the child, which they did not do.

The only measure taken by the domestic authorities which, by its nature, could have been effective was the referral of the entire family to the non-governmental organisation GONIS for consultation. This measure, however, did not work, because the applicant did not trust that organisation on grounds of objective impartiality (see paragraph 31 of the judgment), and consequently, as the judgment states (see paragraph 65), the Greek Ombudsman, who acknowledged the applicant's concerns regarding GONIS, recommended to the parents certain public-law organisations specialising in children's mental health. However, no proposal was made by the Greek Ombudsman as to counselling and psychological or emotional support for the child and his parents. The judgment does not specify which public-law organisations specialising in children's mental health were proposed to the parents by the Greek Ombudsman, but in paragraph 66 it states that the applicant refused the recommendation of the Greek Ombudsman to contact

organisations specialising in children's mental health, arguing that his son was mentally healthy.

The judgment criticises this stand taken by the applicant (see paragraphs 66-67), without, regrettably, taking into account, (a) that the psychiatrists of the Hellenic Centre for Mental Health "concluded that the child did not present any symptoms of mental problems or behavioural issues" (see paragraph 30 of the judgment), and (b) that "the mother, whose participation was a prerequisite for the intervention, did not respond to that proposal" (see paragraph 35 of the judgment). The latter point (b) is reiterated in a more general and conclusive way in paragraph 36 of the judgment as follows: "In view of the two parents' tacit or explicit refusal of his recommendation, the Ombudsman did not interfere further with the case". Regarding the first point (a), if the child did not present any symptoms of mental problems or behavioural issues, then what he really needed in the first place was counselling and psychological or emotional support, and not to be sent for further examination of his mental health by psychiatrists.

The judgment "considers the involvement of child-psychology experts a step in the right direction to enable the applicant to restore his communication with his child" (see paragraph 66). With that I entirely agree, but the judgment omits to take into account that this step was not taken by the respondent State, even though, by its nature, it could have been a practical, effective and meaningful measure. Since consultation with the non-governmental organisation GONIS did not work, the domestic authorities should have proposed consultation with another organisation, public or private, but they omitted to do so. It should be remembered in this connection that before the referral to GONIS, the applicant requested that the prosecutor hold a joint consultation with both parents, but that request was rejected as the prosecutor instead referred them to GONIS (see paragraph 24 of the judgment).

5. In *Hokkanen* (cited above, § 58), the Court held that "the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures being taken to this effect". In that case, no such measures were taken, and the Court found a violation of Article 8 of the Convention. The present judgment, citing *Ribić v. Croatia* (no. 27148/12, § 94, 2 April 2015), also acknowledges that the positive obligations of the State under Article 8 "may require preparatory or phased measures" (see paragraph 56 of the judgment).

In my view, the breadth of "preparatory measures" may embrace a number of child-centred measures, depending on the facts of each case. Some of the most common preparatory measures could be access to counselling and mediation; family assistance or therapy through emotional, psychological or therapeutic support of all parties concerned by the social services and/or by other professionals or experts specialising in child psychology; gradual reintroduction plans or programmes to restore access; visits arranged in playgrounds in the presence of persons whom the child can trust, and so on. As to the last measure, the judgment states that Ms E.K. had informed the

applicant that GONIS had proposed that during contact hours the two parents and the child meet together in playgrounds (see paragraph 31). However, that proposal was not followed up, and it is not established whether it was made by GONIS and, if so, why GONIS did not make a similar proposal to the applicant. In any event, GONIS' involvement did not continue, for the reason explained above.

The list of preparatory measures is not exhaustive, and it is for the professionals and experts and not for the Court to propose in a particular case what measure or combination of measures should be taken and in what order; however, this did not happen in the present case, as no preparatory measures were taken.

If a child steadfastly declines contact with his father, it is judicious for the Court, which disapproves of any measure entailing force, to consider the necessity of preparatory measures aimed at aiding and facilitating the re-establishment of contact between the father and son. The specifics of these preparatory measures should be determined by child professionals and experts. However, it falls to the Court to assess whether the authorities have indeed taken and implemented such preparatory measures. It is my view that in the instant case, the authorities took no preparatory measures other than the unsuccessful effort involving GONIS.

6. In the present case there had been no gradual reintroduction plan or programme with simultaneous counselling and emotional and psychological support for the parents and the child. The aim of a gradual reintroduction plan would have worked as a preparatory measure for the restoration of contact between the father and his son, with the ultimate result the enforcement of the decision of the court. Had it been decided to implement such a plan, the competent professionals or experts would have explained to the parents that the aim of the plan was in no way to modify or annul the decision or order of the court, but only to facilitate its enforcement; so, here again, counselling would have been important.

7. While the judgment acknowledges that the positive obligations of the State under Article 8 may require preparatory or phased measures, it regrettably omits to consider that in the present case no such measures were taken, and yet considers that the respondent State fulfilled its obligations. In other words, it is unfortunate that the judgment is inconsistent: though it refers to the requirement of preparatory measures with approval in the general principles of its assessment, when it deals with the application of those principles it ultimately overlooks this requirement and does not apply it, despite the fact that the present case is a classic instance where such measures should have been taken.

8. The same happens with a number of other principles which the judgment mentions in the general principles of its assessment. For example, the judgment rightly states that the Court's task consists in examining whether the domestic authorities took all necessary steps that could reasonably be demanded in the specific circumstances to maintain the

relationship between the applicant and his son, and that the adequacy of measures is to be judged by the swiftness of their implementation, as the passage of time could have irremediable consequences for relations between the applicant and his son (see paragraph 55 of the judgment). However, even though no preparatory measures were taken, in paragraph 67 of the judgment it is concluded that "the failure to enforce the applicant's contact rights cannot be attributed to a lack of diligence on the part of the relevant authorities". Also in the general principles of the judgment, it is stated that "where children resist contact with one parent, Article 8 of the Convention requires States to try to identify the causes of such resistance and address them accordingly" (see paragraph 56). This principle was likewise not applied in the present case. The cause of the child's resistance to contact with his father could not properly have been identified without a psychological evaluation. Even, however, if we assume that the only cause of the problem was the tense relationship between the parents, the domestic authorities did not address the problem effectively. Lastly, the judgment in its general principles emphasises that "the cooperation and understanding of all concerned will always be an important ingredient" (ibid.) and that the authorities must keep in mind "the best interests of the child as a primary consideration" (ibid.). Again, one can reasonably argue that in the absence of any preparatory measures in the instant case, the best interests of the child were not taken as a primary consideration.

9. Instances such as the present case are exceedingly sensitive and delicate and simultaneously quite sorrowful. As the domestic court held, "the relationship between the parents was very tense and was characterised by mistrust and intense rivalry" (see paragraph 11 of the judgment). The father in the present case accused the mother of trying to alienate the child from him, while the mother contended that it was the father's behaviour which had made the child not wish to have contact with him.

10. The child, caught in the midst of this dispute between adults, becomes a victim, necessitating intervention by the State for a solution. Hence, the measures taken by the State should be practical, effective, meaningful and child-centred. To use the inspiring words of Albert Camus (also quoted in the foreword by Maud de Boer Buquicchio, former Deputy Secretary General of the Council of Europe, to the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe Publishing, 2011)), "Don't walk in front of me; I may not follow. Don't walk behind me; I may not lead. Walk beside me and be my friend." All parents and society, along with the competent authorities, must walk beside children and be their friends, providing support for all their needs and endeavours.

11. Facilitating the re-establishment of the father's contact with his son would be pursued not only for the father's benefit, but primarily for the benefit of his son, as well as for that of his mother and of society at large, which requires healthy relationships among people and relies on the presence of strong interpersonal connections between them.

12. In view of the above, I come to the conclusion that there has been a violation of Article 8 in the present case, and, if I had not been in the minority, I would have proposed that the applicant be awarded just satisfaction under Article 41 of the Convention.