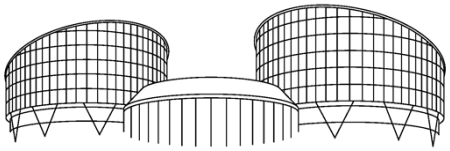

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF M.K. v. LATVIA

(Application no. 26035/23)

JUDGMENT

Art 8 • Positive obligations • Family life • Domestic courts' failure to examine the issue of the applicant's interim contact with the child of her former partner pending the outcome of the main child contact proceedings • No biological ties but close personal ones amounting to a *de facto* parent-child bond • Lack of particular diligence • Denial of contact throughout proceedings, with severe consequences for the applicant's relationship with the child and shaping the outcome of proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 July 2025

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 M.K. v. Latvia,

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

Ivana Jelić*, President*,
Erik Wennerström,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
Raffaele Sabato,
Alena Poláčková*, substitute judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 26035/23) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms M.K. ("the applicant"), on 19 June 2023;

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

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 10 June 2025,

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

INTRODUCTION

1. The case concerns the domestic authorities' failure to determine, in the context of child contact proceedings, the issue of the applicant's interim contact with the child of her former partner, to whom she had no biological ties, but for whom she had cared for several years since his birth while in a relationship with his mother.

THE FACTS

2. The applicant was born in 1983 and lives in Ulbroka. She was represented by Ms D. Rone, a lawyer practising in Riga.

3. The Government were represented by their Deputy Agent, Ms E.L. Vītola.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION

5. In 2012 the applicant started to live with her same-sex partner, Ms E.G.

6. In 2016 E.G. gave birth to a child following artificial insemination. The applicant continued to live with E.G. in the same household and they took care of the child together. The child called the applicant "Mum M.".

7. In February 2022 the applicant and E.G. separated. According to the applicant, after their separation E.G. did not allow her to have any contact with the child.

A. Interim protection orders

8. On 11 February 2022 the applicant applied for an interim protection order to protect her from violent acts by E.G., who she alleged had been physically and emotionally abusive.

9. On 14 February 2022 the Riga District Court ("the District Court") made an order in the applicant's favour.

10. On 27 April 2022 E.G. applied for an interim protection order to protect her from violent acts by the applicant.

11. On 5 May 2022 the District Court made an order in E.G.'s favour. The applicant was prohibited from meeting or contacting E.G.

12. On 8 August 2022, on an application by the applicant lodged on 17 May 2022, the District Court lifted the interim protection order against her.

13. On 1 September 2022 the District Court lifted the interim protection order against E.G.

B. Child contact proceedings

14. Meanwhile, on 17 February 2022 the applicant lodged a claim with the District Court seeking contact with the child. She also applied for an interim contact order allowing her to have contact with the child pending the outcome of the main proceedings.

15. On 25 February 2022 the District Court decided to leave the application without further action, for failure to comply with the requirements set out in the Civil Procedure Law.

16. On 25 March 2022 the applicant rectified the shortcomings identified by the District Court. She relied on section 181(3) of the Civil Law (see paragraph 49 below).

17. On 1 April 2022 the District Court commenced civil proceedings. On 4 April 2022 it ordered E.G. to submit her written observations. On the same date, the District Court invited the R. Guardianship Institution to provide an opinion in the case.

18. On 19 April 2022 E.G. filed her written observations, arguing that it was not open to the court to grant the applicant contact with the child as she was not his parent, nor did she have custody of him. She further alleged that the applicant had often acted contrary to the child's best interests by taking him to see specialists without her knowledge or by trying to set the child against her.

19. On 28 April 2022 the R. Guardianship Institution filed with the District Court the results of a psychological evaluation of the applicant, a psychiatric evaluation of the child, a document from the child's kindergarten and other information.

20. On 16 May 2022 a psychological assessment of the applicant, E.G. and the child was carried out (report no. R-2022/5). It concluded that the child had a secure attachment to the applicant, that he missed her, that his relationship with her was important to him and that he needed routine contact with her.

1. Examination of the applicant's applications for interim contact

(a) Between 17 February 2022 and 6 March 2023

21. On 17 May 2022 the District Court rejected the applicant's application for an interim contact order in respect of the child pending the outcome of the main proceedings, lodged on 17 February 2022 (see paragraph 14 above). Having regard to the opinion of the R. Guardianship Institution, unfavourable to the applicant due to her having no custody rights in respect of the child and to the existence of interim protection orders between her and E.G. (see paragraphs 8-11 above), the District Court held that contact would not be in the interests of the child. In that connection, the District Court referred to the decision of 5 May 2022 prohibiting the applicant from meeting or contacting E.G. (see paragraph 11 above), and the fact that the applicant did not have custody of the child and therefore could not fully ensure the protection of his rights and interests.

22. On 19 May 2022 the applicant lodged an ancillary complaint against that decision.

23. On 6 July 2022 the Riga Regional Court ("the Regional Court") found that the District Court had not sufficiently substantiated its conclusion that granting the applicant an interim contact order in respect of the child would not be in the child's best interests. It quashed the decision of 17 May 2022 and remitted the case to the District Court for a fresh examination.

24. On 25 August 2022 the applicant asked the District Court to hold a hearing on her application for interim contact with the child as soon as possible.

25. On 2 September 2022 the applicant filed with the District Court a copy of its decision of 1 September 2022 whereby the interim protection order against E.G. had been lifted. She submitted that as of 1 September 2022 there

had been no restrictions on her and E.G. meeting or contacting one another (see paragraphs 8-13 above).

26. On 21 September 2022 the District Court notified the applicant that, in view of her request to accelerate the examination of the case, the hearing had been rescheduled for 2 November 2022.

27. On 19 October 2022 the District Court postponed the hearing to 20 February 2023 in view of the fact that E.G. and the child had changed their place of residence and therefore another childcare authority – the Ri. Guardianship Institution – would replace the R. Guardianship Institution in the proceedings.

28. On 21 November 2022 the applicant amended her claim concerning interim contact with the child.

29. On 29 November 2022 the District Court left the claim without further examination, giving the applicant the opportunity to comply with the requirements of the Civil Procedure Law.

30. On 7 December 2022 the applicant filed her amended claim, and on 29 December 2022 the District Court forwarded the claim to E.G. and the Ri. Guardianship Institution.

31. On 20 February 2023 the District Court held a hearing. The applicant was absent for health reasons. Her lawyer withdrew the claim for interim contact on account of the applicant's health condition and her inability to exercise any right to contact with the child at that time.

32. On 6 March 2023 the District Court terminated the part of the proceedings concerning interim contact in accordance with section 223 of the Civil Procedure Law (see paragraph 52 below). The applicant did not appeal, and the decision became enforceable on 16 March 2023.

(b) Between 31 March 2023 and 5 April 2023

33. On 31 March 2023, having been discharged from hospital, the applicant lodged a new claim for interim contact.

34. On 5 April 2023 the District Court refused to accept the claim for examination. The court noted that on 6 March 2023, following the applicant's withdrawal of her interim application on health grounds, it had discontinued those proceedings. The District Court considered that the issue of interim contact had therefore already been examined. It referred in that connection to section 225 of the Civil Procedure Law, which provides that if the proceedings have previously been terminated, a new claim by the same parties regarding the same subject matter and on the same grounds must be refused. The District Court further referred to section 244^{10}(10) of the Civil Procedure Law, which provides that where a court finds no basis for reviewing a decision or adopting a new decision on interim contact, or considers that the case is ready to be examined on the merits, it should reject the application for interim contact.

35. On 12 April 2023 the applicant lodged an appeal against the above-mentioned decision, but on 17 April 2023 the District Court refused to accept it on the basis that the decision of 5 April 2023 was not amenable to appeal (see paragraph 60 below).

(c) Between 7 December 2023 and 8 January 2024

36. On 7 December 2023 the applicant lodged another application for interim contact with the child with the Regional Court.

37. On 8 January 2024 the applicant's representative informed the Regional Court that the applicant wished to leave the question of her interim contact with the child open in view of the forthcoming examination of the main claim for contact on the merits (see paragraph 44 below).

2. Further developments in the main proceedings

38. Meanwhile, on 21 June 2023 the applicant amended her claim in the main proceedings.

39. On 12 July 2023 the Ri. Guardianship Institution filed an opinion with the District Court. It noted that between January and April 2023 the applicant had been undergoing compulsory medical treatment for mental health issues; that the results of her psychological examination showed that she was able to look after the child; and that, since she and the child had lived together for a long period of time, it was in the child's best interests to maintain contact with the applicant.

40. On 17 July 2023 the applicant asked the District Court to accelerate the proceedings. She was, however, informed that owing to the court's workload, that was impossible.

41. On 26 July 2023, given the information provided by the Ri. Guardianship Institution about the applicant's state of mental health, the District Court asked the Riga City Court to provide it with a copy of the compulsory treatment order in respect of the applicant.

42. On 27 October 2023 the District Court dismissed the applicant's claim for contact, referring to the fact that the child was not expressing any desire to meet her, the ongoing conflict between the parties, the applicant's setting the child against E.G. and the lack of information on whether the applicant's health had improved.

43. On 15 November 2023 the applicant appealed against the above-mentioned judgment to the Regional Court.

44. On 21 February 2024 the Regional Court reversed the judgment of 27 October 2023 and granted the applicant contact with the child. The Regional Court found that "family life" existed between the applicant and the child, with whom the applicant had lived in a common household and in whose care she had participated, including financially, for a long time – from the child's birth in 2016 until 2022. Having examined the report on the

psychological examination of the applicant, the child's opinion (obtained on 19 January and 6 February 2023) and the opinions of the guardianship institutions, and having dismissed E.G.'s objections as unsubstantiated, the Regional Court concluded that the applicant's contact with the child would be in the latter's best interests. However, in view of the fact that the applicant and the child had not had any contact for a long time following the applicant's separation from E.G., the Regional Court considered that, in order to avoid any psychological harm to the child, the resumption of such contact should be gradual and should take place in a safe environment and, for the first year, in the presence of a contact person (a psychologist). The court ordered that for the first six months, starting from 7 March 2024, contact should take place every second Thursday from 4 p.m. to 5 p.m.; for the following six months, starting from 5 September 2024, contact should take place every Thursday from 4 p.m. to 5 p.m.; and thereafter it would take place on the second Saturday of every month from 10 a.m. to 2 p.m.

45. Regarding the lack of contact between the applicant and the child pending the outcome of the main proceedings, the Regional Court criticised the District Court for having taken three months, instead of one month as provided for in domestic law (see paragraph 54 below), to make the interim contact order on 17 May 2022 (which had been unfavourable to the applicant). It held that that delay had been particularly damaging for the child, for whom, at such a young age, every day and every moment spent with family members was important. Had the District Court made an interim contact order in favour of the applicant within one month, the child would not have suffered the harm of a broken relationship with a close family member. The Regional Court further noted the lack of promptness in the examination of the issue of interim contact after the decision declining to make an interim contact order had been quashed by it on 6 July 2022: no further hearing had been scheduled by the District Court until the end of August (and the hearing had ultimately taken place on 28 December 2022), and no new interim order had been made. The judgment of 21 February 2024 entered into force on the same day.

46. On 21 March 2024 the applicant lodged an appeal on points of law. The case file does not contain any information about the outcome of those proceedings.

RELEVANT DOMESTIC LAW AND PRACTICE

I. THE CONSTITUTION

47. The Latvian Constitution provides that everyone has the right to inviolability of his or her private life, home and correspondence (Article 96).

48. It provides that the State is to protect and support marriage as a union between a man and a woman, the family, and the rights of parents and of the child (first sentence of Article 110).

II. THE CIVIL LAW

49. Section 181(3) of the Civil Law provides that a child has the right to maintain personal relations and direct contact with his or her brothers, sisters and grandparents, as well as with other persons with whom he or she has lived for a long time in a common household, if that corresponds to the best interests of the child (contact rights).

III. THE CIVIL PROCEDURE LAW

50. The Civil Procedure Law provides that a judge should refuse to accept a claim if, in a dispute between the same parties, on the same subject matter and on the same basis, a judgment of a court or decision to discontinue legal proceedings has become enforceable as a result of the claimant's withdrawal of the claim (section 132(1)). The judge's decision may be appealed against in accordance with the procedures set out in this Law (section 132(3)).

51. In respect of claims left without further action, if a claimant corrects the deficiencies within the given time-limit, the claim is to be regarded as having been lodged on the date when it was first submitted to the court (section 133(3)).

52. The court must terminate proceedings if the claimant withdraws his or her claim (section 223).

53. Proceedings must be terminated by a reasoned court decision. An ancillary complaint may be lodged against a decision to discontinue proceedings (section 224).

54. If proceedings have been discontinued, no further application to the court regarding the dispute between the same parties, on the same subject matter and on the same basis is permissible (section 225).

55. Cases concerning custody and contact are to be examined by the court in accordance with the general provisions, subject to the exceptions provided for in Chapter 29^1 of the Civil Procedure Law (section 244^{10}(10)).

56. On a request by the parties, a court or judge must determine, for the period until judgment has been given, the procedures for the execution of interim contact orders in respect of a child (section 244^{10}(1)).

57. An application for an interim contact order must be examined by a court or a judge within one month from the date of its receipt. It must be enforced without delay (section 244^{10}(7)).

58. An ancillary complaint can be lodged against a court's decision ordering interim contact (section 244^{10}(8)).

59. Upon a reasoned request by a party, the court may review a decision determining the issue of interim contact, provided that the circumstances have changed significantly and that it is in the best interests of the child to do so. Such a review is not subject to appeal (section 244^{10}(9)).

60. If a court does not find a basis for reviewing the decision or for adopting a new interim contact order, or considers that the main case is ready to be examined on the merits, it should refuse to accept the application for an interim contact order. The court's refusal to accept the application for an interim contact order is not subject to appeal (section 244^{10}(10)).

61. Parties to proceedings may appeal against a decision of a first-instance court or an appeal court in proceedings separate from an appeal against the relevant judgment, by lodging an ancillary complaint when such a possibility is provided for in this Law, or when the court's decision hinders the proceedings (section 441).

IV. LAW ON THE CONSTITUTIONAL COURT

62. Section 19^{2}(1) of the Law on the Constitutional Court provides that any person who considers that his or her fundamental rights as defined in the Constitution are infringed by legal provisions that are not in compliance with a provision of a superior legal force may lodge a constitutional complaint with the Constitutional Court.

63. A constitutional complaint must contain, *inter alia*, the reasons for alleging a violation of the applicant's fundamental rights and a statement to the effect that all ordinary remedies have been exhausted or that no such remedies exist (section19^{2}(6)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicant complained under Articles 6 and 8 of the Convention of a violation of her right to respect for her private life on account of the failure of the domestic authorities to grant her, pending the outcome of child contact proceedings, interim contact with the child of her former partner, with whom she had lived for several years.

65. The Court reiterates that while Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, among other authorities, *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I).

66. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court finds it appropriate

to examine the applicant's complaint under Article 8 of the Convention only. The relevant provision reads as follows:

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

A. Admissibility

67. The Court observes at the outset that the examination by the domestic courts of the issue of the applicant's interim contact with the child within the framework of the child contact proceedings consisted of three distinct periods. The first period started on 17 February 2022, when the applicant initially lodged an application for an interim contact order, and ended on 6 March 2023, when the District Court terminated those proceedings following the applicant's withdrawal of her application on health grounds (see paragraphs 14-32 above). The second period started on 31 March 2023, when, having been discharged from hospital, the applicant lodged a new application for an interim contact order and ended on 5 April 2023, when the District Court refused to accept that application for examination (see paragraphs 33-34 above). The third period started on 7 December 2023 – that is, after the application was lodged with the Court – when the applicant lodged another application for an interim contact order with the Regional Court, and ended on 8 January 2024, when she informed the Regional Court that she wished to leave the matter open pending the examination of her claim in the main contact proceedings (see paragraphs 36-37 above).

1. The first period (17 February 2022 - 6 March 2023)

68. The Government made preliminary objections regarding the admissibility of the applicant's complaint in so far as it concerned the first period, in particular, on grounds of non-exhaustion of the available domestic remedies and failure to comply with the four-month rule. The Court does not consider it necessary to address these objections since this part of the application is in any event inadmissible for the following reasons.

69. The Court observes that the applicant's withdrawal of her application for interim contact, which had been lodged on 17 February 2022, made it unnecessary for the domestic courts to examine that application, and therefore amounted to a waiver of her right to benefit from any procedural safeguards established under domestic law. The Court notes in this connection that a waiver of a right guaranteed by the Convention is not valid unless it has been given in full knowledge of the facts, that is, on the basis of informed consent and without constraint, and attended by minimum safeguards commensurate

with its importance (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 202, ECHR 2007-IV; *Dvorski v. Croatia* [GC], no. 25703/11, § 100, ECHR 2015; and *Bože v. Latvia*, no. 40927/05, § 69, 18 May 2017). Turning to the present case, the Court notes that the applicant's withdrawal was based on the fact that had she been granted any interim contact with the child, she would have been unable to exercise that right, owing to her health condition which required hospitalisation. The waiver of the applicant's rights was given by her lawyer and was explicit, voluntary, given in full knowledge of the facts and attended by the necessary safeguards. It remained open to the applicant to lodge a new application for interim contact at any time before a judgment was given in the main contact proceedings (see paragraph 56 above). In such circumstances, the Court considers that in so far as the applicant's complaint concerns the period between 17 February 2022 and 6 March 2023, it is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The second and third periods (31 March – 5 April 2023 and 7 December 2023 – 8 January 2024)

(a) Exhaustion of domestic remedies

70. The Government submitted that the applicant had failed to exhaust the available domestic remedies with regard to the second period. They argued that the applicant should have lodged a constitutional complaint against the decision of 5 April 2023 refusing to accept for examination her application for interim contact, in order for the Constitutional Court to review the compatibility of section 244^{10} of the Civil Procedure Law with Articles 96 and/or 110 of the Constitution.

71. The applicant disagreed with the Government. She argued that she had lodged an appeal against the decision of 5 April 2023, but that it had not been accepted by the District Court, which had referred to section 244^{10}(10) of the Civil Procedure Law (see paragraph 60 above). At the same time, section 441 of the Civil Procedure Law provided for the possibility of bringing an ancillary complaint against a decision of a first-instance court not only in situations directly provided for by the Law, but also when the decision in question hindered the progress of the case (see paragraph 61 above). The decision of 5 April 2023 refusing to accept for examination the applicant's application for an interim contact order had hindered the progress of the case as it had denied her the possibility of having the issue of interim contact with the child determined by the court pending the outcome of the main contact proceedings.

72. The Court reiterates that under Article 35 § 1 of the Convention, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal

requirements of domestic law and within the prescribed time-limits. The only remedies to be exhausted are those which are effective and were available in theory and in practice at the relevant time, that is to say, they must have been accessible and capable of providing redress in respect of the complaint and must have offered reasonable prospects of success (see *Milovanović v. Serbia*, no. 56065/10, § 102, 8 October 2019, with further references).

73. The Court has previously examined the scope of the Constitutional Court's review in Latvia (see *Elberte v. Latvia*, no. 61243/08, §§ 78-79, ECHR 2015, with further references). It noted in that case that the Constitutional Court examined, *inter alia*, individual complaints challenging the constitutionality of a legal provision or its compliance with a provision having superior legal force. An individual constitutional complaint could be lodged against a legal provision only when an individual considered that the provision in question infringed his or her fundamental rights as enshrined in the Constitution (see paragraphs 62-63 above). The procedure of lodging an individual constitutional complaint could not therefore serve as an effective remedy if the alleged violation resulted only from the erroneous application or interpretation of a legal provision which, in terms of its content, was not unconstitutional.

74. Turning to the circumstances of the present case, the Court notes that the applicant's complaint concerning the failure of the domestic courts to determine the issue of interim contact with the child of her former partner pending the outcome of the main child contact proceedings does not relate to the compatibility of one legal provision with another having superior force, but rather to the application and interpretation of legal provisions by the domestic courts. The constitutional proceedings, therefore, were not capable of affording redress in respect of the breaches alleged before the Court, and the applicant was not required to pursue them for the purposes of exhaustion of domestic remedies. The Government's objection must therefore be dismissed.

(b) Victim status

75. In their additional observations, submitted after the main contact proceedings had ended in the applicant's favour, the Government argued that the applicant had lost her victim status. They relied on the appeal decision of 21 February 2024, by which the Regional Court had found that the District Court's handling of the applicant's application for interim contact with the child might have affected her right to maintain contact with the child, and had granted her contact with him. The domestic authorities had thus essentially acknowledged the alleged violation and had remedied the situation by granting the applicant's claim in the main proceedings.

76. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at

all stages of the proceedings under the Convention (see, *inter alia*, *Siliadin v. France*, no. 73316/01, § 61, ECHR 2005-VII). It further reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and subsequently afforded appropriate and sufficient redress for the breach of the Convention. The Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached, the reasons given for the decision and the persistence of the unfavourable consequences for the person concerned after that decision has been made (see *Milovanović*, cited above, § 96, with further references).

77. Indeed, the Court notes that, in its appeal decision of 21 February 2024, the Regional Court criticised the District Court for having taken three months, instead of one month as provided for in domestic law, to make the interim contact order of 17 May 2022 (which had been unfavourable to the applicant), and for its lack of promptness in the examination of the issue of interim contact after the quashing of that refusal on 6 July 2022, which the Regional Court found particularly damaging to the relationship between the applicant and the child (see paragraph 45 above). The Court observes, however, that the acknowledgment of the violation by the Regional Court concerned the applicant's first application for an interim contact order and that this has been declared inadmissible above (see paragraph 69). As regards the ensuing two periods, no such acknowledgment was made by the national authorities, either expressly or in substance, for which reason the Court considers that the applicant retains her victim status.

78. Having regard to the foregoing, the Court dismisses the Government's objection.

3. Conclusion

79. It follows from the above that the applicant's complaint in so far as it concerns the second and third applications for an interim contact order (the second and third periods) is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

80. The applicant submitted that at no point during the contact proceedings had the domestic courts determined her application for an interim contact order in respect of the child. Despite explicit provision in the domestic law requiring that an application for an interim contact order be considered

by a court or judge within one month from the day of its being lodged, her application had not been examined for the entire length of the child contact proceedings. She had waited to no avail for a year after lodging her initial application for an interim contact order and had then fallen ill and had had to withdraw it. Following her discharge from hospital, she had lodged a new application for an interim contact order; however, in violation of the domestic law, the District Court had refused to determine it. The applicant argued that the Civil Procedure Law provided for the possibility of obtaining several interim orders within the framework of the same child contact proceedings if that was in the best interests of the child, and for the possibility of withdrawing an application and lodging a new one at a later stage of the proceedings. She gave examples of several cases where claimants in domestic proceedings had lodged more than one application for interim contact within the same child contact proceedings, which had been examined and granted by the Latvian courts. The domestic courts had thus breached her right to maintain personal relations and to have direct contact with the child for two years, a very long period of time in a child's life, especially bearing in mind the evidence in the case file to the effect that the child had a secure attachment to the applicant and wanted to see her (see paragraph 20 above). The applicant further submitted that the domestic courts' handling of the issue of her interim contact with the child had stemmed from a homophobic attitude towards her and had amounted to a violation of her right to respect for her private life under Article 8 of the Convention.

81. The Government submitted that the applicant's relationship with the child fell under the notion of "family life" and that the domestic law provided for the possibility for a person who had developed a *de facto* family link with a child to apply for measures aimed at preserving that link (contact and interim contact pending the outcome of the contact proceedings, where such contact corresponded to the best interests of the child – see paragraphs 49 and 56 above). Having made their arguments regarding the period between 17 February 2022 and 6 March 2023 – which has been declared inadmissible above (see paragraph 69) – the Government further argued that the decision of 5 April 2023 refusing to accept for examination the applicant's second application for an interim contact order in respect of the child had been primarily based on the fact that the District Court was ready to examine the case on its merits (section 244^{10}(10) of the Civil Procedure Law), which it did on 27 October 2023. They argued that such a decision remained within the discretion of the domestic authorities, that it had been taken in the best interests of the child so as to avoid delaying the main contact proceedings, and that it had remained open to the applicant to lodge another application for interim contact rights to the appeal court, which she had done on 7 December 2023. The Government denied the applicant's allegation to the effect that the handling of the issue of her interim contact with the child had been driven by any homophobic attitudes, for lack of any evidence and the applicant's failure

to raise that argument in her appeal on points of law. The decision-making process had been fair and had afforded due respect to the interests safeguarded by Article 8. The State had therefore complied with its positive obligations and had struck a fair balance between the interests of all those involved in the proceedings.

2. The Court's assessment

82. The Court has declared admissible the applicant's complaint concerning the domestic courts' failure to determine the issue of her interim contact with the child of her former partner, to whom she had no biological ties, pending the outcome of the main child contact proceedings in the period starting from 31 March 2023. It will now proceed to examine this complaint in context, which will inevitably mean having regard to earlier events to some extent (see *Uzbyakov v. Russia*, no. 71160/13, § 98, 5 May 2020, with further references).

83. The Court notes at the outset that, whereas the applicant considered that her relationship with the child fell under the notion of "private life", the Government submitted that their ties amounted to "family life" within the meaning of Article 8 of the Convention.

84. While the relationship developed between the applicant and the child can fall under the notions of both "private" and "family" life within the meaning of Article 8 (see *Vinškovský v. the Czech Republic* (dec.), no. 59252/19, § 42, 5 September 2023), the Court will examine it under the ambit of "family life" (see *X, Y and Z v. the United Kingdom*, 22 April 1997, §§ 36-37, *Reports of Judgments and Decisions* 1997-II, and *Simona Mihaela Dobre v. Romania*, no. 8361/21, § 54, 21 March 2023). It notes that "family life" under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other *de facto* family ties. The existence or non-existence of "family life" for the purposes of Article 8 is essentially a question of fact that depends on the real existence in practice of close personal ties. Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* family ties. That may be so in the case of a parent's partner/spouse or former partner/spouse who is neither the child's biological nor legal parent but who takes care of the child or participates in his or her upbringing, or did so in the recent past – such a relationship being often referred to as "social parenthood"(see *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 140, 24 January 2017; *X and Others v. Austria* [GC], no. 19010/07, §§ 95-96, ECHR 2013; and *Vinškovský*, cited above, § 40; with further references).

85. In the present case, the Court observes that the applicant, together with the child's biological mother E.G. (with whom she had started living in 2012), cared for the child for six years following the child's birth in 2016 and until the applicant's separation from E.G. in February 2022. It was established by

the domestic authorities that the child had developed strong emotional ties with the applicant and addressed her as "Mum M.". These circumstances clearly demonstrate the existence, at the time in question, of close personal ties between the applicant and the child that amounted to a *de facto* parent-child bond constituting "family life" within the meaning of Article 8 of the Convention. The national authorities approached the case in the same way (see paragraph 44 above).

86. In the case at hand, the Court notes that the alleged breach of Article 8 is the consequence of the applicant's separation from the child's biological mother and does not stem directly from a decision or an act of a public authority (see *Callamand v. France*, no. 2338/20, § 32, 7 April 2022, and *Honner v. France*, no. 19511/16, § 53, 12 November 2020). Indeed, the domestic courts did not act to limit or prevent the applicant's contact with the child; rather, they intervened *ex post facto* when dealing with the applicant's application lodged under section 181(3) of the Civil Law.

87. It follows that the present application is to be assessed in the light of the State's positive obligations under Article 8. Within this context, the Court's task is to review whether a fair balance was struck between the competing interests and Convention rights at stake, taking into account not only the applicant's right to respect for her family life but also the best interests and the rights of the child under Article 8 and the rights of his biological mother. In doing so, the Court must bear in mind that the child's best interests ought to be paramount, that the State authorities enjoy a certain margin of appreciation in this domain, and that exceptional diligence should be exercised by the domestic authorities in view of the risk that the passage of time may result in a *de facto* determination of the matter. The latter duty forms part of the procedural requirements implicit in Article 8 (see *Callamand*, § 35; *Honner*, § 55; *Vinškovský*, § 45, all cited above; and *Popadić v. Serbia*, no. 7833/12, § 85, 20 September 2022).

88. The Court reiterates that its task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding, in particular, contact issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their discretionary powers (see *Jírová and Others v. the Czech Republic*, no. 66015/17, § 122, 13 April 2023, with further reference).

89. The Court first observes that section 181(3) of the Latvian Civil Law allowed persons who had lived with a child in a common household for a long period, whether they were biologically related or not, to apply for a contact order, with the aim of maintaining their *de facto* family ties with that child (see paragraph 49 above). Furthermore, by virtue of section 244^{10}(1) of the Latvian Civil Procedure Law, for a period until the delivery of a judgment in those proceedings, on application by the parties, a court was to determine the issue of interim contact in respect of the child in question (see paragraph 56 above).

90. The Court observes that the applicant made use of the above-mentioned opportunity by lodging with the District Court, on 31 March 2023, a second application for an interim contact order in respect of the child in the main child contact proceedings, which had been pending before the domestic courts since 17 February 2022. However, on 5 April 2023 the District Court refused to examine that application, referring to sections 225 and 244^{10}(10) of the Civil Procedure Law (see paragraphs 54 and 60 above). The District Court held, in particular, that it had already determined the issue of the applicant's interim contact with the child in its decision of 6 March 2023 (see paragraph 34 above). The Court notes, however, that on 6 March 2023 the District Court did not examine the applicant's application for an interim contact order in respect of the child on the merits. The decision in question consisted merely in the termination of the previous proceedings for interim contact following the applicant's withdrawal of her application in view of her inability at the material time to exercise her right to interim contact, on health grounds.

91. The Court further notes the Government's submission to the effect that the District Court's refusal of 5 April 2023 had been based mainly on the fact that it had been ready to examine the case on the merits and the examination of the issue of the interim application would have unnecessarily delayed the main proceedings, which would have run counter to the best interests of the child (see paragraph 81 above). However, aside from the reference to section 244^{10}(10) of the Civil Procedure Law, there is nothing in the text of the decision which would suggest that that was indeed the main ground on which the District Court had refused to determine the applicant's application for interim contact.

92. Even assuming that that was the case, the Court notes that taking into account the requirement of the domestic law obliging a court to determine an application for interim contact within one month from the day of its being lodged (see paragraph 57 above) – reflecting the special urgency of the interim measure in question, aimed at ensuring that the main proceedings do not lose their purpose – the refusal to examine the applicant's application for interim contact on the grounds that the District Court was ready to examine the merits of her claim in the main proceedings would imply that such examination was either imminent or expected to take place within a time frame not exceeding one month. The Court notes, however, that it was not until over six months later, on 27 October 2023, that the examination of the case on the merits took place.

93. It is relevant in that connection that by then the applicant had been deprived of all contact with the child since February 2022, and that the handling of the issue of her interim contact with the child in the preceding period – from February 2022 to March 2023 – had been criticised by the Regional Court as having been particularly damaging to the child's relationship with the applicant (see paragraph 45 above). The fact that the

relationship between the applicant and the child had been broken as a direct consequence of the absence of any contact since the applicant's separation with E.G. led the Regional Court – which had quashed the lower court's unfavourable judgment of 27 October 2023, relating to the main contact proceedings, on appeal – to find that it was necessary to restore contact between the applicant and the child gradually, so as to minimise the risk of causing him any psychological harm. In particular, on 21 February 2024 the Regional Court limited contact to one hour every two weeks for the first six months, to take place in the presence of a psychologist, one hour weekly for the next six months, also in the presence of a psychologist, and only then without the presence of a psychologist for four hours once every two weeks (see paragraph 44 above).

94. The Court notes the applicant's argument to the effect that the handling of her request for interim contact with the child by the District Court had been driven by homophobic attitudes. However, since this allegation was neither raised at the domestic level, nor as a part of or an elaboration on her original complaint under Article 8, the Court will not consider it.

95. In view of its findings above, the Court considers it unnecessary to further examine the handling of the applicant's third application for interim contact with the child by the Regional Court in the period between 7 December 2023 and 8 January 2024.

96. Having regard to the foregoing, the Court considers that by failing to examine the issue of the applicant's interim contact with the child pending the outcome of the main child contact proceedings, the domestic authorities (the District Court, in particular) failed to comply with their positive obligation under Article 8 of the Convention and the procedural requirement of particular diligence enshrined therein. As a result, the applicant was denied the right to contact with the child throughout the main proceedings, which had severe consequences for the relationship between the applicant and the child and shaped the outcome of the proceedings.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

99. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government considered the amount claimed unreasonable and unsubstantiated. They further submitted that, should the Court decide to make an award to the applicant in respect of non-pecuniary damage, it should take into account the fact that, by virtue of the Regional Court's appeal judgment, the applicant had been afforded the opportunity to restore her broken relationship with the child.

101. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

102. The applicant also claimed EUR 70 for the costs and expenses incurred before the domestic courts.

103. The Government noted that the applicant had failed to provide any evidence of having incurred the above expenses.

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

105. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds the Government's objections with respect to the costs before the domestic courts justified. It therefore rejects the claim for costs and expenses incurred in the domestic proceedings.

FOR THESE REASONS, THE COURT,

1. *Declares*, by majority, the application admissible, in so far as it relates to the period from 31 March 2023 onwards, and the remainder of the application inadmissible;

2. *Holds*, by 6 votes to 1, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by 6 votes to 1,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Davor Derenčinović and Anna Adamska-Gallant are annexed to this judgment.

CONCURRING OPINION OF JUDGE DERENČINOVIĆ

1. I agree with the majority that the applicant's rights under Article 8 of the Convention were infringed. However, like my colleague Judge Adamska-Gallant, I had difficulty supporting the majority's decision to declare the part of the application concerning the period between 17 February 2022 and 6 March 2023 manifestly ill-founded.

2. Under the domestic legislation, an application for an interim contact order must be examined by a court or a judge within one month from the date of its receipt and such an order must be enforced without delay (section 244^{10}(7)) (see paragraph 57 of the judgment). A very short deadline is understandable in the context of deciding on interim contact in child-parent relationships. Indeed, many domestic systems provide that the competent authorities must act with due diligence and without delay in such cases.

3. In the case before the Court, the time taken to decide on interim contact from 17 February 2022 to 6 March 2023 was excessively long and was thus not only in breach of domestic law but also contrary to the standards established by the Court. Within that timeframe, there were long periods of unexplained and objectively unjustified inaction on the part of the domestic authorities (for instance the period from 6 July 2022 to 20 February 2023).

4. This problem was highlighted by the Regional Court, which held that "delay had been particularly damaging to the relationship between the applicant and the child" and "particularly damaging for the child, for whom, at such a young age, every day and every moment spent with family members was important" (see paragraph 45 of the judgment).

5. The fact that the applicant's lawyer withdrew the application for interim contact on account of the applicant's health condition and her inability to exercise any right to contact with the child at that time (see paragraph 31 of the judgment) does not, in my opinion, automatically justify *ex post facto* the domestic authorities' failure to decide on her request in a timely manner. In other words, the withdrawal itself does not render the complaint manifestly ill-founded. However, it could raise the issue of *locus standi*. Therefore, the position outlined above is without prejudice to any other grounds for inadmissibility put forward by the Government but not addressed by the Court (see paragraph 77 of the judgment).

DISSENTING OPINION OF JUDGE ADAMSKA-GALLANT

I did not join the majority in this case and would therefore like to present the reasons for my decision not to do so.

At the outset, I wish to emphasise that exceptional diligence must be exercised in cases concerning a parent's relationship with their child, given the risk that the passage of time may result in the matter being determined *de facto* (see *T.C. v. Italy*, no. 54032/18, § 58, 19 May 2022). I have no doubt that such diligence was sorely lacking in the case at hand.

I respectfully disagree with the Court's decision to declare the application admissible from 6 March 2023 onwards. The applicant lodged a complaint with the Court against the respondent State on 19 June 2023 in response to two sets of proceedings for an interim contact order: the first set was initiated on 17 February 2022 and discontinued in a decision delivered on 6 March 2023, while the second set commenced with a new application lodged with the District Court on 31 March 2023, which was terminated without consideration in a decision of 5 April 2023. The appeal against that decision was refused in a decision of 17 April 2023.

In the course of the first set of proceedings, there were long periods of unexplained and unjustifiable inaction by the domestic authorities. In addition, it would appear that, in rejecting the application for an interim contact order (later challenged in the appeal proceedings), the District Court did not duly reflect on the psychologist's opinion that there was a need to re-establish contact between the child and the applicant. Finally, the decision of 17 April 2023 did not take into consideration the fact that there had been no decision on the merits, since the initial proceedings had been discontinued on formal grounds. It is therefore clear that, despite its obligation to decide on the application for an interim contact order within one month, the domestic court failed to do so and, in the end, no decision on the merits was taken at all.

Similarly, like Judge Derenčinović, I am of the opinion that the withdrawal of the application for an interim contact order in the first set of proceedings does not suffice to justify the State's failure to fulfil its positive obligations. In this context, I also find it necessary to consider the circumstances in which the applicant's withdrawal took place, namely, that it was effected independently by her lawyer, seemingly without sufficient consultation with the applicant, who was hospitalised at the time for mental health reasons. Immediately after her release from hospital, a fresh application for interim contact was filed. In my view, these circumstances, considered as a whole, justified an examination of this first period in the context of an alleged violation of Article 8 of the Convention.

Bearing this in mind, I am of the opinion that it was not appropriate to analyse the State's subsequent actions, once the proceedings for an interim contact order had been terminated. I find this premature because the main

proceedings in this case carried on before the national courts after that time. They resulted in the judgment of the Regional Court re-establishing contact between the applicant and her child as of 7 March 2024. In this connection, it is significant, in my view, that the Regional Court strongly criticised the conduct of the proceedings before the first-instance court, underscoring the importance of the child's well-being. Eventually, the State came to fulfil its positive obligations to ensure effective protection of the right to respect for private and family life under Article 8 of the Convention.