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Tribunal Europeo de Derechos Humanos, Sección 1ª, Sentencia de 8 Feb. 2024, Rec. 39980/22

CASE OF JANOČKOVÁ AND KVOCERA v. SLOVAKIA TEDH\2024\8



DERECHO AL RESPETO A LA VIDA PRIVADA Y FAMILIAR: Vida privada y familiar: medidas de protección: ámbito: menores: jurisdicción y procedimiento civil: derecho de visitas: inejecución prolongada de las sentencias en las que se fijaban visitas asistidas de los padres a su hijo en el centro: imposibilidad de ver a su hijo durante más de cinco años y cuatro meses: ausencia de medidas eficaces necesarias por parte de las autoridades para hacer valer el derecho de los padres a mantener contacto con su hijo: violación existente

Normativa aplicada

Convenio de Roma 4 Nov. 1950 (protección de los derechos humanos y de las libertades fundamentales) [art. 8](#); [art. 8.1](#); [art. 13](#); [art. 13+8](#)

CASE OF JANOČKOVÁ AND KVOCERA v. SLOVAKIA

8 February 2024

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 Janočková and Kvocera v. Slovakia,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Latif Hüseyinov,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *DeputySection Registrar*,

Having regard to:

the application (no. 39980/22) against the Slovak Republic lodged with the Court under [Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms](#) ("the Convention") by two Slovak nationals, Ms Beáta Janočková ("the first applicant") and Mr Daniel Kvocera ("the second applicant"; together "the applicants"), on 11 August 2022;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Articles 8 and 13 of the Convention and to declare the remainder of the application inadmissible;

the decision to give priority to the application under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 16 January 2024,

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

INTRODUCTION

1. In the context of extensive litigation concerning the parents' rights and duties in respect of the second applicant, the case concerns the length and effectiveness of proceedings for the enforcement of an urgent interim measure (*neodkladné opatrenie*) regulating the first applicant's parental contact with the second applicant, the authorities' alleged failure to take the necessary measures to ensure that contact and the effectiveness of the domestic remedy provided by the Constitutional Court. It raises issues under Articles 8 and 13 of the Convention.

THE FACTS

2. The first applicant was born in 1978 and lives in Blažice. The second applicant, her son, was born in 2014 and lives with his father, D.K., in Bratislava. The applicants were represented by Mr P. Konvičný, a lawyer practising in Košice.

3. The Government were represented by their Agent, Ms M. Bálintová.

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

I. BACKGROUND

5. The first applicant lived with D.K. and the second applicant in one household until 2017. Following the parents' separation each of them provided care for the second applicant on an informal alternating basis.

6. The situation concerning care of the second applicant deteriorated and on 13 March 2017 D.K. applied for its regulation by a court. This led to the opening of proceedings on the merits and a number of auxiliary proceedings in which various issues were determined by way of urgent interim measures.

7. The case fell within the jurisdiction of Bratislava III District Court as the court of first instance and the Bratislava Regional Court as the court of appeal. The second applicant's interests in the proceedings were defended by a court-appointed representative.

8. On 13 September 2017 the District Court issued an urgent interim measure placing the second applicant in the care of D.K. pending the outcome of the proceedings on the merits. The second applicant has been in D.K.'s care and has been living with him ever since.

9. The first applicant submitted that, save for one exception on 23 February 2021, she had not seen the second applicant since 2 September 2018.

10. The applicants' contact has been regulated by a series of urgent interim measures, starting with that of 9 October 2018 ("the 2018 contact order"), providing for their contact without the presence of D.K. at weekends and during the end-of-year holidays. That measure was annulled on 21 April 2021 and on 3 May 2022, but both of those decisions were quashed on appeal.

The 2018 contact order is thus still in place and its enforcement is the central focus of the present case. More details are laid out below.

11. The above-mentioned decision of 21 April 2021 contained several rulings, including a new urgent interim measure ("the assisted contact order"), providing for the applicants' contact without the presence of D.K. on the premises of a centre for the protection of children and youth ("the centre"). The assisted contact order was annulled by the above-mentioned decision of 3 May 2022, but that decision was quashed on appeal by a decision of 17 August 2022. The assisted contact order is thus still in place and its enforcement is ongoing.

12. The decision of 3 May 2022 also included a ruling whereby a further urgent interim measure was issued, providing for the applicants' contact in the presence of D.K. on the centre's premises. However, this contact order was also quashed on appeal by the above-mentioned decision of 17 August 2022.

13. In the last-mentioned decision, the Regional Court noted that despite the parents' receiving counselling, their relationship continued to be conflictual, the tension between them had escalated and the way they communicated with each other was unacceptable. The overall family situation was alarming and had had a serious, negative impact on the second applicant. As regards D.K., it was noted that he had failed to cooperate by ensuring the presence of the second applicant for the applicants' meetings at the centre, while the first applicant had been seeking to enforce contact with the second applicant with the assistance of the police and by actively seeking publicity in respect of the case.

14. Meanwhile, the proceedings on the merits had been resolved in a judgment of 4 July 2019, which was, however, quashed on appeal on 6 May 2020, following which a new judgment was given on 21 April 2022, entrusting the second applicant to the care of D.K. and providing for the applicants' contact in the presence of D.K. Moreover, it was determined that both parents were entitled to act in the name of the second applicant. That judgment has been appealed against by the parties and the most recent information indicates that the proceedings are ongoing.

II. THE 2018 CONTACT ORDER AND ITS ENFORCEMENT

15. In the 2018 contact order (see paragraph 10 above) the District Court noted, *inter alia*, that both parents were equal in their rights and duties in respect of the second applicant. As the second applicant was in the care and custody of D.K., it was up to the

latter to enable the contact between the applicants. As the parents had been unable to arrange the modalities themselves, the applicants' contact depended exclusively on D.K., which was neither appropriate nor desirable. It was accordingly necessary to define at least a minimum level of the applicants' contact in a manner compatible with the interests of the second applicant.

16. On 26 November 2018 the first applicant petitioned for judicial enforcement of the 2018 contact order.

17. On 11 May 2022 the District Court dismissed the petition for the enforcement of the 2018 contact order. It was noted that even though contact between the applicants had been ordered, no contact was in fact taking place. This was due to a dismissive attitude on the part of the second applicant, with no indication of any manipulation by D.K. The court noted that the relationship of the parents was particularly strained despite their having engaged in counselling, with which D.K. was prepared to continue and the first applicant was not. As concluded by an expert witness, forcing the second applicant to have personal contact with the first applicant might result in the further deterioration of their relationship. The first applicant had to work towards maintaining and improving the relationship, with the assistance of D.K., by means of adapting her behaviour and meeting the second applicant in the presence of D.K. In the court's assessment, having regard to the best interests of the second applicant, there were justified grounds for not ordering the enforcement of the 2018 contact order.

18. Following an appeal by the first applicant, that decision was upheld on 29 September 2022, albeit on different grounds. The Regional Court noted that the 2018 contact order had been annulled by the decision of 3 May 2022 and replaced by a new contact order (see paragraphs 10 and 11 above) and that those rulings had become final and binding. In the circumstances, the 2018 contact order was no longer enforceable.

19. The first applicant nevertheless appealed on points of law, arguing, *inter alia*, that not only had the decision of 3 May 2022 been appealed against, but it had also been quashed on that appeal on 17 August 2022 (see paragraph 11 above).

20. On 22 June 2023 the Supreme Court allowed the cassation appeal, observing that the Regional Court had given its decision manifestly ignoring the decision of 17 August 2022. As that decision had quashed the decision of 3 May 2022 annulling the 2018 contact order and had also annulled the new contact order encompassed in that decision (see paragraph 12 above), the 2018 contact order had ultimately neither been annulled nor replaced. In these circumstances, the Regional Court's decision was tainted by arbitrariness. It was accordingly quashed and the matter was remitted for a fresh decision on the first applicant's appeal against the decision of 11 May 2022 dismissing her petition for judicial enforcement of the 2018 contact order (see paragraph 17 above). The proceedings are apparently ongoing.

III. CONSTITUTIONAL PROCEEDINGS

21. The litigation before the ordinary courts concerning care and custody of the second applicant has given rise to a number of proceedings before the Constitutional Court, which include the following.

22. On 16 January 2020 the Constitutional Court rejected as manifestly ill-founded an individual complaint by the first applicant of delays in the proceedings for the enforcement of the 2018 contact order.

23. In a judgment of 6 May 2021 the Constitutional Court ruled on an individual complaint by the second applicant, who had been acting before that court through the intermediary of the first applicant, finding that there had been a violation of the second applicant's right to a hearing within a reasonable time in the proceedings on the merits. By way of relief, it ordered the District Court to proceed with the case without undue delays and awarded the second applicant compensation of 1,000 euros (EUR) in respect of non-pecuniary damage.

24. On 21 September 2021 the Constitutional Court allowed a complaint by the applicants in which the second applicant acted through the intermediary of the first applicant, finding that there had been a violation of the applicants' right to a hearing within a reasonable time and to respect for their private and family life, on account of the manner in which the proceedings for the enforcement of the 2018 contact order had been conducted. In addition, it ordered the District Court to proceed with the enforcement without undue delays and awarded each of the applicants EUR 7,500 in compensation for non-pecuniary damage.

25. The Constitutional Court noted that since the enforcement proceedings under review concerned a minor, they called for particular expediency. Even though matters of this nature were common, the contested enforcement proceedings were somewhat more complex in that they formed a part of a volume of interrelated litigation that had to be handled in a coordinated fashion. Moreover, the question whether D.K. had acted in compliance with the 2018 contact order presented evidentiary challenges. Of the two parents, it was he who had been less cooperative, with no particular delays in the proceedings being imputable to the first applicant. However, there had been delays manifestly attributable to the District Court, which had not ordered the enforcement and had used none of the available means to ensure compliance with the 2018 contact order; in particular, it had not issued a single request for compliance with that order, imposed a fine or suspended any allowances due to D.K. The only relevant step taken by the District Court had consisted of repeatedly ordering the parents to engage in counselling, which, however, the Constitutional Court considered inefficient in the circumstances.

26. On 31 March 2022 the Constitutional Court rejected a fresh individual complaint by the applicants of a violation of their fundamental rights on account of the length and inefficiency of the proceedings for the enforcement of the 2018 contact order. Noting that its jurisdiction was limited to the period subsequent to its above-mentioned judgment of 21 September 2021, there were not enough elements in the period under review to pose any constitutional issues.

27. On 29 June 2022 the Constitutional Court found a violation of the applicants' rights to a hearing within a reasonable time and to respect for their private and family life on account of the manner in which the proceedings for the enforcement of the assisted contact order had been conducted (see paragraph 11 above). It noted, *inter alia*, that D.K. had repeatedly hindered contact between the applicants, that it was the District Court's task to respond to this and that it had failed in that duty. The District Court was ordered to proceed with the enforcement without undue delays and the finding of a violation of the applicants' rights was found to be sufficient satisfaction in respect of non-pecuniary harm suffered by them.

RELEVANT LEGAL FRAMEWORK

28. Proceedings concerning matters of care for minor children are regulated by the Code of Civil Non-Contentious Procedure (Law no. 161/2015 Coll., as amended – "the Code"). Under Article 376 of the Code, if a person bound to a duty by judicial order (*povinný*) fails to comply with that order voluntarily, the beneficiary of that duty (*oprávněný*) may petition for enforcement (paragraph 1). Proceedings for the enforcement of urgent interim measures are, however, to be initiated of the court's own motion (paragraph 3).

29. Pursuant to Article 377 § 1, which was introduced into the Code with the effect from 1 January 2023 (Law no. 388/2022 Coll.), enforcement is to be ordered or refused within six months of the initiation of the proceedings.

30. Upon ordering the enforcement, or in parallel to it, the enforcement court may take steps and measures aimed at voluntary compliance with the duty in question (Article 378).

31. Among other measures, before the enforcement is carried out, the court may issue a request for compliance (Article 379), repeatedly impose a fine of up to EUR 1,000 for non-compliance with such a request (Article 382) and order the suspension of a parental allowance or child allowance (Article 383).

32. Under Article 384, if the measures which are aimed at voluntary compliance remain futile, the court will carry out the enforcement (paragraph 1). If the circumstances so demand, the enforcement may be carried out even without the taking of measures for voluntary compliance (paragraph 2).

THE LAW

I. PRELIMINARY REMARKS

33. The present application is aimed at a specific set of enforcement proceedings concerning one of many questions that are being dealt with by the domestic courts in relation to the care and custody of the second applicant. While respecting the focus of the application, in its assessment the Court will have regard to the wider procedural context as appropriate.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicants complained that the proceedings for the enforcement of the 2018 contact order had been too lengthy and that the manner in which they had been conducted was incompatible with the respondent State's positive obligation to secure their right to respect for their private and family life, as provided in Article 8 of the Convention, which reads as follows:

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

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

A. Admissibility

35. The Government raised two interrelated objections, pointing to the Constitutional Court's judgment of 21 September 2021 (see paragraph 24 above) and the subsequent course of the contested enforcement proceedings. By that judgment, the Constitutional Court had awarded the applicants compensation in respect of non-pecuniary damage and had ordered the acceleration of the enforcement proceedings. Those proceedings had then been concluded by means of a decision of 11 May 2022 (see paragraph 17 above) and that decision had been upheld on appeal on 29 September 2022 (see paragraph 18 above), regard being had to the effectiveness of the preventive redress provided to the applicants by the Constitutional Court. As a result, with regard to the part of the proceedings covered by the constitutional judgment of 21 September 2021, the applicants had lost the status of a victim within the meaning of Article 34 of the Convention and, with regard to the part of the proceedings subsequent to that judgment, they could and should have resorted to the Constitutional Court anew in order to exhaust domestic remedies as required under

Article 35 § 1 of the Convention. As they had done so too soon after the constitutional judgment of 21 September 2021 (see paragraph 26 above), they had failed to meet that requirement.

36. The applicants pointed out that on their appeal on points of law, the decision of 29 September 2022 had in fact been quashed (see paragraph 20 above), as a result of which the contested enforcement proceedings were still ongoing. In their view, they remained victims of the alleged violations and had exhausted all effective domestic remedies for Convention purposes.

37. The Court, for its part, notes at the outset that no objection has been raised by the Government as to the first applicant's standing to pursue the present application in the name of the second applicant. The case concerns enforcement of a judicial order for contact between the applicants, a mother and her minor son, issued in proceedings that involved an assessment of the best interests of the child – the second applicant (see paragraphs 15 above and 49 below). The effort to have that order enforced and, by extension, the present application, is consistent with that interest. Moreover, even though the second applicant has been in the care of D.K., this was done in the context of an interim arrangement only (see paragraph 8 above), there is no indication of any restriction of the capacity of the first applicant, as his mother, to act in his name and such capacity was not questioned by the Constitutional Court in numerous proceedings before it (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 158, 10 September 2019, and contrast *K.B. and Others v. Croatia*, no. 36216/13, §§ 110-11, 14 March 2017). In fact, even though the underlying proceedings on the merits are ongoing, it was determined in the judgment of 21 April 2022 that both parents were entitled to act in the name of the second applicant (see paragraph 14 above). In sum, the Court finds no reasons to question the first applicant's capacity to act before it in the name of the second applicant.

38. The Court notes that the Government's two objections as to inadmissibility are interlinked in that the assessment of each depends on the assessment of the redress afforded to the applicants by the Constitutional Court. On the facts of this case, the assessment of the latter question is closely linked to the assessment of the merits of the applicants' complaint under Article 8 of the Convention. The Government's objections must therefore be joined to the merits of the case.

39. The Court notes that the applicants' Article 8 complaint 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

40. The applicants complained that the proceedings for the enforcement of the 2018 contact order had been too lengthy and had been conducted in an inefficient manner, which had contributed to the fact that they had not seen each other since 23 February 2021 (see paragraph 9 above).

41. The Government acknowledged that the enforcement proceedings in question had concerned the applicants' right to respect for their private and family life. At the time that the Government submitted their observations, the proceedings had already been concluded. Their length and course had been influenced by the profoundly disrupted relationship between and differences in the opinions of the parents, which had not improved, despite the authorities' efforts. This had been reflected in the parties' behaviour in the proceedings and the many various interrelated proceedings that had to be dealt with in a coordinated fashion. The Government asserted that the authorities' positive obligations in the present case had not been absolute and had essentially concerned the means employed, not the result achieved. Where the reunion of a parent and a child depended on collaboration between those involved, the national authorities were bound to facilitate it, but any duty to use coercion was limited, taking into account, *inter alia*, the best interests of the child and other rights protected by Article 8 of the Convention. They argued that, as concerns the best interests of the second applicant in the present case, the national authorities had had regard to the recommendations of an expert and had proceeded in accordance with their positive obligations under Article 8 of the Convention.

2. The Court's assessment

42. The Court has summarised the relevant principles in, for example, *Ball v. Andorra* (no. 40628/10, §§ 45-51, 11 December 2012, with further references) as follows.

(a) The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention.

(b) Even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. In both the negative and positive aspects of Article 8, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; in both situations the State enjoys a certain margin of appreciation.

(c) In relation to the State's obligation to implement positive measures, for parents Article 8 includes a right that steps be taken to reunite them with their children and an obligation on the national authorities to facilitate such reunions. This applies not only to

cases dealing with the compulsory taking of children into public care and the implementation of care measures, but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family.

(d) The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is not, however, absolute. The establishment of contact may not be able to take place immediately and may require preparatory or phased measures. The cooperation and understanding of all concerned will always be an important ingredient. While national authorities must do their utmost to facilitate such co-operation, 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.

(e) What is decisive is whether the national authorities have taken all necessary steps to facilitate the execution of any order regulating contact that can reasonably be demanded in the specific circumstances of each case.

(f) In this context, 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 who does not live with the child.

(g) Active parental participation in proceedings concerning children is required under Article 8 of the Convention in order to ensure the protection of their interests and when the respective parent applies for enforcement of a court order, his or her conduct as well as that of the courts is a relevant factor to be considered.

43. In the present case, it has not been questioned, and the Court accepts, that the relationship between the applicants amounts to "family life" within the meaning of Article 8 of the Convention and that the contested enforcement proceedings clearly concerned the applicants' family life for the purposes of that provision.

44. The Court's task is to consider whether, in the light of the relevant principles in its case-law, the measures taken by the Slovakian courts were as adequate and effective as could reasonably have been expected in the circumstances of the case for the facilitation of the reunion between the applicants. In doing so, the Court must examine whether a fair balance was struck between the various interests involved.

45. In that connection, it notes first of all, that even though the 2018 contact order was annulled on two occasions, those decisions were quashed and the order is considered by the courts as being still in force (see paragraphs 10 and 20 above). In that regard, the Court notes in particular that the decision of 21 April 2021 which quashed the 2018 contact order at the same time indicated the assisted contact order (see paragraphs 10 and 11 above). The assisted contact order was itself quashed on 3 May 2022, but the latter decision was itself quashed on 17 August 2022, as a result of which both orders presently appear to be in force, despite the overlap in their purpose and the fact that the assisted contact order supersedes the 2018 contact order as regards the means how that purpose should be achieved.

46. As the 2018 contact order was issued in the procedural form of an urgent interim measure, the proceedings for its enforcement were to commence by the initiative of the court that issued it (see paragraph 28 above). The urgency inherent in the enforcement of rulings concerning minors is recognised in Article 377 § 1 of the Code, in force since 1 January 2023, which provides that the preliminary stage of the proceedings should be completed within six months of their commencement by a decision either to order the enforcement or to deny it (see paragraph 29 above). Once the enforcement is ordered, or in parallel to it, measures may be taken with a view to ensuring voluntary compliance (see paragraph 31 above), failing which forced enforcement is to follow (see paragraph 32 above).

47. On the facts, the proceedings for the enforcement of the 2018 contact order never passed the preliminary stage.

48. While the material at the Court's disposal suggests that the fundamental reason behind the lack of contact between the applicants is the profound disruption of the relationship between the parents – the first applicant and D.K. – which they have been unable to overcome despite external assistance and, even though the first applicant's approach to the enforcement of the 2018 contact order is open to criticism, both the Regional Court and the Constitutional Court established that it was rather D.K. who had been uncooperative and that no delays in the proceedings could be imputed to the first applicant (see paragraphs 13 and 25 above). Yet, as was also recognised by the Constitutional Court, the District Court made use of none of the available means to ensure compliance with the order.

49. At the same time, the Court notes that in the proceedings resulting in the 2018 contact order, the second applicant's best interests were taken into account and that those interests have found a further expression in the assisted contact order of 2021, the enforcement of which is ongoing (see paragraph 11 above). It can accordingly not be doubted that the applicants' contact has been in the second applicant's best interests.

50. Nevertheless, no contact between the applicants has been achieved and, save for one exception, they have not seen each other for more than five years and four months (see paragraph 9 above), the seriousness of which is to be regarded in connection with the second applicant's young age.

51. In view of the considerations above, including the Constitutional Court's own finding in its judgment of 21 September 2021 (see paragraph 24 above), the Court cannot but conclude that the measures taken by the Slovakian courts were not as adequate and effective as could reasonably have been expected in the circumstances of the case for the facilitation of the reunion between the applicants.

52. The next question to be answered is whether in view of the Constitutional Court's judgment in question the applicants have retained their status as victims of a violation of their Article 8 rights for the purposes of Article 34 of the Convention, the general principles for the assessment of that question being summarised, for example, in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, §§ 179-181, ECHR 2006-V). In the constitutional judgment a violation of the applicants' Article 8 rights was recognised and they were awarded compensation in respect of non-pecuniary damage. Further violations of their rights were found by the Constitutional Court in respect of closely related proceedings and the second applicant was awarded further compensation in respect of non-pecuniary damage (see paragraphs 23 and 27 above). However, it remains a fact that no enforcement has been secured and the applicants continue to be separated. In sum, they have retained their victim status and the Government's objection under Article 34 of the Convention must be dismissed (see, *a fortiori*, *Y.Y. and Y.Y. v. Russia*, no. 43229/18, § 51, 8 March 2022, with further references).

53. Moving on to the question of exhaustion of domestic remedies, the Court refers to the applicable general principles as summarised in, for example, *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). Moreover, it reiterates that, in proceedings in which the length of the proceedings has a clear impact on the applicant's family life (and which thus fall to be examined under Article 8 of the Convention), the States are obliged to put into place a remedy which is at the same time preventive and compensatory, since their positive obligation to take appropriate measures to ensure an applicant's right to respect for family life risks becoming illusory if the interested parties only have at their disposal a compensatory remedy, which can only lead to an *a posteriori* award for monetary compensation (see *Kuppinger v. Germany*, no. 62198/11, § 137, 15 January 2015, with further references).

54. In the instant case, in addition to the above-mentioned rulings of a compensatory nature, the Constitutional Court also ordered the acceleration of the proceedings, that ruling nevertheless defining no time-frame or consequence in the event of non-compliance. In that regard, the Government argued that the enforcement proceedings had concluded soon after the constitutional judgment in question (see paragraph 35 above). However, as established in the subsequent course of the Convention proceedings, the decision of 29 September 2022 on the first applicant's appeal against the first-instance decision of 11 May 2022 dismissing her petition for enforcement of the 2018 contact order had in fact been quashed, as a result of which her appeal is apparently still pending (see paragraph 20 above).

55. As established by the Supreme Court, the decision of 29 September 2022 had been taken in manifest ignorance of important procedural developments and was as such tainted by arbitrariness. In the Court's view, this is consonant with the pattern of overall inefficiency of the proceedings before the District Court and the Regional Court concerning the second applicant, with first-instance decisions in this case being routinely quashed on appeal (see, for example, paragraphs 10, 11, 12, 14 and 20 above) and with violations of the applicants' fundamental rights repeatedly being found by the Constitutional Court as well as the Court (see *Janočková v. Slovakia* [Committee], no. 40124/21, 6 February 2023). In sum, no preventive effect of the constitutional judgment of 21 September 2021 has been established, as a result of which the applicants were not required for the purposes of Article 35 § 1 of the Convention to resort to the Constitutional Court anew; the Government's objection to that effect must therefore be dismissed.

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

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

57. The applicants also complained that, in relation to their Article 8 complaint, they had been denied an effective remedy before the Constitutional Court, in violation of Article 13 of the Convention, which 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."

A. Admissibility

58. Referring to their arguments as regards the applicants' complaint under Article 8 of the Convention, the Government contended that that complaint was not arguable for the purposes of Article 13 of the Convention, as a result of which their complaint under the latter provision was manifestly ill-founded.

59. The applicants reiterated their complaint.

60. Having regard to the above finding as regards the applicants' complaint under Article 8 of the Convention, that complaint is clearly "arguable" for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52,

Series A no. 131). The complaint under the latter provision 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

61. The applicants made no submission apart from those set out above.

62. The Government referred to their arguments as regards exhaustion of domestic remedies in relation to the applicants' complaint under Article 8 of the Convention.

63. Reiterating that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant and that the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (see *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, no. 44460/16, § 160, 7 June 2018, with further references), the Court notes that, despite a repeated use of a remedy before the Constitutional Court in relation to the present as well as other related proceedings, no preventive effect has been achieved. It follows from the finding above as regards the Government's objection of non-exhaustion of domestic remedies with regard to the applicants' Article 8 complaint that they were denied an effective remedy for that complaint.

64. There has accordingly been a violation of Article 13, taken in conjunction with Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

67. The Government considered the amount of the claim overstated.

68. The Court notes that the applicants have received some compensation at the domestic level. Ruling on an equitable basis, it awards them EUR 5,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable. The award to the second applicant is to be held for his benefit by the first applicant.

B. Costs and expenses

69. The applicants also jointly claimed EUR 1,042 for the costs and expenses incurred at the domestic level and before the Court.

70. The Government objected, submitting that that claim had not been supported by any evidence.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Ištván and Ištvánová v. Slovakia*, no. 30189/07, § 121, 12 June 2012, with a further reference).

72. In the instant case, the applicants have neither itemised their claim nor substantiated it by any relevant supporting documents. It is accordingly dismissed.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits of the complaint under Article 8 of the Convention the Government's objections of loss of victim status and non-exhaustion of domestic remedies, and *dismisses* them;

2. *Declares* the application admissible;

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

4. *Holds* that there has been a violation of Article 13 in conjunction with Article 8 of the Convention;

5. *Holds*

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

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

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar
Marko Bošnjak
President