



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

FIRST SECTION

CASE OF HROMADKA AND HROMADKOVA v. RUSSIA

(Application no. 22909/10)

JUDGMENT

STRASBOURG

11 December 2014

FINAL

11/03/2015

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

In the case of Hromadka and Hromadkova v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Julia Laffranque,

Paulo Pinto de Albuquerque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 22909/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Zdenek Hromadka (“the first applicant), on his own behalf and on behalf of his daughter, Ms Anna Valerie Hromadkova (“the second applicant”), who holds both Czech and Russian citizenship, on 31 March 2010.

2. The applicants were represented by Mr Yu. Kiryushin, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that by failing to recognise and enforce the final judgment of a Czech court granting the first applicant custody of his daughter, the second applicant, who had been wrongfully removed from the Czech Republic by the child’s mother, O.H., and by failing to secure contact between the applicants in Russia, the Russian authorities violated their right to respect for their family life guaranteed by Article 8 of the Convention.

4. On 7 September 2012 the application was granted priority treatment (Rule 41 of the Rules of Court), and on 5 November 2012 it was communicated to the Russian Government.

5. On 19 December 2013 the Czech Government declared that they would exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1970 and lives in Prague, the Czech Republic. The second applicant was born in 2005. She currently lives in Russia with O.H., her mother.

7. On 5 June 2003 the first applicant married a Russian national, O.H. The couple decided to settle in Prague.

8. On 28 January 2005 their daughter, the second applicant, was born.

9. In 2007 the first applicant and O.H. decided to separate.

10. On 1 November 2007 O.H. filed for divorce in the Czech Republic. Both O.H. and the first applicant sought custody of the child.

11. In April 2008 O.H., unbeknownst to the first applicant, obtained a one-month Russian visa for the second applicant, and on 17 April 2008, together with the latter, left for Russia (Vologda Region). Upon the expiry of the visa on 12 May 2008 O.H. did not bring the second applicant back to the Czech Republic. Instead, on 20 May 2008 she obtained a temporary residence permit for the second applicant from the Russian Federal Migration Service, and on 27 May 2008, Russian citizenship for the latter. On an unspecified date O.H. and the second applicant left for St Petersburg.

12. On 7 July 2009 O.H. applied to the Federal Security Service Border Control (*Пограничное управление Федеральной службы безопасности Российской Федерации по городу Санкт-Петербургу и Ленинградской области*) in order to restrict the second applicant's travel outside Russia.

13. As of 10 July 2009 the second applicant's travel abroad was restricted.

14. Since 29 May 2011 the first applicant has had no contact with the second applicant, because O.H. prevented him from either seeing the second applicant or communicating with her by telephone. The Russian authorities have been unable to establish O.H.'s and the second applicant's whereabouts since then.

A. The proceedings in the Czech Republic

1. The interim measure granting the first applicant temporary custody of the child

15. The interim decision of Prague 4 District Court of 30 April 2008 as amended by the interim decision of Prague Municipal Court of 21 July 2008 granted the first applicant temporary custody of the second applicant pending the outcome of the divorce proceedings. The Prague Municipal Court thereby obliged O.H. to hand the child over to the first applicant, not to leave the Czech Republic and not to remain outside the territory of the

Czech Republic with the minor. The interim decision entered into force on 8 August 2008.

2. The final judgment granting the first applicant custody of the child

16. On 2 June 2011 Prague 4 District Court issued a final custody judgment by which custody of the second applicant was granted to the first applicant. O.H. was obliged to pay the first applicant 5,000 Czech korunas – about 200 euros (EUR) – monthly in alimony. The court held as follows:

“The father loves [his daughter] very much; in the opinion of the experts he is better developed emotionally in comparison to the mother, is more capable of self-control and handling [stress] so as to not spoil the relationship between the mother and [the child] or otherwise turn [the child] against her mother. It was established that the interests of [the child] require that she be placed in her father’s care [as he] was established to be a more suitable caregiver; at the same time it was established that as a result of [the child’s] separation from her father the former’s psychological well-being [has been affected]. It was established that for the last three years the father, unlike the mother, has been cooperating with [the custody and guardianship authority], and the [guardian] had therefore had a real possibility to examine the father’s living conditions and his situation; ... it was established that he can provide [the child] with normal accommodation ... The father is financially stable, which enables him to provide [the child] with the material [items] and non-material values necessary for her health, mental, cultural and physical development. [The child] will soon go to primary school and the father, in view of his education and indisputable interest in [the child], is capable of providing her, along with the possibility of school education, with everything she needs. ... Despite the fact that the father was and is still being prevented from communicating with [the child], he [supports the child financially by giving money directly to the mother and making deposits into the child’s bank account], and in addition to alimony the father gives [the child] presents whenever he has the possibility to meet her.

The mother, on the contrary, was characterised as unstable, authoritative, unfriendly to the father and inclined to impulsive aggression and rash behavior. While carrying out her parental duties she harms [the child], she has abused her parental authority since November 2007 at least ... Therefore, she acts both unlawfully and contrary to the interests of [the child] and the court’s decision. While exercising her parental authority the mother consciously and purposefully acts in total disregard of the recommendations of the experts and her lawful duties; she completely prevented communication between the father and [the child], at first without any reason. Subsequently, under an invented pretext, in April 2008 she took [the child], without the permission of the father, the court or [the custody and guardianship authority] abroad to the Russian Federation, where she has kept [the child] until now. At the same time the mother has not complied with the decision of the court pursuant to which she should have handed [the child] over to the father, to render to the father [the child’s] travelling passport and not to remain [with the child] outside the territory of the Czech Republic. [It was established that the decision in question] was served on [the mother] first of all through her representative in the Czech Republic, and thereafter to her personally in the course of the proceedings at the courts in St Petersburg and Moscow. Furthermore, the mother refuses to send an invitation for visiting Russia to the father, [who] has to go through demanding procedures to obtain Russian entry visas, and when the father succeeds in obtaining a visa and goes to Russia the mother often hides [the child] and refuses to communicate with the

father[.] [S]he does not even allow the father to talk to [the child] on the telephone, and even if she lets them talk she purposefully manipulates the father's and [the child's] mindset according to the situation. Therefore, the court believes that the mother has, in disregard of the law of the Czech Republic, willfully interfered with [the child's family life], her right to know her father and her right to be in her father's custody. She has interfered with [the child's] right to freedom of movement and to choose her place of residence, and her right to free entry to her homeland, the Czech Republic. Thereby the mother has breached the rights guaranteed by the State in the framework of Conventions on Human Rights, including the Convention on the Rights of the Child. The mother, unbeknownst to the father, the court or [the custody and guardianship authority] and without their consent in contravention of the legal order of the Czech Republic, applied to Russian administrative authorities to grant [the child], a national of the Czech Republic, Russian citizenship, on the basis of which in a record-breaking short term of five days the latter was granted Russian citizenship.

...

Regarding the father's claim for termination of the mother's parental rights, the court has decided to dismiss it [since termination of parental rights is the most serious interference in relations between parents and children, when the violation of parents' duties is so serious that the termination of parental rights is the only possible solution to protect the interests of the child]. The court has arrived at the conclusion that termination of the mother's parental rights would be in contradiction with the father's own statement in his final speech that [the child] should have both parents.

..."

17. The case was examined in the absence of O.H. The District Court established that on 10 May 2011 consul T. of the Czech Consulate General informed O.H. by telephone about the venue and the time of the hearing, that is, 2 June 2011 at 1 p.m. in Prague 4 District Court, but O.H. did not say anything in reply and hung up. Nobody answered the phone when the consul tried to reach O.H. again. The telephone was subsequently switched off. The International Department for Civil Matters of the Czech Ministry of Justice did not receive confirmation from the Russian authorities on whether the request of October 2010 for the delivery of a court summons to O.H. had been complied with. The District Court therefore considered that O.H. had been duly notified and that she had failed to appear in court without valid reason. It therefore proceeded in her absence.

18. On 10 February 2012 that judgment became final.

19. The judgment remains unenforced to this day.

B. The proceedings in Russia

1. Proceedings relating to the decision of the Russian Federal Migration Service of 20 May 2008

20. The first applicant challenged the decision of the Russian Federal Migration Service of 20 May 2008 granting the second applicant a temporary residence permit (see paragraph 11 above).

21. On 13 February 2009 Vologda Town Court dismissed the first applicant's claims. The court held that the temporary residence permit had been granted to the second applicant in accordance with the procedure established by law, and that the relevant procedure did not require the applicant's consent.

22. On 24 April 2009 Vologda Regional Court upheld the above judgment on appeal.

2. Proceedings relating to the decision of the Russian Federal Migration Service of 27 May 2008

23. The first applicant challenged the decision of the Russian Federal Migration Service of 27 May 2008 granting the second applicant Russian citizenship (see paragraph 11 above).

24. On 6 July 2009 Vologda Town Court dismissed the first applicant's claim. The court held that the granting of Russian citizenship to the second applicant had been carried out in compliance with the procedure provided for by the Russian law and did not require the consent of the first applicant as O.H., the second applicant's mother, had Russian citizenship and the second applicant, having received a Russian temporary residence permit, was considered to be residing in Russia at the moment when the relevant decision had been taken by the competent authorities. The court held that the Russian Constitution allowed for dual citizenship, and that the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics of 6 June 1980 on prevention of dual citizenship, relied on by the first applicant, was no longer in force after 5 July 2006. The court further held that there was no evidence of criminally punishable acts in the actions of the Federal Migration Service.

25. The hearing of the case on 6 July 2009 took place in the absence of the first applicant. His request for adjournment of the hearing (due to his involvement in other court proceedings in St Petersburg) was dismissed. The first applicant was, however, represented by a lawyer.

26. On 9 October 2009 Vologda Regional Court upheld the judgment on appeal.

3. Proceedings relating to the first applicant's request for recognition and enforcement of the interim decision of 21 July 2008

27. On 12 March 2009 the first applicant applied to St Petersburg City Court seeking formal recognition of the interim measure of the Prague Municipal Court of 21 July 2008 granting him temporary custody of the second applicant pending the divorce proceedings (see paragraph 15 above).

28. By a final decision of 15 December 2009, however, the Supreme Court of Russia rejected the request. It held that the Treaty of 12 August

1982 between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance did not apply to interim measures.

4. Proceedings relating to the first applicant's visiting rights

29. As he had been prevented by O.H. from seeing the second applicant, on 20 April 2009 the first applicant brought proceedings before the Russian court seeking to have the terms of his contact with the second applicant in Russia fixed.

30. By a final decision of 18 May 2010 St Petersburg City Court discontinued the above proceedings. It found that according to the Treaty of 12 August 1982 between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance, litigation in the domestic courts of one High Contracting Party to the agreement had to be discontinued if the same litigation between the same litigants was pending before the domestic courts of the other High Contracting Party.

5. Proceedings relating to the restriction of second applicant's travel outside Russia

31. On 23 September 2010 the first applicant brought proceedings against O.H. seeking to cancel the restriction on the second applicant's travel outside Russia (see paragraph 13 above).

32. By a final decision of 18 April 2011 St Petersburg City Court dismissed his claim. The court held that the essence of the first applicant's complaint had been the fixing of the terms of his contact with the second applicant, which had been for the Czech courts to determine. The court held, therefore, that until the final judgment of the Czech courts the first applicant and O.H. were to decide on the issues in question by mutual agreement. The court further pointed out that the first applicant had the right to communicate with the second applicant on the territory of the Russian Federation and that O.H. had no right to prevent that.

6. Proceedings relating to the first applicant's request for recognition and enforcement of the final custody judgment

33. On 29 June 2012 the first applicant applied to St Petersburg City Court for recognition and enforcement of the judgment of Prague 4 District Court of 2 June 2011 (see paragraph 16 above).

34. On 9 October 2012 St Petersburg City Court, relying on Article 60 of the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance and Articles 409-12 of the Russian Code of Civil Procedure, refused the first applicant's request, because O.H. had not been duly notified of the hearing of 2 June 2011 and had been deprived of the opportunity to take part in it. The relevant part of the decision reads as follows:

“As it follows from the material of the case file [O.H.] did not participate in the proceedings before Prague 4 District Court resulting in a judgment the compulsory enforcement of which is sought by [the first applicant].

This circumstance is supported by the text of the judgment itself. As it follows from this document [O.H.] failed to appear [in court] for the hearing of the case [on 2 June 2011], although she had been informed orally about [the time and the place] of the hearing. The [Prague 4 District Court] found it established that [O.H.] had been informed about the hearing orally by a consul.

At the same time it follows from [the applicant’s] application and the text of the above-mentioned judgment that in 2008 [O.H.] had left the territory of the Czech Republic with the child [and] resides on the territory of the Russian Federation.

Taking into consideration [the fact] that at the time of delivery of the judgment O.H. has been residing on the territory of the Russian Federation, her notification should have been carried out in accordance with Article 9 of the Treaty, which provides that service of documents [must be] certified by a confirmation signed by the person on whom the document is served and officially sealed and signed by the competent authority responsible for the service with indication of the date of service, or by a confirmation issued by that competent authority with indication of the means, the place and the time of service.

No such [confirmation] was provided by [the first applicant]. It follows from the contents of the above-mentioned judgment that a request for delivery of documents to [O.H.] was addressed to the Ministry of Justice of the Russian Federation and remained without reply.

At the same time, according to Article 411 of the Code of Civil Procedure of the Russian Federation a request for compulsory enforcement of a foreign court judgment must be accompanied by a document showing that the party against whom the judgment was taken, and who did not participate in the proceedings, had been duly notified of the time and the place of the hearing. The same rule is contained in Article 55 of the Treaty.

It follows from the contents of the above-mentioned legal provisions that notification of [O.H.] of the time and the place of the hearing should have been certified by [a] written confirmation, signed by [O.H.], [and] sealed by [the competent authority] which handed over the notification.

No such documents were, however, provided by the [first applicant].

...

As noted above, the judgment of Prague 4 District Court indicates that [O.H.] was notified orally by a consul.

...

The [first applicant’s] argument that [O.H.’s] notification by consul orally by telephone was in accordance with section 51 of the Civil Procedure Code of the Czech Republic does not amount to proof of [O.H.’s] proper notification ...

The above-mentioned Treaty does not provide for the possibility of notification by a consul. Under Article 10 of the Treaty Contracting Parties are entitled to serve the documents through consular establishments to their citizens only. However, [since O.H.] is not a citizen of the Czech Republic, but only had a permit for permanent residence on the territory of the Czech Republic, the [court summons] was not served on her ...

In view of the foregoing the court finds that [O.H.] was deprived of the possibility to take part in the proceedings as a result of a failure to duly notify her of the time and the place of the hearing ...”

35. The decision of 9 October 2012 was taken in the absence of O.H. Court summonses were repeatedly sent to O.H.’s place of residence in St Petersburg and to the address in Nyuksenitsa, Vologda Region, given to the court by the first applicant. However, the summonses returned unclaimed following the expiration of the storage time. Attempts were also made to notify O.H. through a local police inspector, without success. The court therefore considered that it had taken sufficient and exhaustive measures to notify O.H. and to ensure her presence at the hearing, that the latter had abused her right, and that it was possible to examine the first applicant’s request in her absence.

36. On 3 December 2012 St Petersburg City Court upheld the judgment of 9 October 2012 on appeal.

37. On 16 September 2013 the first applicant’s “cassation appeal” lodged against the judgment of 9 October 2012 and the decision on appeal of 3 December 2012 was dismissed.

C. Various actions undertaken by the Russian authorities in connection with the present case

1. Involvement of the guardianship and trusteeship body

38. In February 2009 the first applicant applied to the guardianship and trusteeship body for St Petersburg Porokhovye municipal circuit (*орган опеки и попечительства местной администрации внутригородского муниципального образования г. Санкт-Петербурга муниципальный округ Пороховые*) to facilitate visits between him and the second applicant.

39. In March 2009 the first applicant renewed his application.

40. On 12 March and 29 September 2009 representatives of the guardianship and trusteeship body accompanied the first applicant to visit the child.

41. In the meantime, on 8 July 2009 the guardianship and trusteeship body examined O.H.’s living conditions in St Petersburg. It was established that the flat was in a very good condition, that all the furniture and household appliances were new, and that the girl had a separate room, which was spacious, tidy and cosy.

42. Between 2010 and July 2011 the first applicant did not apply to the guardianship and trusteeship body to organise visits between him and the second applicant.

43. In February 2012 the first applicant again applied to the guardianship and trusteeship body to organise his upcoming visit in March 2012. He relied on the judgment of Prague 4 District Court of 2 June 2011. However,

his request was refused in the absence of a judgment by the Russian court obliging the guardianship and trusteeship body to organise visits between the first applicant and the second applicant.

2. Involvement of children's ombudsmans' offices

(a) In St Petersburg

44. On over a dozen occasions the first applicant applied to the Ombudsman for Children in St Petersburg seeking for assistance in establishing contact with his daughter and visa support.

45. In response to the first applicant's requests the Ombudsman tried to reconcile the first applicant and O.H. In particular, during his visit to Russia between 23 September and 4 October 2010 the first applicant stayed at O.H.'s apartment and was able to have contact with his daughter. However, the first applicant and O.H. later had a conflict. O.H. claimed that the first applicant had been cruel to the child and that she would interfere with contact between the first applicant and the child in the interests of the latter. The Ombudsman explained to O.H. the provisions of the Family Code concerning the right of the parent living apart from the child to have contact with the child. Nevertheless O.H. stated that she viewed the situation as a strictly private family matter. In her opinion the wide media coverage of the case initiated by the first applicant and the involvement of a number of official bodies went contrary to the principles of the inviolability of private and family life. She further submitted that the child did not want to communicate with the first applicant. Since May 2011 the Ombudsman for Children in St Petersburg has lost all contact with O.H. Information about the second applicant was put on the Ombudsman's website (www.spbdeti.org) in the "missing child" section.

46. Concerning the issue of visa support to the first applicant, the Ombudsman applied to the representation of the Russian Ministry of Foreign Affairs in St Petersburg, which explained that the first applicant could apply to the health care and social welfare authorities for the invitation which was required in order to obtain a Russian visa.

47. In his letter of 23 August 2013 the first applicant expressed his gratitude to the Ombudsman for Children in St Petersburg for her active participation in protecting the second applicant's rights.

(b) In Vologda Region

48. On 24 October 2012 the first applicant lodged a request with the Ombudsman for Children in Vologda Region asking for assistance in establishing his communication with his daughter.

49. On 21 November 2012 the Ombudsman visited Nyuksenitsa, where O.H. was supposedly living. However, the information about O.H. and the

second applicant's whereabouts in Nyuksenitsa was not confirmed. The first applicant was informed accordingly.

50. On 7 December 2012 the first applicant applied to the Ombudsman for Children in Vologda Region asking for an inquiry into the activity of the commission for the affairs of minors in Nyuksenskiy municipal district to be carried out owing to what he saw as their negligent attitude in examining the issue of establishing his communication with his daughter.

51. On 29 December 2012 the first applicant was informed that his request was outside the Ombudsman's competence and that he could apply to the prosecutor's office or the court.

52. On 11 April 2013 the first applicant again applied to the Ombudsman for Children in Vologda Region asking for assistance in establishing his daughter's whereabouts.

53. On 29 April 2013 the first applicant was informed that the child was not studying in any school in Nyuksenskiy municipal district and was not living there.

(c) Ombudsman for Children under the President of the Federation of Russia

54. On 25 November 2009 and 29 July 2010 the Czech Ministry of Labour and Social Affairs applied to the Ombudsman for Children under the President of the Federation of Russia for assistance in the protection of the right of the second applicant to communicate with both parents. Since at the time O.H. lived in St Petersburg with the child, the applications were transmitted to the Ombudsman for Children in St Petersburg.

55. On 21 March 2011 and 28 November 2011 the Ombudsman for Children under the President had consultative meetings with the Ambassador Extraordinary and Plenipotentiary of the Czech Republic in the Russian Federation and actively corresponded with the Czech Embassy on the issue. Regular contact was maintained with the Russian Ministry of Foreign Affairs and the guardianship and trusteeship body for St Petersburg Porokhovye municipal circuit.

56. Meanwhile, on 25 July 2011 and 3 September 2012 the first applicant himself applied to the Ombudsman for Children under the President of the Federation of Russia. Regular contact was maintained with the first applicant by telephone and e-mail.

57. As a result of the work carried out by the Ombudsman for Children under the President and the ombudsmen for children in St Petersburg and Vologda Region, on 28 February 2013 a reply was given to the first applicant. He was informed about the legal means of protecting his right to communicate with his daughter which were applicable to his situation. In particular, he was told that he could bring a civil action before the Russian courts in order to determine his access rights (*иск об определении порядка общения с дочерью*). That recommendation was made with regard to the first applicant's repeated assurances that he was not seeking compulsory

enforcement of the judgment of Prague 4 District Court of 2 June 2011 as he understood that after such a long – in comparison to the child’s life – passage of time, the enforcement of that judgment could be harmful to his daughter and would not be in her best interests. At the same time the first applicant repeatedly stated his wish to establish and maintain regular contact with his daughter and to receive information about her life. However, the first applicant did not follow the above recommendation.

3. Involvement of the prosecutor’s office and police

58. On 2 November 2011 the first applicant reported O.H.’s refusal to allow him to communicate with his daughter, the second applicant, to the Krasnogvardeyskiy District Prosecutor’s Office of St Petersburg.

59. The local police inspector went to O.H.’s registered place of residence in St Petersburg and found that she was not living there. The neighbours had no information about O.H.’s whereabouts. A summons requesting O.H. to present herself at the local police station was returned unclaimed after the expiration of its storage time.

60. On 22 December 2011 the first applicant asked the police to search for O.H. in the absence of any information about her and the second applicant since 30 May 2011. The file was transferred to Krasnogvardeyskiy District investigations department (*следственный отдел по Красногвардейскому главному следственному управлению Следственного комитета Российской Федерации по Санкт-Петербургу*).

61. The investigator of Krasnogvardeyskiy District investigations department succeeded in reaching O.H.’s mother, G.K., on her mobile telephone. The latter submitted that she was in regular contact with O.H., but refused to divulge O.H.’s whereabouts.

62. On 11 January 2012 the investigator received a fax message from O.H. in which the latter confirmed that she was living at her registered place of residence with the second applicant, and that she refused all contact with the first applicant.

63. On the same day the investigator refused to institute criminal proceedings into the disappearance of O.H. and the second applicant.

64. On 22 March 2012 the juvenile inspector of the local police went to the flat at O.H.’s registered address in St Petersburg, but nobody opened the door. O.H.’s neighbour, Mr Sh., said that O.H.’s flat had not been lived in since June 2011.

65. On 26 March 2012 the Krasnogvardeyskiy District Deputy Prosecutor set aside the decision of 11 January 2012 and returned the file to the investigator with instructions to carry out an additional check aimed at determining the whereabouts of O.H. and the second applicant.

66. On 3 April 2012 and 26 May 2013 the investigator again refused to institute criminal proceedings into O.H.’s and the second applicant’s

disappearance. Those decisions were subsequently set aside by the Krasnogvardeyskiy District Deputy Prosecutor and additional checks were ordered.

67. The additional checks revealed that O.H. had not been receiving her correspondence. They also established that the second applicant had not been attending kindergarten since 6 June 2011, and that the last appointments she had attended at the health care facility had been on 22 June and 6 September 2011.

68. According to information provided by the Krasnogvardeyskiy District commission for the affairs of minors (*комиссия по делам несовершеннолетних и защите их прав при администрации Красногвардейского района*), since the end of May 2011 O.H. had been hiding the second applicant from her father, the first applicant; she had not been opening the door and had been ignoring summonses to appear in court.

69. The Krasnogvardeyskiy District Prosecutor's Office examined the possibility of bringing administrative proceedings against O.H. under Article 5.35 § 2 of the Code of Administrative Offences. However, the failure to establish O.H.'s whereabouts made it impossible to serve summonses on her, to obtain her explanations and to serve her with the record of administrative offence.

70. The prosecution authorities also conducted a check at O.H.'s presumed place of residence in Nyuksenitsa, Vologda Region. It was established that O.H. and the second applicant did not live there.

71. On 21 December 2012 Nyuksenskiy District Prosecutor questioned O.H.'s mother, G.K. The latter submitted that O.H. had lived and worked in Nyuksenitsa between June and August 2012, but that O.H.'s subsequent whereabouts were unknown to her. G.K. further submitted that the first applicant was not supporting O.H. financially, that he had arrived in Nyuksenitsa in summer 2012 and sent 4,000 Russian roubles (RUB) to O.H.'s place of residence in St Petersburg, although he had known that O.H. had been living and working in Nyuksenitsa at that time.

72. It was established that in 2012 the second applicant had been enrolled for external studies in the first grade of Kirovskiy District school no. 277 in St Petersburg under a distance learning programme. When O.H. had signed a contract with the school she had given a St Petersburg address.

73. On 31 January and 13 May 2013 the local police inspector again went to the above-mentioned address in St Petersburg, in vain.

74. In August 2013 O.H. logged onto the school educational website, which suggested that the child started the second grade programme.

75. To the present day the whereabouts of O.H. and the second applicant remain unknown.

4. Cooperation between the Russian Ministry of Justice and the Czech authorities

76. On 30 December 2008 the Russian Ministry of Justice received from the Ministry of Justice of the Czech Republic court orders issued by Prague 4 District Court for a check of O.H.'s living conditions and certain other procedural actions to be carried out.

77. On 26 January and 27 January 2009 respectively, in accordance with the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance, the court orders were submitted to the North-Western Federal Circuit Department of the Ministry of Justice (*Управление Министерства юстиции Российской Федерации по Северо-Западному федеральному округу*).

78. On 16 March and 30 April 2009 reminders were sent to the North-Western Federal Circuit Department of the Ministry of Justice.

79. According to that department, the execution of the orders had been complicated by the failure of the court to provide O.H.'s correct address.

80. On 31 July 2009 the Russian Ministry of Justice submitted to the Ministry of Justice of the Czech Republic the documents on execution of the orders of Prague 4 District Court.

81. On 29 October 2010 and 12 November 2010 the Russian Ministry of Justice received from the Ministry of Justice of the Czech Republic another order issued by Prague 4 District Court to take certain procedural steps in respect of O.H. and a request for service of court documents on O.H.

82. On 11 November and 23 November 2010 respectively the court order and request for service of documents were submitted to the North-Western Federal Circuit Department.

83. On 12 May 2011 the Russian Ministry of Justice informed the Ministry of Justice of the Czech Republic that it was impossible to execute the orders of Prague 4 District Court.

84. Following receipt of a note from the Embassy of the Czech Republic forwarded by the Ministry of Foreign Affairs of Russia, on 29 March 2012, the Russian Ministry of Justice submitted to the North-Western Federal Circuit Department a court order issued by Prague 4 District Court for service of court documents on O.H.

85. On 31 July 2012 the Russian Ministry of Justice submitted to the Russian Ministry of Foreign Affairs the documents attesting to the impossibility of executing that court order.

86. Following receipt of another note from the Embassy of the Czech Republic, on 22 November 2012 the Russian Ministry of Justice again submitted to the North-Western Federal Circuit Department a court order issued by Prague 4 District Court for service of court documents on O.H.

D. The first applicant's request under Article 21 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction

87. On 1 June 2012, the first day of acceptance by the Czech Republic of Russia's accession to the 1980 Hague Convention on the Civil Aspects of Child Abduction, the first applicant filed a request under Article 21 of the Convention for securing the effective exercise of his "access rights" in respect of his daughter, the second applicant.

88. On 21 August 2012 the Office for the Legal Protection of Children ("the Czech Central Authority") informed the Russian Ministry of Education and Science ("the Russian Central Authority") that the first applicant had discovered the whereabouts of O.H. in Vologda Region. However, he had not seen his daughter.

89. As the Russian Central Authority had not replied to the above-mentioned letters, on 1 October 2012 a reminder was sent to it.

90. On 1 November 2012, at the request of the Czech Central Authority, the Ambassador of the Czech Republic in Moscow sent a letter to the Russian Central Authority.

91. On 5 March 2013 the Russian Central Authority replied that it was not possible to establish O.H. and the second applicant's place of residence.

92. In the meantime, on 12 December 2012 and 27 March 2013 the Czech Central Authority contacted the Russian Children's Ombudsman about the same issue. The Czech Authority has not yet received a reply.

93. On 21 May and 6 September 2013 the Czech Central Authority sent further letters to the Russian Central Authority. No reply has been received. Another reminder was sent on 13 December 2013.

94. On 11 November 2013 the Czech Central Authority sent a letter to the Secretary General of the Hague Conference on Private Law asking for help in securing effective cooperation between the Czech and Russian Central Authorities.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

95. The 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") entered into force in respect of the Czech Republic on 1 March 1998 and in respect of Russia on 1 October 2011. On 1 June 2012 the Czech Republic accepted Russia's accession to the Convention. For the relevant provisions of the Hague Convention see *X v. Latvia* [GC], no. 27853/09, § 34, ECHR 2013.

96. In the present context reference is made to the following provisions of the Hague Convention:

Article 3

“The removal or the retention of a child is to be considered wrongful where -

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.”

Article 21

“An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.”

Article 35

“This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

...”

B. The International Convention of 20 November 1989 on the Rights of the Child

97. The 1989 Convention on the Rights of the Child was ratified both by Russia and the Czech Republic. For the relevant provisions of the 1989 Convention on the Rights of the Child see *X v. Latvia*, cited above, §§ 37-39; and *Maumousseau and Washington v. France*, no. 39388/05, § 44, 6 December 2007.

C. Treaty of 12 August 1982 between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on legal assistance and legal relations in civil, family and criminal cases

98. The relevant provisions of the Treaty read as follows:

Article 9

“Service of documents shall be certified by a confirmation signed by the person on whom the document was served and officially sealed and signed by a competent authority responsible for the service with indication of the date of service, or by a confirmation issued by that competent authority with indication of the means, the place and the time of service.”

Article 10

“1. Contracting Parties are entitled to serve documents on their citizens through their diplomatic missions or consular establishments ...”

Article 18

“In case of initiation of court proceedings in a case between the same parties and on the same legal dispute in courts of both Contracting Parties ... the court which initiated the proceedings later shall discontinue them.”

Article 25

“If one of the spouses is a citizen of one Contracting Party and the other spouse is a citizen of another Contracting Party, and one spouse lives on the territory of one Contracting party and the other spouse on the territory of the other Contracting Party, their private non-pecuniary relations are determined by the law of the Contracting Party on the territory on which they had their last common place of residence.”

Article 30

“1. Legal relations between parents and children shall be determined in accordance with the law of the Contracting Party in which the child permanently resides ...”

Article 55

“1. A request for compulsory execution of a judgment shall be lodged with the court which decided on the case in the first instance. This court forwards the request, in accordance with the procedure set out in Article 3, to the court competent to take a decision on the matter. If the person lodging the request for compulsory execution of the judgment is domiciled or resident on the territory of the Contracting Party where the judgment is to be executed, such request may be lodged directly with the competent Court of the Contracting Party ...”

Article 60

“Recognition and compulsory execution of a judgment may be refused in the following cases:

...

c) if the person who initiated the request or the defendant have not participated in the proceedings because they or their representative were not duly and timely served with court summons or due to the fact that notification was carried out only by way of a public announcement or by other means not provided for by the present Treaty ...”

D. Relevant Russian law

1. The Constitution

99. The relevant provisions of the Constitution read as follows:

Article 15

“1. The Constitution of the Russian Federation has supreme juridical force and direct effect and is applicable throughout the territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution ...

4. The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international agreement shall apply.”

Article 17

“1. The rights and freedoms of human beings and citizens in conformity with the universally recognised principles and norms of international law are recognized and guaranteed by the Russian federation and under the present Constitution ...

3. The exercise of the rights and freedoms of a human being and citizen may not violate the rights and freedoms of other people.”

Article 19

“1. Everyone shall be equal before the law and the courts of law.

2. The State shall guarantee the equality of rights and freedoms regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, or any other circumstance. Any restriction on the human rights of citizens on social, racial, national, linguistic or religious grounds is forbidden ...”

Article 38

“1. Maternity and childhood and the family shall be protected by the State.

2. The care of children and their upbringing shall be both the right and obligation of parents ...”

Article 62

“1. A citizen of the Russian Federation may have citizenship of a foreign State (dual citizenship) in accordance with the federal law or an international agreement to which the Russian Federation is party ...”

2. Code of Civil Procedure of the Russian Federation

100. The recognition and execution of the judgments of foreign courts is governed by Chapter 45 of the Code.

101. The Code provides that judgments of foreign courts must be recognised and executed in the Russian Federation if this is stipulated in the international treaty to which the Russian Federation is a party. The judgment of a foreign court may be presented for compulsory execution within three years from the day of its entry into force (Article 409 §§ 1 and 3).

102. It is the court at the debtor's place of residence or stay in the Russian Federation that has territorial jurisdiction to examine a request for the compulsory execution of a foreign court judgment. If the debtor has no place of residence or stay in the Russian Federation, or if the place of his stay is unknown, it is the court at the place where his property is located that has jurisdiction (Article 410).

103. The request must be considered in open court, and the debtor notified of the time and the venue of examination of the request. The debtor's failure to appear in the absence of valid reasons does not preclude the court from examining the request. The court may grant the request for compulsory enforcement of a foreign court judgment or refuse it after having heard the defendant and examined the evidence. In the event of doubts during the examination of the request the court may seek explanation from the person who lodged the request, and may also question the defendant on the merits of the request and if necessary seek explanation from the foreign court which delivered the judgment in question (Article 411 §§ 3, 4 and 6).

104. The court may refuse a request for compulsory execution of a foreign court judgment if, among other reasons, the party against whom the decision was taken was deprived of the possibility to take part in the proceedings due to untimely and inappropriate notification of the time and the place of the hearing (Article 412 § 1 (2)).

3. Family Code of the Russian Federation

105. Under the Code, a child has the right to communicate with both his parents, with his grandfather and grandmother, his brothers and sisters, and other relatives. Dissolution of the parents' marriage or the parents' living apart has no impact on the child's rights. If the parents live apart, the child has the right to communicate with each of them (Article 55 § 1).

106. The child has the right to protection of his rights and legal interests. The child's rights and legal interests are protected by his parents, and, in the cases stipulated by the Code, by the guardianship and trusteeship body, by the prosecutor and by the court (Article 56 § 1).

107. The Code provides that parents enjoy equal rights and discharge equal duties with respect to their children (Article 61 § 1).

108. The exercise of parental rights must not contravene the children's interests. Providing for the children's interests is the principal object of the parents' care. Parents who exercise parental rights to the detriment of the

rights and interests of the children are answerable under procedures established by law (Article 65 § 1).

109. A parent who resides apart from the child has the right to communicate with the child and to take part in his upbringing. The parent with whom the child lives must not prevent the child from communicating with the other parent, unless such communication damages the child's physical and mental health or his moral development (Article 66 § 1).

110. The parents have the right to conclude a written agreement on the way the parent residing apart from the child may exercise his parental duties. If the parents cannot reach an agreement, the dispute must be resolved in court with the participation of the guardianship and trusteeship body, upon a claim lodged by the parents (or one of them). In the case of non-abidance by the court decision, the measures stipulated by the civil procedural legislation are applied to the parent guilty of non-compliance. In the case of persistent non-fulfilment of the court decision, the court may, upon a claim by the parent residing apart from the child, take a decision to place the child in his or her care, based on the child's interests and taking into account the child's opinion (Article 66 §§ 2-3).

111. The parent residing apart from the child has the right to obtain information on his or her child from educational establishments and medical centres, social welfare institutions or similar. The provision of information may be refused only if the parent presents a threat to the child's life and health. A refusal to provide information may be disputed in court (Article 66 § 4).

112. The parents have the right to seek that the child be returned to them from the custody of any person who keeps him or her other than on the basis of the law or a court decision. In the event of a dispute, the parents have the right to turn to a court for the defence of their rights (Article 68 § 1).

113. Judgments in cases involving the issue of the upbringing of children are enforced by a bailiff in conformity with the procedure laid down by the civil procedural legislation. If one of the parents (or other person in whose charge the child is) obstructs the enforcement of the court judgment, the measures stipulated by the civil procedural legislation will be applied to him or her (Article 79 § 1).

114. Where compulsory enforcement of a judgment involves the taking away of the child and placing him or her in the charge of another person, the guardianship and trusteeship body and the person(s) into whose charge the child is placed must be involved. If necessary, representatives of internal affairs bodies can also be involved (Article 79 § 2).

4. The Code of Administrative Offences of the Russian Federation, with effect from 4 May 2011

115. Violation by parents or other legal representatives of the rights and interests of minors by preventing them from communicating with their

parents or other close relatives, if such communication is not contrary to the interests of the children, deliberate concealing of minors' whereabouts, and non-compliance with court judgments on determination of minors' place of residence, are all punishable by an administrative fine ranging from RUB 2,000 to 3,000 (Article 5.35 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

116. The first applicant complained on behalf of himself and the second applicant about the violation of their right to respect for their family life in that the Russian authorities failed to “take action” and assist him in being reunited with his child. He referred to Article 8 of the Convention, which in its relevant part 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

1. *Incompatibility* *ratione personae*

117. The Government contended that, in so far as the first applicant complained in his daughter's name, the application was incompatible *ratione personae* with the Convention. They submitted, in particular, that the child, now nine years old, had only lived with her father, the first applicant, for three years, that the latter was not paying alimony to support the child and that the child had not in any manner confirmed her intention to act as an applicant before the European Court.

118. The Court reiterates the principle that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective. In this context, the position of children under Article 34 qualifies for careful consideration, as they must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense. A restrictive or technical approach in this area is therefore to be avoided and the key consideration in such cases is that any serious issues concerning

respect for a child's rights should be examined (see *C. and D. v. the United Kingdom* (dec.), no. 34407/02, 31 August 2004, citing *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, and *P., C. and S. v. the United Kingdom* (dec.), 56547/00, 11 December 2001).

119. It is recalled that in cases arising out of disputes between parents, it is the parent entitled to custody who is entrusted with safeguarding the child's interests (see *Z. v. Slovenia*, no. 43155/05, § 115, 30 November 2010, and *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 88, 1 December 2009, with further references).

120. In the present case, although the second applicant has lived with her mother, O.H., since April 2008, no official decision granting O.H. custody of the child has been rendered. On the contrary, in July 2008 the first applicant obtained temporary custody and, in June 2011, permanent custody of the second applicant, and continues to be her custodial parent.

121. Under these circumstances, the Court considers that the first applicant has standing to act on his daughter's behalf. The Government's objection must accordingly be dismissed.

2. *Exhaustion of domestic remedies*

122. The Government argued that the first applicant had not brought a "cassation appeal" under the amended Part IV of the Code of Civil Procedure (new Chapter 41, "Cassation review procedure"), against the judgment of 9 October 2012 and the appeal decision of 3 December 2012 (see paragraphs 34 and 36 above) and therefore had not exhausted domestic remedies.

123. The Court has not yet had an occasion to examine whether the new cassation review procedure can be considered an "effective" domestic remedy that the applicant should have used for the purposes of "exhaustion". But even assuming, for the sake of argument, that it can, the Court notes that on 16 September 2013, while the proceedings before it were still pending, the applicant had recourse to that remedy (see paragraph 37 above). The Government's plea must be therefore dismissed.

3. *Conclusion*

124. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The respondent Government

125. The Government admitted that there had been an interference with the applicants' right to respect for their family life and, in particular, the right of the child to communicate with her father and the right of the father to participate in the child's upbringing. They asserted, however, that this interference resulted not from the actions or inaction of the Russian authorities, but from a variety of circumstances. Among such circumstances the Government mentioned the unwillingness of the mother to divulge the child's whereabouts to the father; the inability of the Russian courts to examine the dispute between the parents in view of the fact that the same dispute was pending before the Czech courts; untimely interim measures taken by the Czech court after the child had left the Czech Republic; the impossibility of enforcing the interim measures in Russia under the applicable law; the fact that the custody issue was determined in violation of the mother's right to participate in the relevant proceedings and the ensuing impossibility of proceeding with the compulsory enforcement of the judgment of the Czech court in Russia.

126. The Czech court had failed to strike a fair balance between the necessity of returning the child to the Czech Republic and the child's best interests. In particular, Prague 4 District Court had not given any consideration to the possible consequences of the child's return to the Czech Republic and to whether she would be able to communicate with her mother following her return or be able to communicate in Russian. The Czech court had also left without consideration the fact that the child had only lived in the Czech Republic for three years during her very early childhood, and that she had been living in Russia for over five years now, spoke Russian and attended a kindergarten. The Russian authorities could not therefore bear responsibility for not enforcing a judgment which had not been in the child's best interests.

127. The Government further submitted that the first applicant's request for recognition and compulsory enforcement of the judgment of Prague 4 District Court of 2 June 2011 granting him custody of the second applicant had been rejected by the Russian courts due to the fact that O.H., the second applicant's mother, had not been duly notified of the relevant proceedings and had thereby been deprived of the opportunity to take part in them, in violation of the principle of equality of arms. The relevant decisions of the domestic courts had pursued a legitimate aim and had been necessary in a democratic society, in particular because the handing over of the second applicant to the father would have violated O.H.'s right to respect for her family life and would not have been in "the best interests of the child". In

view of the above, the judgment of 2 June 2011 could not be enforced in Russia.

128. At the same time, the Government assured the Court that the first applicant's requests lodged with various competent authorities in Russia concerning his communication with his daughter, the second applicant, were being examined by the competent Russian authorities in a timely manner so as to secure his right to respect for his family life. In particular, the competent authorities had taken all the necessary measures to establish the whereabouts of the second applicant and O.H. and to settle, within their competence, the dispute relating to the upbringing of the second applicant.

129. The Government admitted that while there were sufficient grounds for instituting administrative proceedings against O.H. under Article 5.35 § 2 of the Code of Administrative Offences for breaching the rights and the interests of her daughter by interfering with the latter's right to communicate with her father and thwarting the exercise by the father of his parental rights, the domestic authorities had no practical opportunity to do so. They assured the Court that the domestic authorities, under the supervision of the St Petersburg City Prosecutor's Office, were continuing to take further measures to establish the whereabouts of O.H. and the second applicant. There had therefore been no violation of Article 8 of the Convention in the present case.

130. In their observations on the third-party submissions the Government claimed that pursuant to its Article 35, the Hague Convention was applicable as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States. Therefore, since the Russian Federation had acceded to the Convention only in 2011, it could not be applied to the events that had occurred back in 2008 when O.H. left the Czech Republic. To hold otherwise would, in the opinion of the Government, breach the sovereignty of the Russian Federation.

131. In the present case there had been no "abduction" as such. A Russian visa for the second applicant had been issued by the consular department of the Russian Embassy in Prague in full compliance with the Russian law, which did not require the consent of the other parent. The granting of a temporary residence permit and subsequently Russian citizenship to the second applicant had also been carried out in full compliance with the Russian law.

132. The Government further stated that the Czech authorities had been apprised on several occasions of the position of the Russian authorities with regard to the present case. The essence of this position is that in a complex family cross-border dispute such as the one in the present case where the reaching of a mutual understanding between the parents is impossible, a fair legal solution should be found by an impartial tribunal, in accordance with the law, and with due regard to the interests of all the parties concerned. They further considered that the efforts of the Czech Republic to influence

the case from an administrative or political angle and to bring a private family-law dispute on the level of interstate relations were unacceptable. The Government further confirmed that diplomatic dialogue with the Czech authorities was still underway.

133. Regarding the issue of the service of documents on O.H., the Government submitted that the Russian authorities had complied with their obligations under the 1965 Hague Service Convention and the 1982 Treaty on legal assistance. They emphasised that the provisions of those legal instruments presupposed voluntary receipt of documents and no sanctions were applicable to the recipient in the case of refusal to receive the documents. The Russian court could therefore not serve the documents on O.H. by force.

(b) The first applicant

134. The first applicant maintained his complaint. In his opinion the Hague Convention was applicable to the circumstances of the present case.

135. He submitted that the provisions of the Russian law governing the procedure for attribution of citizenship to foreign children without the second parent's consent had had the effect of legalising the abduction of the second applicant by the girl's mother, O.H.

136. Regarding the refusal by the Russian court to recognise the final custody judgment in his favour of 2 June 2011, the first applicant submitted that O.H. had not been denied the opportunity to participate in the relevant proceedings. The Czech court had exhausted its possibilities to duly notify O.H. of the venue and the time of the hearing. By contrast, the Russian competent authorities, which were required to comply with the orders of the Czech court, had not fulfilled their responsibility to serve court documents on O.H. and to inform the Czech party of the results. The responsibility for the failure to notify O.H. of the hearing of 2 June 2011 rested, therefore, entirely with the competent Russian authorities, most notably the Russian Ministry of Justice, which was obliged to provide legal support, particularly by means of carrying out all relevant instructions, in compliance with the 1982 Treaty on legal assistance.

137. The first applicant further noted that on 9 October 2012, when examining his application for recognition and enforcement of the judgment of 2 June 2011, St Petersburg City Court had considered it possible to proceed in the absence of O.H. as the court had taken, in vain, exhaustive and sufficient measures to notify her and considered that she had abused her right. Therefore, the fact that in similar circumstances Prague 4 District Court had examined the case in the absence of O.H. could not be regarded as having been in violation of O.H.'s right to a fair trial (access to court).

138. In view of the refusal by the Russian court to recognise the judgment of 2 June 2011, the latter judgment could not be enforced. The applicants could thus not legally reunite after their unlawful separation and

disruption of their family relations. The Russian authorities had demonstrated total indifference to the first applicant's parental rights and both applicants' rights to preserve and maintain their family ties and to maintain regular contact with each other, which amounted to a violation of their right under Article 8 of the Convention to respect for their family life.

139. The first applicant further stressed that not only had the competent Russian authorities not been able to ensure that he could exercise his right to see his daughter since May 2011, they had also been unable to establish the latter's whereabouts for almost three years.

140. In his subsequent submissions the first applicant submitted that, despite the Government's assertions as to the impossibility of establishing O.H.'s whereabouts, there is documentary evidence (not provided to the Court) of contact between various competent Russian authorities and O.H.

(c) The Government of the Czech Republic

141. The Czech Government submitted at the outset that the present case was unusually complex and extensive in both factual and legal terms and that it was not simple to resolve owing to the sensitivity of the matter.

142. The Czech Government considered that the principles developed in the Court's case-law as regards compliance by a respondent State with its obligations under Article 8 of the Convention in situations of child abduction within the meaning of the Hague Convention and summarised in *Carlson v. Switzerland* (no. 49492/06, § 69, 6 November 2008) could be applied to the circumstances of the present case *per analogiam* as the child had been removed outside the territory of the Czech Republic without the first applicant's consent during custody proceedings initiated in the Czech Republic.

143. In the light of the above-mentioned principles, the Czech Government submitted that despite the objectively great distance between their places of residence, and even though meetings between the applicants could only take place in Russia, the first applicant had been making active and ongoing efforts to have contact with his daughter. However, O.H. had showed no interest and had not facilitated the visits in any way. On the contrary, she had put great obstacles in his way. At the beginning some visits had taken place, albeit irregularly, when the first applicant had gone to Russia. However, since May 2011 the first applicant had not had any contact with his daughter. O.H. had been hiding the child somewhere in Russia.

144. Since 2008 the first applicant had been fighting for visits with his daughter. He had made a large number of requests and complaints, and written numerous letters and e-mails. He had addressed various State authorities both in the Czech Republic and Russia, for instance offices for children's protection, courts of different levels of jurisdiction, police, ombudsmen, various departments of ministries, ministers themselves and

embassies. While some of the above-mentioned authorities had showed interest in the case, their effort had had no positive practical result, and the first applicant and the Czech authorities also faced indifference and a negative attitude towards resolving the case. At the time of their submissions, the first applicant had no idea about his daughter's whereabouts. He regularly went to Russia hoping to find her, but the Russian authorities had done little to help him.

145. The Czech Government maintained that the passage of time had had irreversible consequences on the development of the relationship between father and daughter. They regretted to say that it was not an exception that questions and requests addressed by the Czech authorities to the Russian authorities were ignored by the latter, even after several reminders, even though special diligence was required when family life with a minor child was at stake. And when the Russian authorities did address such requests, this generally did not bring about any further development in the case. The difficulties associated with serving judicial documents on O.H. raised the question of whether this particular area of Russian law was effective and in accordance with the international obligations imposed on Russia under the 1982 Treaty on legal assistance and the Hague Service Convention.

146. In conclusion, the Czech Government submitted that they were aware of the difficulties that had arisen and might arise in respect of enabling the first applicant to be in contact with his daughter. However, they trusted that a suitable solution to the uneasy family situation could be found as a result of cooperation between all the parties involved. They also expressed their opinion that the positive obligation imposed on Russia under Article 8 of the Convention to secure the applicants' right to be in contact with each other had not been met.

2. *The Court's assessment*

147. The Court notes that 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 (see *Eberhard and M.*, cited above, § 125). It is therefore common ground that the relationship between the applicant and his daughter, the second applicant, falls within the sphere of family life under Article 8 of the Convention. That being so, it must be determined whether there has been a failure to respect the applicants' family life. "Respect" for family life implies an obligation for a State to act in a manner calculated to allow these ties to develop normally (see *Scozzari and Giunta*, cited above, § 221).

148. In April 2008 the first applicant's then wife, Russian national O.H., unbeknownst to the first applicant, obtained a Russian visa for their daughter, the second applicant, aged three years and two months at the material time, and together with the latter left the Czech Republic, the

child's homeland, for Russia, and never came back. The applicants lost all contact with each other in May 2011 (see paragraph 14 above), and to the present day the first applicant is unaware of the child's whereabouts.

149. The Court reiterates that although the essential object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in an effective "respect" for family life (see *Maumousseau and Washington*, cited above, § 83). These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the taking, where appropriate, of specific steps. The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; nonetheless, the applicable principles are similar. In both contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community as a whole, including other concerned third parties, and in both cases the State enjoys a certain margin of appreciation (see *Kosmopoulou v. Greece*, no. 60457/00, § 43, 5 February 2004).

150. As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take such measures. 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 (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and *Kosmopoulou*, cited above, § 44).

151. The Court observes that cases with comparable factual circumstances, that is, when a child habitually resident in one State is removed to or retained in the territory of another State by one of the parents, are usually examined with reference to the 1980 Hague Convention on the Civil Aspects of Child Abduction. This Convention sets criteria for defining whether the removal of a child to another country by one parent was "wrongful" and whether it required appropriate measures to be taken by the authorities of the State where the child was retained. In particular, in cases of international child abduction the Court has presumed, save for certain exceptions, that the best interests of the child are better served by the restoration of the *status quo* by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of abduction (see *X v. Latvia*, cited above, §§ 96-97 and 106-107).

152. In other words, in such cases the presumption is in favour of the prompt return of the child to the "left-behind" parent. That rule is supported

by serious considerations of public order: the “abductor” parent should not be permitted to benefit from his or her own wrong, should not be able to legalise a factual situation brought about by the wrongful removal of the child, and should not be permitted to choose a new forum for a dispute which has already been resolved in another country. Such presumption in favour of return is supposed to discourage this type of behaviour and to promote “the general interest in ensuring respect for the rule of law” (see, *mutatis mutandis*, *Nuutinen v. Finland*, no. 32842/96, § 129, ECHR 2000-VIII; see also *M.R. and L.R. v. Estonia* (dec.), no. 13420/12, § 43, 15 May 2012). It is also recalled that a child’s return cannot be ordered automatically or mechanically when the Hague Convention is applicable. The child’s best interests, from a personal development perspective, will depend on a variety of individual circumstances, in particular his age and level of maturity, the presence or absence of his parents and his environment and his experiences. For that reason, those best interests must be assessed in each individual case (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 138, ECHR 2010).

153. In the present case, however, in April 2008 when O.H. left the Czech Republic with the child for Russia, the Hague Convention had not yet entered into force in respect of Russia. It was not until October 2011 that Russia acceded to the Hague Convention, and not until June 2012 that the Czech Republic accepted Russia’s accession to it (see paragraph 95 above). The Russian Government stressed that the Hague Convention was not applicable to the present case and that the positive obligations which Article 8 of the Convention lays on the Contracting States in the matter of reuniting a parent with his or her child could not therefore be interpreted in the light of the Hague Convention (see paragraph 130 above).

154. The Court reiterates in this connection that its primary task is to examine the applicant’s situation in the light of the requirements of Article 8 of the European Convention. The Court accepts that the Hague Convention had no direct application between the Czech Republic and Russia at the time of the events in question. However, even if the Hague Convention had no direct application to the present case, the Court cannot avoid relying on certain general approaches developed in its own case-law based on the Hague Convention (see *Neulinger and Shuruk*, cited above, § 132; *P.P. v. Poland*, no. 8677/03, § 85, 8 January 2008; and, *mutatis mutandis*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 85-86, ECHR 2008).

155. The Court observes that O.H. left the Czech Republic with the child in April 2008 while the divorce proceedings before the Czech court were pending and shortly before the court granted the first applicant temporary custody over the second applicant pending the outcome of the divorce proceedings (see paragraphs 10, 11 and 15 above) and prohibited O.H. from leaving the Czech Republic and remaining outside its territory with the child. Moving to Russia with the child permitted her to remain the girl’s *de*

facto resident parent and evade the effects of the interim decision of 30 April 2008, as amended by Prague Municipal Court on 21 July 2008.

156. In such circumstances the Court concludes that the second applicant was “wrongfully” removed and retained in Russia by her mother O.H. (see paragraph 151 above), and that consequently, Article 8 of the Convention required the Russian authorities to “take action” and assist the applicant in being reunited with his child.

(a) The period between the second applicant’s removal from the Czech Republic in April 2008 and the termination of the child custody proceedings before the Czech court in June 2011

157. The decision of 30 April 2008 by which custody of the second applicant (the child) was granted to the first applicant pending the outcome of the divorce proceedings was not enforceable in Russia in view of its interim nature (see paragraphs 27-28 above). Furthermore, until the termination of the child custody proceedings before the Czech court the first applicant was deprived of the possibility to have the arrangements for contact with his daughter formally determined by the Russian court (see paragraphs 29-32 above). It appears, therefore, that, in the absence of an agreement between the parents, the regulatory legal framework which existed in Russia at the material time did not provide for a practical and effective protection of the interests of the father (the first applicant) in maintaining and developing family life with his child, which in the present case has had irremediable consequences for relations between them. The Court considers therefore that in failing to set up the necessary legal framework that would secure prompt response to international child abduction at the time when the events in question took place the Russian Federation failed to comply with its positive obligation under Article 8 of the Convention.

(b) The proceedings for recognition and enforcement of the final custody judgment of June 2011

158. On 2 June 2011 Prague 4 District Court issued a final custody judgment by which custody of the second applicant was granted to the first applicant. The District Court, having taken into account the first applicant’s personality, his living conditions and his emotional ties with the child on the one hand, and O.H.’s personality, her unlawful conduct in removing the child from the Czech Republic and retaining the child in Russia, her failure to comply with the temporary custody order, lack of cooperation with the childcare authority and interference with the child’s right to know her father on the other, considered the first applicant to be a more suitable caregiver (see paragraph 16 above). The Court notes that that judgment, which was unfavourable to O.H., was taken in the absence of O.H., whom neither the Czech nor the Russian authorities have been able to apprise of the hearing in

the absence of information about her whereabouts. The judgment became final in February 2012 (see paragraph 18 above).

159. In June 2012 the first applicant applied to St Petersburg City Court asking for the judgment of 2 June 2011 to be recognised and enforced in Russia. The Russian court, however, refused the first applicant's request, citing as a reason O.H.'s non-participation at the hearing of 2 June 2011 resulting from the failure to duly notify her (see paragraph 34 above).

160. The parties disputed whether or not the responsibility for the failure to duly notify O.H. of the hearing of 2 June 2011 before Prague 4 District Court rested with the Russian authorities (see paragraphs 133 and 136 above). The Court recalls that in this type of cases all persons involved should have the opportunity to present their case fully (see *Neulinger and Shuruk*, cited above, § 139). However, referring to the circumstances of the present case, the Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, of which the international treaties incorporated therein form a part (see *Carlson*, cited above, § 73). The Court will therefore proceed to determine whether the refusal to recognise and enforce the judgment of Prague 4 District Court of 2 June 2011 granting the first applicant custody of the second applicant struck a fair balance between the interests of the child and those of the first applicant. In carrying out this balancing exercise, the Court will attach particular importance to the best interests of the child, which, depending on their nature and seriousness, may override those of the parent. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sommerfeld v. Germany* [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts), and *Neulinger and Shuruk*, cited above, § 134).

161. At the outset the Court observes that the framework of the proceedings for recognition and compulsory enforcement of the final custody judgment of Prague 4 District Court of 2 June 2011 did not empower the Russian court to make an assessment of whether the return of the child to her father's care in the Czech Republic would be in the child's best interests. The Court will therefore have to make such an assessment on the basis of the evidence in its possession.

162. The Court reiterates that the national authorities' duty to take measures to facilitate reunion is not absolute. A change of relevant circumstances, in so far that it was not brought about by events imputable to the State, may exceptionally justify the non-enforcement of a final child custody order (see *Mihailova v. Bulgaria*, no. 35978/02, § 82, 12 January 2006, with further references).

163. The second applicant (the child) was born in January 2005 in the Czech Republic, of which she is a national, and lived there with both her parents – the first applicant and O.H. – until the age of three years. Subsequently, in April 2008 the child was taken to Russia by her mother,

O.H., where she was granted Russian nationality and where she has resided with the latter for six years now. Since her departure from the Czech Republic the child had very limited contact with her father, the first applicant, until the final rupture of emotional ties between the applicants in May 2011 when they lost all contact. Regard being had to the foregoing, the Court considers that since 2008 the child has settled in her new environment in Russia, and that her return to her father's care would have run contrary to her best interests (see *Neulinger and Shuruk*, cited above, § 138). Reference is also made to paragraph 152 above. In this connection the Court notes further that in communication with the Ombudsman for Children under the President of the Federation of Russia, the first applicant himself admitted that after such a long – in comparison to the child's life – passage of time the enforcement of the judgment of 2 June 2011 could be harmful to his daughter and would not be in her best interests (see paragraph 57 above).

164. In the light of the foregoing, the Court considers that the decision of the Russian court refusing to recognise and enforce the judgment of Prague 4 District Court of 2 June 2011 did not amount to a violation of Article 8 with regard to the applicants' enjoyment of their right to respect for their family life.

(c) Other measures after June 2011

165. The Court will further examine whether the Russian authorities have taken all the measures that could reasonably be expected of them to enable the applicants to maintain and develop family life with each other since June 2011. The Court reiterates in this connection that lack of cooperation between separated parents is not a circumstance which by itself may exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 176, 27 September 2011).

166. Since June 2011 O.H. has been in hiding with the child. It appears, therefore, that in order to make it possible for the first applicant to maintain family ties with his child, the domestic authorities were required in the first place to establish the whereabouts of O.H.

167. Following the first applicant's requests to the prosecutor's office and the police in November and December 2011, between winter 2011 and spring 2013 the police went to O.H.'s presumed place of residence in St Petersburg on several occasions, but did not find her there. The neighbours in St Petersburg submitted that the flat had not been lived in since June 2011. It was further established that O.H. had not been receiving her correspondence in St Petersburg, that the child had not attended the kindergarten in St Petersburg since June 2011, and that her last kept appointments at the health care facility in St Petersburg had been in June

and September 2011 (see paragraphs 59, 64, 67 and 73 above). The Court further notes that despite strong indications that O.H. had been living and working in the village of Nyuksenitsa, Vologda Region, at least in summer 2012 (see paragraphs 71 and 88 above), the police went to O.H.'s presumed place of residence there on one occasion only, also in vain (see paragraph 70 above). There is no evidence in the documents made available to the Court that this visit took place as soon as the domestic authorities knew about O.H.'s whereabouts in Nyuksenitsa in August 2012. It was not until December 2012 that O.H.'s mother was questioned about her daughter's whereabouts in Nyuksenitsa. Furthermore, there is no evidence that the domestic authorities ever questioned O.H.'s neighbours and co-workers in Nyuksenitsa about her whereabouts.

168. The Court further notes that the first applicant's attempts to involve other competent domestic authorities in assisting him to establish contact with his daughter were thwarted by the impossibility of locating O.H. and the child. In particular, although the conduct of O.H. gave grounds for instituting administrative proceedings under Article 5.35 § 2 of the Code of Administrative Offences (see paragraph 115 above), the failure to establish her whereabouts made it impossible in practice to do so. The first applicant's requests to the regional and Russian ombudsmen for children for assistance in establishing contact with the child yielded no results in the absence of information about O.H.'s whereabouts (see paragraphs 45-57 above). The first applicant's request of June 2012 under Article 21 of the Hague Convention for securing the effective exercise of his rights of access in respect of his daughter remained without response due to the impossibility of locating O.H. and the second applicant (see paragraphs 87-94 above).

169. Having regard to the foregoing and without overlooking the difficulties created by the resistance of the child's mother, the Court concludes that the Russian authorities failed to take all the measures that could reasonably be expected of them to enable the applicants to maintain and develop family life with each other, resulting in the disruption of the emotional ties between the father and the child, and thereby breached the applicants' right to respect for their family life, as guaranteed by Article 8.

(d) Summary of the findings

170. The Court has found, therefore, that in failing to set up the necessary legal framework securing a prompt response to international child abduction at the time when the events in question took place the Russian Federation failed to comply with its positive obligation under Article 8 of the Convention.

171. It has further found that, in the light of the child's best interests, the decision of the Russian court refusing to recognise and enforce the judgment of Prague 4 District Court of 2 June 2011 did not amount to a

violation of Article 8 with regard to the applicants' enjoyment of their right to respect for their family life.

172. Finally, the Court has found that in violation of Article 8 of the Convention the domestic authorities failed to take all the measures that could reasonably have been expected of them since 2011 to enable the applicants to maintain and develop family life with each other.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

173. The first applicant further complained under Article 13 of the Convention that he did not have at his disposal an effective remedy for the violation of his rights, in that he was unable to have the decision of 21 July 2008 awarding him temporary custody of the second applicant pending the outcome of the divorce proceedings enforced. Article 13 of the Convention reads as follows:

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

174. The Court considers that the issue raised under this Article overlaps with the merits of the applicant's complaint under Article 8 and has already been addressed in paragraph 157 above. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 8 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. The first applicant claimed 11,760 euros (EUR) in respect of pecuniary damage, broken down as follows:

(i) EUR 7,560 for aeroplane tickets for twenty-one trips to Russia (St Petersburg and Vologda Region) in the period between February 2009 and December 2012;

(ii) EUR 2,600 for accommodation in Russia during these trips; and

(iii) EUR 1,600 for translation of court documents from Czech to Russian in connection with his requests lodged with the Russian court for

recognition and enforcement of the temporary custody order of 21 July 2008 and the final custody order of 2 June 2011.

In support of his claim the first applicant submitted a copy of his passport bearing Russian visas and airport stamps, a roundtrip electronic aeroplane ticket from Prague to St Petersburg via Moscow bought in August 2009 for 9,163 Czech korunas, and an invoice from a hotel in St Petersburg in the amount of RUB 1,100 for a one-day stay in July 2012.

177. As to non-pecuniary damage, the first applicant submitted that the violation of Article 8 of the Convention in the present case caused him to be separated from his daughter for a long time and deprived him of the possibility to see her grow up and to participate in her upbringing, thereby causing both him and the child deep psychological trauma. He left to the Court's discretion the determination of the amount of compensation for non-pecuniary damage to be awarded to him and his daughter.

178. The Government submitted that the first applicant had failed to substantiate the full amount of the pecuniary damage claimed. As regards non-pecuniary damage, the Government considered that no such award should be made in the present case.

179. As to the travel and translation costs claimed by the first applicant, the Court considers it appropriate to deal with them under the head of costs and expenses (see *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 83, 24 April 2003).

180. As to non-pecuniary damage, the Court considers that the applicants must have suffered and continue to suffer profound distress as a result of their inability to enjoy each other's company. It considers that, in so far as the first applicant is concerned, sufficient just satisfaction would not be provided solely by a finding of a violation. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41, the Court awards the first applicant EUR 12,500 under this head. As to the second applicant, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage she may have suffered as a result of the violation of her Article 8 rights (see *Karrer v. Romania*, no. 16965/10, § 62, 21 February 2012, and *Sylvester*, cited above, § 84). The Court further holds that the Government should take, as a matter of urgency, all appropriate measures to ensure respect for the applicants' family life, duly taking into account the best interests of the child.

B. Costs and expenses

181. The first applicant also claimed EUR 5,375 for the costs and expenses incurred before the Court (legal fees and translation services). He submitted documents certifying payment of EUR 2,000 to Ms O. Khazova

and EUR 1,000 to Mr Yu. Kiryushin for legal services in the proceedings before the Court.

182. The Government considered the first applicant's claims to be excessive and not fully supported by relevant documents.

183. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant EUR 3,000 for legal costs and expenses and EUR 375 for travel expenses. The Court therefore awards the first applicant a total of EUR 3,375 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,375 (three thousand three hundred and seventy-five euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
 - (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;

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

Done in English, and notified in writing on 11 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President