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La CEDU su rispetto della vita privata e familiare
(CEDU, sez. IV, sent. 29 ottobre 2019, ric. n. 67068/11)

La Corte Edu si pronuncia sul ricorso di una donna che, allontanata dalla figlia in quanto accusata di complicità in molestie sessuali a danno della medesima, aveva invocato la violazione dell'art.8 Cedu, a causa non solo di tali decisioni, ma anche del successivo ritardo con cui le autorità nazionali avevano consentito il ricongiungimento familiare, una volta archiviate le accuse di violenza sessuale nei suoi confronti.
I Giudici di Strasburgo hanno, tuttavia, escluso l'inadempimento da parte delle autorità lituane del dovere di garantire il rispetto alla vita privata e familiare della ricorrente, avendo riscontrato che le medesime avevano agito con la necessaria diligenza nel procedimento *de quo* e che i ritardi nella riconsegna della minore non erano in alcun modo ad esse addebitabili.
Ed invero, le autorità nazionali avevano dovuto dapprima attendere che fosse acclarato il non coinvolgimento della ricorrente nelle presunte molestie sessuali subite da sua figlia. Una volta eliminato tale ostacolo, i tribunali interni avevano ritenuto rispondere al migliore interesse del minore l'immediato ricongiungimento con la madre.
Le autorità, tuttavia, avevano incontrato una pervicace opposizione da parte di altri membri della famiglia nel riconsegnare la minore, riuscendo alla fine ad adottare con successo le misure adeguate a far fronte ad una situazione estremamente delicata come quella profilatasi nel caso di specie.
Di qui la conclusione che non vi è stata alcuna violazione della Convenzione.

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

FOURTH SECTION

CASE OF STANKŪNAITĖ v. LITHUANIA

(*Application no. 67068/11*)

JUDGMENT

Art 8 • Respect for family life • Proceedings regarding parental rights • Requisite diligence of the national authorities • Involvement in decision-making process • Positive obligations

STRASBOURG
29 October 2019

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

In the case of Stankūnaitė v. Lithuania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Jon Fridrik Kjølbro, *President*,
Faris Vehabović,
Branko Lubarda
Carlo Ranzoni,
Jolien Schukking,
Péter Paczolay, *judges*,
Danute Jočienė, *ad hoc judge*,
and Andrea Tamietti, *Deputy Section Registrar*,
Having deliberated in private on 8 October 2019,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 67068/11) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Laimutė Stankūnaitė ("the applicant"), on 2 September 2011.
2. The applicant was represented by Mr G. Černiauskas, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their former Agent, Ms E. Baltutytė.
3. The applicant alleged that proceedings regarding her daughter's temporary guardianship and return to her had been in breach of Article 8 of the Convention.
4. On 3 February 2012 the Government were given notice of the application.
5. Mr Egidijus Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court). Accordingly, the President of the Section appointed Ms Danutė Jočienė to sit as an ad hoc judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The applicant was born in 1986. Her current address is unknown to the Court (see paragraphs 14 and 105 in fine below).

7. The applicant lived with D.K. On 19 February 2004 a daughter was born to the couple, who were not married.
8. On 19 March 2008 the Vilnius City First District Court approved a settlement agreement between the applicant and D.K., who by that time had been living separately, in which it was agreed that the daughter would live with D.K. The first-instance court's decision was upheld by the Vilnius Regional Court on 29 May 2008, which dismissed the applicant's appeal. The applicant retained the right to see her daughter and would periodically take her to her home.
9. On 30 November 2008, on the basis of an application by D.K., the authorities started a pre-trial investigation on suspicion that the girl had been sexually molested (Article 153 of the Criminal Code, see paragraph 85 below) by a certain A.Ū. (also see paragraphs 26-28 below). D.K. alleged that the crime had taken place in the applicant's rented apartment in Kaunas, and in her presence.

B. D.K.'s application to restrict the applicant's parental rights and the applicant's contact with her daughter until December 2009

10. On 22 December 2008 D.K. lodged an application with the Kaunas City District Court to restrict the applicant's parental rights. He argued that, pursuant to the settlement agreement, the applicant had been communicating with their daughter and taking her to her home. According to D.K., when the girl had returned to him having visited her mother between 21 and 23 November 2008, she had started telling him about how her mother and some men who had come to her mother's home had been behaving with her. D.K. noted having already lodged an application with the police regarding his daughter's molestation, and that a criminal investigation had been opened (see paragraph 9 above). D.K. then asked the court to apply temporary protective measures in order to restrict the applicant's ability to see her daughter until the civil case for the restriction of her parental rights had been resolved.
11. By a ruling of 23 December 2008 the Kaunas City District Court granted D.K.'s request for temporary protective measures, prohibiting the applicant from seeing her daughter until the civil case for the temporary restriction of her parental rights had been terminated. The court noted that a pre-trial investigation had been opened concerning the alleged sexual molestation. Accordingly, there was sufficient basis to apply temporary protective measures. The court also cited Article 3.65 § 2 (7) of the Civil Code as the legal basis for the measures (see paragraph 79 below).
12. However, following an appeal by the applicant, by a ruling of 27 April 2009 made in written proceedings the Vilnius Regional Court varied the temporary protective measure by allowing the applicant to see her daughter in the presence of a representative from the Kaunas city childcare authorities. The Regional Court pointed out that any suspicions against the applicant had not yet been proven, therefore to completely forbid the child from seeing her mother could be detrimental to the child's best interests.
13. On 8 July 2009 the Kaunas City District Court amended the contact order between the applicant and her daughter: they were to meet twice a week between 9 and 11 a.m. at the premises of the Kaunas city childcare authorities, in the presence of their representative. D.K. was responsible for taking his daughter to those meetings. The court also suspended the examination of the civil case concerning the restriction of the applicant's parental rights until the pre-trial investigation in the

criminal case about the girl's sexual molestation had been terminated. The applicant and her lawyer took part in that hearing.

14. By a final ruling of 15 December 2009 the Vilnius Regional Court examined an appeal lodged by the applicant and essentially left the District Court's decision of 8 July 2009 unchanged, with the exception that D.K.'s sister N.V. had become responsible for taking the girl to the meetings, which were to take place in a secure location designated by the Lithuanian witness protection authorities, and in the presence of a representative from the childcare authorities. The reason for that was a change in circumstances – there had been an incident on 5 October 2009 in which two people had been shot (see paragraphs 16 and 17 below), and State protection had been instituted in respect of both the applicant and her daughter. When upholding the temporary protective measure as set out earlier, the Regional Court highlighted the principle that priority had to be given to the interests of the child. It relied on Article 3.3 § 1 of the Civil Code and Article 4 § 1 (1) of the Law on the Fundamentals of Protection of Children's Rights (see paragraphs 77 and 79 below). The Regional Court also considered that the District Court had properly assessed the situation, having taken into account the opinion of the Kaunas childcare authorities, which had been the institution providing a conclusion in the case. Lastly, it pointed out that the applicant had herself limited contact with her daughter in the past period, although it did not elaborate further.

15. According to the Government, who have not been contradicted on these points by the applicant, from 5 October 2009 onwards the meetings between the girl and the applicant did not take place based on reasons that lay with the latter. Specifically, on 27 October 2009 the applicant asked the childcare authorities to postpone her meetings with her daughter. She resumed the meetings on 17 December 2009. Despite being informed in writing, the applicant also failed to appear at a review meeting concerning the drafting of a temporary guardianship plan for her daughter, which had been organised by the childcare authorities to take place on 21 October 2009.

C. Events leading to the decision to establish temporary guardianship for the applicant's daughter

16. On 5 October 2009 two people were gunned down in Kaunas. One of them was a judge of the Kaunas Regional Court, J.F., the other was the applicant's sister, V.N. It was suspected that D.K. had committed that crime. He fled from the law enforcement authorities and, in rather unclear circumstances, was found dead on 17 April 2010, the day which the court later pronounced as his date of death. On the basis of expert reports, including from the Swedish National Forensic Service (Rättsmedicinalverket), the Lithuanian authorities found that D.K. had actually died from alcohol and drug poisoning, and that he had choked on the contents of his own stomach.

17. On 8 October 2009 the director of the Kaunas Municipal Administration, on the basis of Articles 3.261 and 3.265 of the Civil Code (see paragraph 79 below), issued a temporary guardianship in respect of the applicant's daughter, effective as of 5 October 2009. She was supposed to reside at the child development centre at the Vilnius University Hospital. Afterwards, on 12 October 2009 the director of the Kaunas Municipal Administration, on the basis of Article 3.264 of the Civil Code (see paragraph 79 below), appointed N.V., who was D.K.'s sister and a judge at the Kaunas Regional Court, as the temporary guardian of the child who should live with N.V. at her home in the township of Garliava, in Kaunas district. The decision stipulated that it could be appealed against under the

rules set out in the Law on Administrative Proceedings (see paragraph 86 below). No such appeal was lodged.

D. Criminal proceedings

1. Termination of the criminal proceedings against the applicant

18. During the pre-trial investigation regarding the sexual molestation of the applicant's daughter (see paragraph 9 above), the prosecutor questioned a number of individuals, including the applicant, D.K., A.Ū. (the main suspect) and J.F. At a certain point additional charges of sexual assault under Article 150 § 4 of the Criminal Code were brought in respect of the applicant, her sister V.N., as well as A.Ū. and J.F.

19. In the course of the pre-trial investigation the authorities questioned the applicant's daughter as a victim on four occasions: on 17 and 30 December 2008, and on 9 June and 23 October 2009. Her testimony varied: during the first two interviews she said that acts of molestation had been performed on her by the suspect A.Ū., and also testified that her mother had been present. Later, however, her account of what had happened became more and more detailed. According to the submissions of D.K. and his relatives, and, partly, the interviews with the applicant's daughter, she started remembering more and more details of her sexual abuse: that besides the main suspect, A.Ū., there were two other men who had molested and sexually assaulted her on a number of occasions and in the presence of the applicant and the applicant's sister V.N.; this had taken place at the applicant's home, V.N.'s home and a hotel.

20. In the course of the criminal proceedings the girl was assessed by the psychologist I.Č., whose conclusion of 12 August 2009 stated that the girl had been capable of talking about events that had happened in the past. That said, it was not possible to ascertain whether the girl's experience had been direct, that is, whether the acts of sexual molestation had been performed on her, or whether that experience had been indirect, that is, whether she had watched the sexual acts of others, seen pornographic films, or heard adult conversations and questions on the topic. It was also not possible to ascertain whether those actions actually had been performed with the girl because later on she had been too often and improperly questioned about the alleged sexual abuse. The psychologist also addressed, as a separate matter, the video material provided by D.K. with the girl's accounts of sexual abuse. The psychologist pointed out that the very clear and specific description of A.Ū. provided by the girl in the video-recordings, that her father had given to the authorities, had differed from how she had described him in her interview with the authorities of 17 December 2008. The psychologist concluded that the father had influenced the girl's real experience by constantly talking with his daughter about that topic and giving her leading questions.

21. The State Forensic Psychiatry Service's specialist report no. 92TPK-1 of 25 November 2009, based on the psychological assessment of the girl, also supported the conclusions of psychologist I.Č. According to this report, the girl's age and individual experience, as well as the fact that from the start of the talks about sexual violence she had been living with her father, could have had an impact on her testimony. In general, the information which the girl had obtained from the adults, and the adult conversations and opinions expressed in her presence, had influenced the child's understanding about those events and the way she had described them. For children of her age,

recognition and positive evaluation by adults, especially those who were important to them and had authority, was important. Accordingly, in order to please, children would adjust their statements and answer as asked.

22. On 26 January 2010 a prosecutor at the Vilnius Regional Prosecutor's Office discontinued the criminal investigation in respect of the applicant and the two people who had been shot, V.N., and J.F. (see paragraph 16 above), holding that they had not committed the crimes of sexual assault and sexual molestation (Articles 150 § 4 and 153 of the Criminal Code).

Among other evidence, the prosecutor relied on the conclusion by the forensic psychiatrists, which had evaluated the applicant's daughter's testimony as not entirely credible, given that she had been questioned while she had already been living with her father and his family members, who could have indirectly influenced her perceptions (see paragraphs 20 and 21 above). Moreover, in none of her interviews or occasions when her behaviour had been observed had the specialists noticed any behaviour to show that she had experienced long-term sexual abuse. The girl's testimony had not been sufficiently precise and consistent.

In so far as the suspect A.Ū. was concerned, the suspicions against him were changed to sexual molestation, and he was charged with that crime on 23 February 2010.

The prosecutor informed the girl's representative N.V. about the right to challenge this decision via a higher prosecutor.

23. N.V. then challenged the prosecutor's decision. Having examined the material in the pre-trial investigation file, on 23 February 2010 a higher prosecutor dismissed the appeal, upholding the decision of 26 January 2010 as reasonable and sound.

24. By a final and unappealable ruling of 3 November 2010 the Panevėžys Regional Court upheld the prosecutors' conclusions as well-founded. The court observed that when considering the girl's testimony, the circumstances in which the testimony about sustained sexual abuse had been given had been particularly important. The same importance should have been attributed to the specialists' conclusions. Those circumstances had been examined in this case – the girls' family members had been questioned and the prosecutors had stated their opinions about the credibility of that testimony.

The Regional Court also stressed that, as established by the prosecutors, the dispute between the applicant and D.K. over their daughter had started in 2006, and their relationship had become hostile. Moreover, as pointed out by the prosecutor in the decision of 23 February 2010, the video recordings which D.K. had made of the girl clearly showed that on more than one occasion it had been talked at length with the girl about sexual actions and sexual violence, and in this way her understanding of sexual experience and her subsequent statements had been influenced (see also paragraphs 20 and 23 above).

The Regional Court noted that the prosecutor's assessment had been based on the experts' opinion and specialists' conclusions, as well as D.K.'s own admission that the video-recordings had started to be made in December 2008, that is, from the very beginning of the pre-trial investigation (see paragraph 9 above). It also pointed to the conclusions by the psychologist I.Č. and the report no. 92TPK-1 (see paragraphs 20 and 21 above).

25. As to the applicant, the Regional Court noted that the prosecutor's decision to discontinue the pre-trial investigation had been based on the gathered material, which had been carefully and

thoroughly examined. Although N.V. and her family members had claimed that the applicant's involvement in her daughter's sexual abuse and molestation had been proven by the girl's testimony, the Regional Court considered that testimony to be inconclusive. It upheld the prosecutor's conclusions that the vague and inconsistent data could not form a basis for holding that the applicant had been involved in the girl's molestation.

2. A.Ū.'s death and posthumous acquittal

26. As to the main suspect in the case, A.Ū., on 23 February 2010 a bill of indictment on charges of sexual molestation of a minor (Article 153 of the Criminal Code) was drawn up and the criminal case was transferred to the court for examination.
27. However, on 13 June 2010 A.Ū. was found dead. By a decision of 17 November 2010 the District Court discontinued the criminal case against A.Ū. on the grounds that the accused had died. It was later reopened at the request of A.Ū.'s relatives, who sought to clear his name.
28. By a judgment of 30 November 2012 the Vilnius City Second District Court acquitted A.Ū. in respect of the charges of sexual molestation, under Article 153 of the Criminal Code. That judgment was upheld by the Vilnius Regional Court on 10 April 2013, which held that the charges had not been proven. In its reasoning the Regional Court also extensively relied on the psychologists' conclusions (see paragraphs 20 and 21 above).

3. Pre-trial investigation against D.K. on account of the disclosure of information about his daughter's private life to the public

29. On an unspecified date in 2009 the authorities started a pre-trial investigation in respect of D.K. on the grounds that he, by sending to the media and other individuals filmed recordings of his daughter recounting the sexual acts possibly performed against her, had not only made public the material of a criminal investigation, but had also made public information about his minor daughter's private life, it being degrading to her honour and dignity. The criminal investigation against D.K. was based on allegations of abuse of parental rights and duties (Article 163 of the Criminal Code, see paragraph 85 below). It was discontinued on 3 May 2010, upon D.K.'s death (see paragraph 16 above).

E. Civil proceedings for the child's return to the applicant

1. The applicant's request that her daughter be returned to her care, and the applicant's contact with her daughter until December 2011

30. On 23 December 2009 the applicant applied to the Kėdainiai District Court for a permanent residence order in respect of her daughter. She submitted that she could take care of her daughter and that there had been no reason to prevent her and her daughter communicating. She also pointed out that her parental rights had not been restricted.

31. Within those proceedings N.V. lodged a counterclaim, applying for residence in respect of the child and asking that the applicant's parental rights in respect of her daughter be permanently restricted.

32. In the spring of 2010 the applicant asked the courts to lift the temporary protective measure, on the grounds that by a decision of 26 January 2010 the prosecutor had dropped the criminal charges against her (see paragraph 22 above). However, by a ruling of 4 June 2010 the Panevėžys Regional Court dismissed her request, noting that the contact schedule for the applicant and her daughter, as set out by the Vilnius Regional Court on 15 December 2009 (see paragraph 14 above), was sufficient for them to maintain contact and implement her parental rights.

The court also noted that in order to annul or change the temporary protective measure a factual basis was necessary. In the present case, such a basis could be the child's suffering when living with the guardian or her interest in communicating with her mother. However, according to the court, the applicant had not provided any factual proof that her and her daughter's relationship could break up because of the contact schedule set by the court on 15 December 2009, or that the existing contact order would be detrimental to the child's interests, such as her not having proper conditions to grow and develop. The court also relied on the fact that an appeal against the prosecutor's decision to discontinue the criminal proceedings against the applicant and her co-accused had been pending (see paragraphs 23 and 24 above).

33. According to the report of 14 December 2009 of the Psychological Support and Counselling Centre (a public institution), the temporary guardian N.V. and the girl had attended the centre on 16 November 2009 and psychological support had been provided to the girl once a week. The employees of the centre noted that the girl and N.V. had established a relationship of trust. They proposed that psychological support be continued. In the report of the centre of 17 February 2010 it was noted that N.V. had taken part in a training programme for guardians.

34. In January and February 2011, both the applicant and N.V. had asked the Kėdainiai District Court to order a number of examinations. In particular, the applicant asked if the experts could ascertain whether her daughter could objectively understand her surroundings and objectively express her wishes as regards her place of living, whether she could be influenced by the fact that she lived with her temporary guardian and in her home, and whether she could objectively answer the question whether she wished to live with her mother. For her part, N.V. asked if the experts could ascertain how the child's psychological state would be affected should she have to change her place of residence, leave N.V.'s home and be transferred to the applicant's care.

35. By a ruling of 8 February 2011 the Kėdainiai District Court approved those questions and ordered the experts at the State Forensic Psychiatry Centre to conduct the examination.

36. In the meantime, on 18 August 2011 the Kėdainiai District Court granted a request by the applicant regarding the times when she could see her daughter. As per the applicant's wishes, the court changed the time for the meetings to 3 to 5 p.m. on Mondays and Thursdays, to adapt to the girl's school attendance times.

37. Having assessed the girl, in October 2011 the psychiatrists issued report no. 103MS-143. They found that because of her age, emotional development and state of mind the girl could not fully grasp her situation and could not form an independent opinion as to where she preferred to live. As a result, they recommended that the girl should not be questioned in court. Even though the girl had

stated that she wished to live with her temporary guardian N.V., she could not explain why. Furthermore, the child's view was predetermined by objective facts, namely that she could not remember the time when she had lived with her mother and that she was currently residing with N.V.'s family, who had a negative attitude towards the applicant.
The psychologists also pointed out that both her mother and the temporary guardian were emotionally important persons for the child; she therefore avoided talking not only about them but also about the matter of where she should reside. The psychologists observed – having noticed no difference in the child's communication with her mother and N.V. – that she felt a strong connection and had a sense of security with both of them, who could both properly take care of the girl. Lastly, the psychologists noted that the natural and essential need of every child was to live with their parents –the mother in this case – and that the child's transfer to her mother would not have negative impact on her psychological state. Mutual goodwill between the applicant and N.V. and the latter's family members could ease the girl's adaptation to a new place of residence.

2. The Kėdainiai District Court's decision of 16 December 2011

38. On 16 December 2011, at a closed hearing in the presence of the applicant, her lawyer, N.V. and the childcare authorities, the Kėdainiai District Court held that the applicant could exercise her parental rights unrestrictedly. It ruled that the girl should reside with her mother. A counterclaim by N.V. that the girl should stay with her was dismissed. The court ruled out that there would be any danger for the girl if she was returned to her mother. Relying on the Court's judgment in Schaal v. Luxembourg (no. 51773/99, §§ 48 and 49, 18 February 2003), the District Court emphasised that any criminal charges against the applicant had been dropped as unfounded by a final court ruling of 3 November 2010 (see paragraphs 24 and 25 above). It followed that it was necessary to reunite the applicant with her daughter as soon as possible. In that context the District Court also held that accusations which N.V. had flaunted against the applicant – that she had assisted in her daughter's molestation – had been nothing more than a continuation of D.K.'s earlier efforts to have residence and to completely prohibit the mother from seeing her daughter.
39. The District Court relied on the Court's case-law in Olsson v. Sweden (no. 1) (24 March 1988, § 72, Series A no. 130) and Eriksson v. Sweden (22 June 1989, § 58, Series A no. 156), to the effect that taking a child into care meant a very serious interference with the right to respect for family life. Separation of a biological family had to be supported by sufficiently sound and weighty considerations in the interests of the child. For the Lithuanian court, no such circumstances existed as concerned the continued separation of the girl and her mother.
Firstly, there was no proof that the applicant had failed to properly take care of her daughter while they had lived together in 2006, or after their separation in 2008, when they had had supervised contact. Similarly, although N.V. had relied on the settlement agreement of 19 March 2008 in which the applicant had agreed that her daughter would reside with D.K. (see paragraph 8 above), the District Court considered that such a settlement agreement could not be treated as the applicant's refusal of the child. The court considered that the applicant had convincingly explained that she had signed that agreement envisaging that her daughter would only be living temporarily with the father, also because at that time she had been studying and could only see her daughter on

weekends. It was only after concluding the agreement that she had realised that she had been deceived, and had therefore immediately appealed against it.

The court also pointed to the fact that the applicant had consistently fought for her right to live with her daughter. There were no circumstances in the case allowing for the conclusion that the applicant had ever failed to use her parental powers in respect of her daughter or that she had acted against the interests of her child.

40. Similarly, after J.F.'s and V.N.'s murder a search had been announced for D.K., the applicant had been placed under State protection and her right to communicate with her daughter had been restricted (see paragraphs 16 and 17 above). Separating them obviously affected their relationship, which became weaker. However, this fact could not be held against the applicant. In this connection the court relied on childcare specialists' explanations and reports, according to which a negative attitude was being formed about the applicant at N.V.'s home, what had as a consequence that the applicant's daughter had become introverted and had refrained from talking about her mother not only at home, but also with the kindergarten teachers or childcare authorities.

The court also took notice of the forensic experts' explanations in report no. 103MS-143 that although the girl had stated that she wanted to live with N.V., she could not explain that choice (see paragraph 37 above). For the court, one could only conclude that, not having been able to freely communicate with her mother as of May 2008, when D.K. had taken her (see paragraph 8 above), and having been transferred to N.V.'s care in October 2009 (see paragraph 17 above), the girl had become attached to N.V. because the latter had been the only familiar and close person whom she could trust. It was also probable that the girl, having no other choice and not understanding her mother's situation (where and how she had lived), had hidden her feelings towards her mother (as confirmed by the testimony of the psychologists and kindergarten teachers).

Accordingly, when assessing the girl's emotional connection with her guardian, as explained by the experts, it was of paramount importance to understand that such feelings were not entirely natural, but based on a sense of "security". Furthermore, the girl's contact with her mother, in the present circumstances – twice a week and in the presence of others – could not be seen as free and uninterrupted. Such a lack of uninterrupted and regular communication could only lead to a further weakening of their relationship.

That being so, the District Court also took note that since January 2010 the applicant had received regular assistance from a psychologist before her meetings with her daughter, so that they would run easier, which had had a positive effect on their communication. The psychological experts confirmed (report No. 103MS-143, see paragraph 37 above) that the girl's relationship with her mother was strong, emotionally adequate and a "safe haven".

41. The court acknowledged N.V.'s arguments that a close connection had been established between her and the applicant's daughter, and that she loved the child and had the complete ability to take care of her. Even so, that was not sufficient to limit the applicant's parental rights towards the child. On this point the District Court relied on the Court's case-law to the effect that in such cases the child's best interests were of paramount concern. This had two aspects: on the one hand, it was necessary to ensure that the child grew in a safe environment, and that in no circumstances could a mother have recourse to measures which could harm the child's health and development (the court relied on Johansen v. Norway, 7 August 1996, § 78, Reports of Judgments and Decisions 1996-III).

On the other hand, it was also obvious that the best interests of the child were to grow with his family, unless it was proven that the family was inappropriate, because to do otherwise would mean separating the child from his roots. Moreover, even though the national authorities had wide discretion when deciding whether to give the child to his or her biological parents, the family connection could be restricted only in "particularly special circumstances" and everything had to be done in order to safeguard the personal connection and, if and when possible, "restore the family" (the court cited Amanalachioai v. Romania, no. 4023/04, § 81, 26 May 2009).

42. The District Court also highlighted that the instant case did not concern a dispute between persons who were competing for the right to have the child in their care, where the main principle was the best interests of the child. In contrast, this was a dispute between the child's mother and a temporary guardian, in which completely different criteria, defining the relationship between the child and the mother, applied. Given that no grounds to limit the mother's rights had been established, priority had to be given to the right, acquired by the child at birth, to live in a family with her mother.

In that context it was also noteworthy that N.V. had possibly failed to properly execute her duties as a guardian. In this respect, the Ombudsperson for the Protection of Children's Rights' report of 10 December 2010 criticised the actions of N.V., such as providing the media with information about the girl's inner emotional state, thereby breaching the child's interests. The Ombudsperson then recommended that the Kaunas childcare authorities guarantee the girl's rights and pointed N.V.'s attention to the fact that information of a private nature should not be disseminated. The fact that N.V.'s negative attitude towards the applicant had affected the girl, as well as her failure to ensure that information related to the child would not be made public, had been noted also by the psychologists.

For the court, such circumstances had to be evaluated as being counter to the aims of temporary guardianship, which, as a concept, in any case had the purpose of returning the child to the family, whenever the circumstances allowed. The need to reunite natural parents and a child had also been emphasised by the Court (the District Court relied on Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 169, ECHR 2000-VIII). For the District Court, the conclusions of the forensic experts and childcare services had completely ruled out the need to limit the applicant's rights as a mother, as demanded by N.V.

43. The District Court further emphasised that the girl would suffer irreparable harm if she was left to reside with N.V.:

"The court considers that the girl's interests would be seriously harmed if she stayed in the family of N.V., because that would mean that the girl's inherent rights to family ties, to be brought up and live with her biological family, would be restricted without any lawful grounds. As it has been established by forensic experts, even without any particular influence, the girl has picked up the negative attitude of N.V. and her family towards [the applicant]. Therefore, if the girl continued living with N.V., and taking into account N.V.'s particularly negative attitude towards [the applicant], there is a big risk that [the applicant] and her daughter's relationship will become weaker or will be completely disrupted. The court considers that N.V.'s negative influence would obstruct

[the applicant] in preserving a relationship with her daughter, which would clearly and seriously breach the interests of the child."

44. The District Court also referred to the Court's case-law on the issue of prolonged access restriction. It quoted Dolhamre v. Sweden (no. 67/04, § 120, 8 June 2010) to the effect that following any removal into care, stricter scrutiny was called for in respect of any further limitations by the authorities, for example on parental rights or access, as such further restrictions entailed the danger that the family relations between the parents and a young child were effectively curtailed. The District Court emphasised that the applicant and her daughter had been separated for almost three years. During that time they could communicate only minimally, which had undoubtedly negatively affected their relationship. It was unlikely that continuous separation of the mother from her child would make their relationship stronger.
For the District Court, it was of paramount importance that decisions determining family relations were not adopted merely because of a lapse of time or by simply upholding de facto situations. Accordingly, considering that the passage of time in the instant case was unacceptable because it could have irreparable consequences for the relationship between the child and her mother, with whom the former did not live, the court considered that its decision to return the girl to her mother had to be executed swiftly (Article 283 § 1 (4) of the Code of Civil Procedure, see paragraph 83 below). Given that the two had lived apart for a long time, the court set a term of fourteen days for the child to be returned to the applicant. During those fourteen days the applicant was to meet with her daughter daily, in the presence of child psychologists, and the duration of those meetings was to be increased by one hour until the meetings lasted six hours. If the childcare authorities decided that the girl was ready to move in with her mother earlier, she was to be returned in advance of the set deadline.
45. The District Court ordered N.V. to transfer the girl to the applicant within fourteen days, that is, by 30 December 2011. It quashed the temporary protective measures (see paragraphs 12, 14 and 36 above). The part of the court decision regarding the girl's place of residence, the obligation on N.V. to transfer the girl and the lifting of the temporary protective measures were to be executed immediately, in accordance with Article 283 §§ 1 (4) of the Code of Civil Procedure (see paragraph 83 below).
46. As later established by another court, on the date the decision of 16 December 2011 was adopted N.V. took the girl out of school and started home schooling (see also paragraph 58 below).
From that time onwards, crowds dissatisfied with the Kėdainiai District Court's decision of 16 December 2011 would maintain a constant vigil around N.V.'s home in Garliava to "protect" the girl from being taken away.
47. Afterwards, N.V. lodged an appeal challenging the part of the Kėdainiai District Court's decision ordering the girl to be returned to her mother within fourteen days. By a ruling of 28 December 2011 the Panevėžys Regional Court refused to accept the appeal for examination on the merits, on the grounds that N.V. had failed to follow the rules of civil procedure.
48. By rulings of 28 December 2011 and 3 and 6 January 2012 the Panevėžys Regional Court again refused, on procedural grounds, to accept N.V.'s appeals in respect of the decision ordering the applicant's daughter to be returned to the applicant by 30 December 2011.

49. By a ruling of 18 April 2012 the Klaipėda Regional Court dismissed N.V.'s appeal against the Kėdainiai District Court's decision of 16 December 2011 and left it unchanged.

3. The course of the girl's transfer to the applicant after the Kėdainiai District Court's decision of 16 December 2011

(a) The applicant's contact with the girl

50. The Government stated that the applicant had been provided with psychological consultations to strengthen her relationship with her daughter. She had attended a special training course for developing positive parental skills and received individual psychological consultations, as suggested and arranged by the Kaunas childcare authorities. The Government also submitted that, according to the childcare authorities, the applicant's use of psychological support had been rather passive, and she had been encouraged to attend psychological consultations more than once.

51. Given that the Kėdainiai District Court's decision had obliged the Kaunas childcare authorities to organise the meetings between the applicant and her daughter, they had initially drafted a schedule for the meetings in a neutral location for the period of execution of that decision and until 30 December 2011. The childcare authorities had obtained N.V.'s signature to comply with that schedule and had also arranged for a psychologist to be present during those meetings; they had also arranged psychological support for the applicant, her daughter and N.V. Both parties had been offered the possibility of mediation, however, they had both refused that option.

52. According to the Government, after the decision of 16 December 2011 N.V. refused to take the girl to the meetings with the applicant in a neutral location, on the pretext that the girl did not want to leave the house. With the efforts of the childcare authorities, the applicant could then see her daughter at N.V.'s house, and their meetings took place on 20, 23, 24 and 27 December 2011, and on 19 February 2012, the girl's birthday.

53. The Government submitted that on 16 March 2012 the applicant had asked the childcare authorities to organise meetings with the girl in a neutral location. Since the authorities had been aware of the girl's refusal to leave the house, those meetings had taken place on 19, 21, 22 and 23 March 2012 at N.V.'s house, with the participation of childcare specialists and a psychologist on the last two dates (22 and 23 March 2012).

54. The Government specified that following the unsuccessful handover of the girl on 23 March 2012 (see paragraph 62 below), the childcare authorities had taken steps to deal with the possible psychological consequences suffered by the child. Various means of psychological support had been proposed, including art therapy.

55. The Government also submitted that on 6 April 2012 an opinion concerning the emotional state of the girl had been received from a public institution, the Psychological Support and Counselling Centre. Accordingly, taking the girl's state into account, a meeting with the mother, irrespective of location, would cause the child grave additional stress, and the relationship between the girl and the mother should be strengthened gradually. Therefore, the Kaunas childcare authorities suggested to the applicant that she should write letters to the girl, which they would read to her. The applicant actually wrote several such letters, and the girl responded.

(b) Writ of execution, bailiff's actions and imposition of a fine on N.V. for failure to execute the District Court's decision of 16 December 2011

56. On 16 December 2011 the Kėdainiai District Court also issued a writ of execution under which N.V. was obliged to transfer the child to the applicant. The bailiff instructed N.V., under signature, to return the child to the applicant on 30 December at the secondary school in Kaunas district, which the girl had attended. However, even though the bailiff as well as child psychologists and childcare specialists were present at the school on the specific date and time, N.V. did not show up and did not bring the girl. She did not answer her telephone either. The bailiff afterwards requested the childcare authorities to provide assistance with the execution of the court decision for the girl's transfer, and they recommended that the transfer take place in a neutral environment.
The childcare specialists noted that although the meetings between the girl and the applicant had been aimed at making the eventual transfer easier, during those meetings it had been concluded that N.V. had not been preparing the girl for her return to her mother. The bailiff then attempted to have the girl returned to the applicant on 11 January 2012 at the premises of Kaunas police headquarters in the presence of childcare authorities and a psychologist, but on that day N.V. again failed to show up and bring the girl. The following day N.V. wrote to the bailiff, alleging that she had been executing the court decision, but that the girl did not wish to meet her mother and live with her.
57. On 5 January 2012 the applicant asked the bailiff to fine N.V. for failing to execute the court decision, and the bailiff in turn requested the Kėdainiai District Court to impose a fine of 1,000 Lithuanian litas (LTL) (approximately 390 euros (EUR)) for each day the court decision remained unexecuted, which was the maximum amount under Article 771 § 5 of the Code of Civil Procedure (see paragraph 82 below). By a ruling of 29 March 2012 the court granted the bailiff's request, but reduced the fine to LTL 200 (EUR 60) per day.
As specified by the Government, on that basis N.V. paid a sum of LTL 28,000 (EUR 8,100) to the applicant.
58. By a ruling of 8 June 2012 the Šiauliai Regional Court dismissed an appeal of N.V. against the court's decision to impose a fine on her (see paragraph 57 above). The court noted that after the pronouncement of the Kėdainiai District Court decision of 16 December 2011 the girl had been immediately taken out of school and then home schooled at N.V.'s home. In doing so N.V. had not only failed to prepare the girl for the transfer to her mother, but had also isolated her from the environment which she had been familiar with, and, without objective grounds, had restricted her ability to communicate with other children of her age, as well as her mother. This was confirmed by the Kaunas childcare authorities' reports to the effect that when asked about the girl, N.V. had stated that it had been in the best interests of the child to stay at her home.
According to those reports, N.V. had confirmed refusing to take the girl to the meetings with her mother. The appellate court also noted that on 11 January 2012 N.V. had not only not shown up, either alone or with the child, at the meeting which the authorities had set for the girl's transfer (see paragraph 56 above), but had also not informed the other participants of that meeting about not coming, "in this manner obviously ignoring the execution of the court decision and efforts by several State authorities to execute that decision with as little trauma to the child as possible".

The appellate court also noted that since the Kėdainiai District Court decision of 16 December 2011 "the girl was not being taken to the meetings with her mother in a neutral environment, and that in the environment in which the girl lived [D.K.'s] family members would constantly and publicly express negative views towards the applicant". This allowed for the conclusion that the girl's opinion as to communication and living with the mother was being shaped "exclusively" by N.V. and the persons close to her. For the appellate court, it was clear that N.V.'s actions and inaction were purposefully targeted at obstructing the execution of the court decision of 16 December 2011. Moreover, the sole fact that the girl was eight years old was not sufficient to claim that she could independently and publicly express her opinions about her place of residence or her connection with her mother, as suggested by N.V.

59. Lastly, the Šiauliai Regional Court pointed out that N.V., being obliged under Article 18 of the Code of Civil Procedure (see paragraph 81 below) to execute the court decision and because of her education clearly understanding the consequences of failure to execute the court decision, had the ability to choose whether to execute the court decision or to risk paying the fine.

(c) The operation for the girl's forcible transfer to the applicant

60. On 16 January 2012 the bailiff applied to the Kėdainiai District Court, requesting permission to forcibly take the child from N.V. On 22 March 2012 the Kėdainiai District Court granted the bailiff's request, however emphasising that force could only be used for removing the obstacles for execution of the court decision but not against the child herself.

61. In the meantime, the bailiff cooperated with the psychologists who had been working with the girl, and the childcare authorities. A number of opinions and recommendations from various institutions concerning the execution of the court decision were received. The bailiff also systematically organised meetings between the different authorities concerning the enforcement. As a result, a number of proposals were given to the applicant and N.V.; the latter was also warned a number of times of the obligation to act in the interests of the child.

62. On 23 March 2012, more than three months after the Kėdainiai District Court had ordered the transfer of the child to the applicant and one day after the same court gave its permission for the forcible taking of the girl, the bailiff issued a warrant requiring the child to be urgently handed over to the applicant. The bailiff arrived at the house of her grandparents, the parents of N.V., where the applicant's meeting with the girl was taking place. However, because of the crowds surrounding N.V.'s house and "guarding" the applicant's daughter against the enforcement of the Kėdainiai District Court's decision of 16 December 2011 (see paragraph 46 above) and active physical resistance on the part of the girl's grandparents, the bailiff's attempt to enforce the court decision was unsuccessful and the girl was not taken.

63. Subsequently, the childcare authorities organised special training for their specialists in order to prepare adequately for the next attempt at execution of the court's decision and handing over the child.

64. On 16 April 2012 the bailiff drafted two plans for enforcement of the decision and submitted them to the Lithuanian Association of Psychologists and a child and juvenile psychiatrist for

assessment. After receiving their comments the bailiff made the relevant amendments and obtained the approval of the institutions participating in the transfer procedure.
65. According to the Government, on 18 April 2012 the bailiff issued N.V. with the warrant requiring her to execute the court decision and hand over the child in goodwill. She refused.
66. Between 24 April and 3 May 2012 the bailiff, having coordinated with the heads of all the institutions participating in the execution proceedings, including the Kaunas police headquarters, prepared a general plan for the girl's transfer. The documents drafted by the bailiff set out the responsibilities of each of the institutions, and were given to all the participating parties (with the exception of N.V.), who signed them.
67. On 17 May 2012 the bailiff, the applicant, a childcare specialist and a psychologist arrived at N.V.'s house. They were accompanied by a police force of at least 100 officers, who removed any obstacles – the crowd which had gathered around N.V.'s home – hindering the execution of the court decision. The childcare specialist took the child from N.V. and handed her over to the applicant. The Government stated that afterwards competent specialists, including a psychologist, were monitoring the girl's condition, and gave her the necessary support.

(d) Measures taken with regard to persons who obstructed the execution of the court decision, as noted by the Government in their observations and not contested by the applicant

68. On 23 March 2012, after the unsuccessful attempt to enforce the Kėdainiai District Court's decision (see paragraph 62 above), the Prosecutor General, on his own initiative, opened a pre-trial investigation with regard to the elements of a crime under Article 245 of the Criminal Code, namely failure to comply with a court decision not associated with a penalty (see paragraph 85 below).
69. The bailiff also applied to the prosecutor on 27 March 2012, requesting that a pre-trial investigation be opened under Article 231 of the Criminal Code, namely hindering the activities of a bailiff (see paragraph 85 below) with regard to the actions of N.V.'s relatives during the unsuccessful attempt to execute the court decision on 23 March 2012 (see paragraph 62 above). The prosecutor opened a pre-trial investigation of that charge and also likewise of the charge that a civil servant had been threatened (Article 287 § 1 of the Criminal Code).

(e) Proceedings against N.V.

70. On 23 May 2012 the Prosecutor General addressed the Seimas requesting to lift the immunity of N.V., who was a judge. The prosecutor considered that the material gathered allowed for the conclusion that N.V. could have committed several criminal acts. The Government also noted that N.V.'s actions had been subject to examination in disciplinary proceedings before the Judges' Court of Honour.
71. In June 2012 N.V. resigned her judgeship after the Seimas voted to remove her legal immunity. N.V. then became the face of a new political party "The Way of Courage (Drąsos Kelias)", which alluded to her brother D.K.'s name.
72. In October 2012 N.V. was elected to the Seimas.
73. In spring 2013 the Prosecutor General asked the Seimas to lift N.V.'s immunity on the grounds that she had been suspected of a number of crimes contained in the Criminal Code, namely,

contempt of court (Article 232), failure to comply with a court decision not associated with a penalty (Article 245), resistance against a civil servant or a person performing the functions of public administration (Article 286), abuse of the rights or duties of a guardian (Article 163), hindering the activities of a bailiff (Article 231) and causing negligible bodily harm (Article 140).

74. On 9 April 2013, on the basis of a proposal by the Prosecutor General, the Seimas agreed that N.V.'s immunity, as that of a member of the Parliament, be lifted, so that she could be prosecuted and detained.

75. Afterwards, N.V. fled from Lithuania. She was impeached for having failed to attend the plenary meetings of the Seimas, and proceedings regarding her extradition from the United States of America are currently pending.

II. RELEVANT DOMESTIC LAW

A. As to family life

76. The Constitution reads:

Article 38

"The family shall be the basis of society and the State.
Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.
...
In the family, the rights of spouses shall be equal ..."

Article 39

"The State shall take care of families raising and bringing up children at home, and shall render them support according to the procedure established by law.
...
Under-age children shall be protected by law."

77. The relevant parts of the Law on the Fundamentals of Protection of Children's Rights (Vaiko teisių apsaugos pagrindų įstatymas) read as follows:

Article 4. General Provisions for the Protection of the Rights of the Child

"Parents, other legal representatives of a child, State, municipal government and public institutions and other natural and legal persons must abide by the following provisions and principles:
(1) the legal interests of the child must always and everywhere be given priority consideration;
...
(4) every child shall be given the possibility to be healthy and develop normally, [both] physically and mentally, prior to his or her birth as much as afterwards, and upon birth, a child must also be guaranteed the opportunity to develop morally and to participate in life within society;
...

(7) parents and other legal representatives of a child must first [and foremost] safeguard the rights of the child."

78. The Civil Code provides that parents (the father and mother) have equal rights and duties in respect of their children, irrespective of whether the child was born to a married or unmarried couple, after divorce or judicial nullity of the marriage or separation (Article 3.156).
79. Other provisions of the Civil Code relevant to this case read as follows:

Article 3.3. Principles for the legal regulation of family relations

"1. In the Republic of Lithuania the legal regulation of family relations shall be based on the principles of monogamy, voluntary marriage, the equality of spouses, the priority of protecting and safeguarding the rights and interests of children, raising children in the family, the comprehensive protection of motherhood and [on the] general principles for the legal regulation of civil relations.
2. Family laws and their application must ensure the strengthening of the family and its significance in society, the mutual responsibility of family members for the preservation of the family and the education of children, the possibility for each member of the family to exercise his or her rights in an appropriate manner and protect children of a minor age from the undue influence of the other members of the family or other persons or any other such factor."

Article 3.65. Temporary protective measures

"1. The court, having regard to the interests of the children of the spouses as well as the interests of one of the spouses, may make orders for temporary protective measures...
2. The court may make the following orders for temporary protective measures:
...
7) prohibit one of the spouses from having contact with his or her minor children or appearing in certain places."

Article 3.170. Right of the separated parent to have contact with the child and be involved in the child's upbringing

"1. The father or mother not living with the child shall have a right to have contact with the child and be involved in the child's upbringing.
2. A child whose parents are separated has the right to have regular and direct contact with both parents irrespective of where they live.
3. The father or mother living with the child shall not interfere with the other parent's contact with the child or involvement in [his or her] upbringing.
4. If the parents cannot agree on the involvement of the separated father or mother in the upbringing of the child and contact, the separated parent's contact and involvement in the child's upbringing shall be determined by the court.
5. The separated father or mother has the right to receive information about the child from all institutions and authorities concerned with the child's education, training, healthcare and protection

... Information may be refused only in cases where the child's life or health is at risk from the mother or father and in the cases provided for by law. ..."

Article 3.174. Disputes over a child's residence

"1. Applications for the determination of a child's residence may be filed by the child's father or mother, as well as by the parents or guardians/caregivers of a child's minor-aged parents who do not have full legal capacity.
2. The court shall resolve the dispute having regard to the interests of the child and the child's wishes. The child's wishes may be disregarded only if they are against [his or her] best interests...."

Article 3.261. Child guardianship in public and non-governmental guardianship institutions

"1. A child deprived of parental care shall be placed in a public or non-governmental child guardianship institution where there is no possibility of placing the child under guardianship in a family or a social family..."

Article 3.264. Child guardianship in public and non-governmental guardianship institutions

"1. Where a child is placed under temporary guardianship, the child's guardian shall be appointed by the decision of the ... municipal administration ... on the recommendation of the childcare institution..."

Article 3.265. Place of guardianship

"The place of guardianship of the child may be:
1) the guardian's place of residence;
...
3) an institution of child guardianship."

80. Other domestic law as to a child's right to live with his or her natural parents, the grounds for restriction of parental authority and the institution of care and guardianship are reproduced in the judgment Z.J. v. Lithuania (no. 60092/12, §§ 68-70, 29 April 2014).

B. Certain norms of civil procedure

81. The Code of Civil Procedure at the relevant time provided:

Article 18. Binding force of court decisions, rulings, orders or decrees

"Effective court decisions, rulings, orders or decrees are binding on the State or municipal authorities, civil servants and officials, physical and legal persons and shall be enforced throughout the entire territory of the Republic of Lithuania."

82. As to the court's role in family law cases and the transfer of children by court order, the Code of Civil Procedure reads as follows:

Article 376. Role of the court

"...
2. The court must take measures to reconcile the parties, as well as aim to protect the rights and interests of children. ..."

Article 764. Transfer of children named in a court decision

"1. If the [judgment] debtor does not within the time-limit set by the court or the bailiff comply with a court order concerning the transfer of a child, the bailiff, having assessed the recommendations of the childcare service, the police and the psychologist, shall take a decision regarding the way the court order should be enforced ... A copy of the bailiff's decision shall be sent to all parties of the proceedings and other relevant persons.
2. In implementing the court decision concerning the transfer of a child, the bailiff must carry out its duties in the presence of the [applicant] and a representative of the childcare service. To guarantee the protection of the child's rights, a psychologist may be invited, at the request of any party to the civil proceedings or the childcare service, or by a decision of the bailiff.
3. If the debtor does not comply with the bailiff's order for the transfer of the child, the bailiff has the right to ask the court for permission to forcibly take the child.
4. Where forcibly transferring a child, the police must remove obstacles for the enforcement of the decision for transfer, and the representatives of the childcare service shall take the child and hand him or her to the [applicant].
5. If a court rejects the bailiff's request for permission to forcibly take the child, the ruling must indicate how the child's transfer will proceed from that point forward.
6. Where enforcing the decisions mentioned [herein], protection of the child's rights must be guaranteed."

Article 771. Enforcement of decisions obliging the debtor to perform certain actions or stop performing them

"1. If the decision obliging the debtor to perform certain actions or stop performing them, where such actions are not related to transfer of property or funds, the bailiff shall note it in writing ...
...
5. When the decision obliging the debtor to perform certain actions or stop performing them, and those actions may only be performed by the debtor personally, is not executed within the set time-limit, the bailiff shall bring the aforementioned written statement to the district court of the place of execution. The issue of non-execution is decided in a court hearing. Both the debtor and the person in whose favour the court decision to be executed has been taken [the creditor] are informed of the time and place of the hearing ... Having established that the debtor has not executed the court

decision, the court may impose a fine of up to one thousand litas [EUR 290] for each delayed day in favour of the creditor and set a new time-limit for execution of the court decision.
6. If the debtor one or more times again breaches the time-limit set for execution of the court decision, the court shall apply the sanction mentioned in paragraph 5 of this Article. Payment of the fine shall not release the debtor from the obligation to perform certain actions or stop performing them ..."

83. Article 283 § 1 (4) of the Code of Civil Procedure at the material time provided that the court could order that its decision be urgently executed in part or entirely, before deciding the appeal, if a delay in executing the court decision could cause serious harm to the party seeking the decision or could make the decision overall impossible to execute.
84. Articles 2 and 3 of the Law on Bailiffs (Antstolių įstatymas) states that a bailiff is someone authorised and empowered by the State to carry out the enforcement of writs of execution, make findings of fact, or carry out any other tasks provided for by law (see also Manic v. Lithuania, no. 46600/11, § 71, 13 January 2015). A bailiff's actions or failure to act may be appealed against to the district courts (Article 510 of the Code of Civil Procedure).

C. Criminal Code

85. The Criminal Code, in so far as relevant, reads:

Article 163. Abuse of the Rights or Duties of Parents, Guardians, Custodians or Other Lawful Representatives of a Child

"Anyone who abuses the rights of a father, mother, guardian or custodian or other lawful representative of a child by physically or mentally harassing a child, leaving him for long periods without care or by maltreating him in a similar cruel manner
shall be punished by a fine or by restriction of liberty or by arrest or by deprivation of liberty of up to five years."

D. Other relevant domestic law

86. The Law on Administrative Proceedings, in so far as relevant, reads:

Article 15. Cases falling within the scope of competence of the administrative courts

"1. Administrative courts shall examine cases concerning:
1) the lawfulness of legal acts adopted and actions performed by the entities of State administration, as well as the lawfulness and justification of refusals by those entities to perform the actions within their competence or delay in performing such actions;
2) the lawfulness of acts passed and actions performed by the entities of municipal administration, as well as the lawfulness and justification of refusals by those entities to perform the actions within their competence or delay in performing such actions;

3) redress for damage caused by the unlawful actions of the entities of public administration (Article 6.271 of the Civil Code); ..."

III. RELEVANT INTERNATIONAL MATERIALS

87. The United Nations Convention on the Rights of the Child, ratified by Lithuania on 3 July 1995, and published in the State Gazette (Valstybės žinios) on 21 July 1995, contains, inter alia, the following provisions:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. ..."

88. On 25 January 1996 the Council of Europe adopted the Convention on the Exercise of Children's Rights, which entered into force on 1 July 2000. To date, the Convention has been signed by twenty-eight Council of Europe Member States and ratified by twenty. Lithuania is not a party to the Convention. As concerns the decision-making process and role of judicial authorities, the Convention reads as follows:

Article 3 – Right to be informed and to express his or her views in proceedings

"A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:
a. to receive all relevant information;
b. to be consulted and express his or her views;
c. to be informed of the possible consequences of compliance with these views and the possible consequences of any decision."

Article 6. Decision-making process

"In proceedings affecting a child, the judicial authority, before taking a decision, shall:
consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;
in a case where the child is considered by internal law as having sufficient understanding:
ensure that the child has received all relevant information;
consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
allow the child to express his or her views;
give due weight to the views expressed by the child."

Article 7. Duty to act speedily

"In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable."

Article 8. Acting on own motion

"In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger."

89. On 17 November 2010 the Committee of Ministers of the Council of Europe adopted Guidelines on Child Friendly Justice. One of the fundamental principles is that all children have a right to be consulted and heard in proceedings involving or affecting them. The best interests of the children are a primary consideration for the Member States. The Guidelines also provide that children should be treated with care and sensitivity throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come

into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Judgments and court rulings affecting children should be duly reasoned. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law. In family law cases (for example, custody), courts should exercise exceptional diligence to avoid any risk of adverse consequences on the family relations. When necessary, judicial authorities should consider the possibility of taking provisional decisions. Once the judicial proceedings are over, national authorities should take all necessary steps to facilitate the execution of court decisions involving and affecting children without delay. Lastly, after judgments in highly conflictual proceedings, guidance and support should be offered to children and their families by specialised services (see point nos. 44-48, 50-54, 76 and 79).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

90. In her application to the Court, and relying on Articles 6 § 1 and 8 of the Convention, the applicant complained, in particular, about the domestic authorities' decision to take her daughter into temporary care, about the fact that the return of her daughter had not yet taken place although the criminal case against her had already been terminated, and about the handling of the court proceedings regarding the return of her daughter and their overall length, notably in view of her limited opportunities to communicate with her daughter. In her observations to the Court, after the child had been actually returned to her, the applicant further complained about the belated execution of the court's decision to return the child to her and the circumstances surrounding this execution. The Court will examine those complaints as submitted by the applicant.
91. The Court considers that the applicant's complaints fall to be examined solely under Article 8 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' arguments

(a) The Government

92. Firstly, the Government noted that, as regards the taking of her daughter into temporary guardianship in October 2009, the applicant had failed to appeal against that administrative decision before the administrative courts, even though such a possibility was clearly provided for by Lithuanian law (see paragraph 86 above).
The Government also considered that this part of the applicant's complaint was manifestly ill-founded.
93. As to the applicant's complaint about the non-return of her daughter to her care, in their observations of 31 May 2012 the Government pointed out that on 17 May 2012 (see paragraph 67 above) the applicant's daughter had been handed over to her following the enforcement of the Kėdainiai District Court's decision of 16 December 2011. The situation complained of by the applicant had thereupon ceased to exist. The Government thus considered that the applicant could no longer claim to be the victim of an alleged violation of the Convention, and submitted that this part of the application should therefore be declared inadmissible, pursuant to Article 35 §§ 3 and 4 of the Convention.
94. Should the Court nonetheless hold that the applicant could still be considered as having victim status within the meaning of Article 34 of the Convention, the Government submitted that the applicant had failed to exhaust domestic remedies by not having addressed the domestic courts seeking the State's responsibility. In particular, had she considered that the delayed execution of the Kėdainiai District Court's decision of 16 December 2011 had caused her damage, she could have claimed redress under Article 6.272 of the Civil Code. In this connection, the Government also noted that the main actor in the execution of the court's decision had been the bailiff. Accordingly, had the applicant been dissatisfied with the bailiff's actions, she could have appealed against those decisions to a court. However, she had failed to use either of these remedies.

(b) The applicant

95. The applicant admitted that she had not appealed against the October 2009 administrative decision regarding the temporary guardianship of her daughter. Nevertheless, she wished to emphasise that by the ruling of 23 December 2008 the temporary protective measures had been established and that at that time her parental rights had already been limited (see paragraphs 11 and 12 above). The applicant thus considered that any appeal against the temporary guardianship would have been futile. She also noted that despite the fact that she had not appealed against the administrative decision appointing the temporary guardian, she had taken other actions for her daughter to live with her – on 23 December 2009 she had started court proceedings regarding the child's permanent place of residence (see paragraph 30 above). The applicant considered that a separate application to the court for residence had been one of the possible ways to cancel the decision to appoint a guardian for the girl.
96. As to the Government's suggestion that the applicant should have started court proceedings for damages regarding her daughter's non-return (see paragraph 94 above), the applicant reiterated that she had had limited financial resources and time to pursue those. Despite that, she had made claims and appealed to the courts regarding the essential issue related to her right to family life and her "goal to live with her daughter".

2. The Court's assessment

97. The Court recalls that by the Kaunas City Municipality director's decision of 5 October 2009 the applicant's daughter was taken into temporary guardianship (see paragraph 17 above). As correctly pointed out by the Government (see paragraph 92 in limine above), the applicant did not appeal against that decision. The Court has also held, as early as in 2003 (see, mutatis mutandis, Jankauskas v. Lithuania (dec.), no. 59304/00, 16 December 2003) that the administrative courts, which were created in Lithuania in 1999, are an effective remedy regarding complaints against actions of the State or municipal authorities. That being so, it cannot but find that the applicant has not exhausted the available domestic remedies in respect of her complaint concerning issuing of temporary guardianship in respect of her daughter. Accordingly, this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

98. The Court next turns to the Government's objection that the applicant could no longer claim to be a victim of Article 8 violation on account of the fact that in May 2012 the daughter had been returned to her (see paragraphs 67 and 93 above). The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 81, ECHR 2012, and the case-law cited therein). Such an acknowledgment is absent in the present case. The Court likewise held that the issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an ex post facto examination of his or her situation (see Scordino v. Italy (no. 1) [GC], no. 36813/97, § 181, ECHR 2006-V). In the instant case the applicant's complaint is in fact that the State authorities did not effectively prevent N.V.'s efforts which delayed the execution of the Kėdainiai District Court's judgment. Therefore, the applicant retains the status of a victim, and the Government's objection must be dismissed.

99. The Court also considers that the Government's remaining objections as to the applicant not having exhausted the domestic remedies (see paragraph 94 above) are intrinsically linked to the merits of her complaints about the State authorities' actions in the course of the court proceedings for her daughter's residency (also see paragraph 105 below). It therefore joins these objections to the merits.

100. Lastly, the Court notes that the applicant's complaints as to the State authorities' actions within the proceedings concerning her daughter's return, including temporary protective measures, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

101. In her application to the Court, lodged on 2 September 2011, the applicant complained that the civil proceedings concerning the restriction of her parental rights and custody in respect of her daughter had already been pending for two years and ten months (see paragraph 11 above), although it was still the court of first instance which had been examining her case. The applicant criticised the entire handling of her case and complained that the Lithuanian authorities had not returned her daughter to her, even though the criminal charges against the applicant had been dismissed and the persons concerned [N.V.] had exhausted all legal remedies to appeal against the decisions dismissing those charges. She also submitted that, given the fact that she had had limited opportunities to communicate with her daughter during the civil proceedings, the State had had to assure that the court proceedings would be as expedient as possible. However, that had not been the case.

102. The applicant further asserted that already from the beginning of the litigation concerning her parental rights – which had been affected as early as on 23 December 2008 (see paragraph 11 above) – there had been disproportion between her right to family life and the general interest of society. In her view, as no institution had established that she had assaulted her daughter or helped others to molest her, there had been no need to impose the temporary protective measures. Pointing to the circumstances when two of the individuals connected with the alleged sexual abuse had been shot (see paragraph 16 above), the applicant asseverated that although she personally had been provided with State protection, there had been no reason why she and her daughter could not live together.

103. As to her contact with her daughter, the two had already been separated on 19 March 2008, when a settlement agreement between her and D.K. had been approved by the Vilnius City First District Court, establishing that the girl would live with her father (see paragraph 8 above). Several sets of court proceedings had then followed, but their outcome had been that the applicant and her daughter had been apart for four years, until 17 May 2012. During that period the applicant and her daughter's situation had been made harder by the fact that they had had limited opportunities to communicate. Even after the temporary protective measures had been varied on 27 April 2009 (see paragraph 12 above), the applicant and her daughter could not act freely – the meetings had been supervised by the childcare authorities and had lasted for only a limited time – a couple of hours per week. What was more, some of those meetings had taken place at the home of N.V., who personally, as well as her family members, had been unwilling to permit uninhibited contact between the mother and the daughter. The applicant also submitted that a number of times she had not been allowed to enter N.V.'s house, especially after the Kėdainiai District Court's decision of 16 December 2011.

104. In her observations to the Court, submitted on 23 July 2012, the applicant further submitted that the State had not guaranteed her rights because it had not ensured a smooth handing over of her child to her. In particular, there had been no justifiable grounds for not implementing a court order regarding the daughter's return, and the return had taken place only after a delay of five months. The applicant also disputed the Government's defence that the case had been extraordinary, and that the biggest burden for the execution of the court decision to hand over the girl to her mother had rested on the guardian N.V. and her supporters (see paragraphs 108 and 109 below). For the applicant, and notwithstanding N.V.'s failure to comply with the bailiff's demands, the State authorities, especially since they had been aware of the impact the case had had on Lithuanian

society and the support that N.V. had among the Lithuanian people, had retained a duty to be prepared for the execution of the court decision. In that context the applicant pointed out that three months after the Kėdainiai District Court's decision, on 22 March 2012, the court had given permission for the use of force for its execution (see paragraph 60 above), allowing the removal of obstacles hindering the girl being taken from N.V.'s home. After that decision had been issued, it had still taken almost two months for the child to be handed over to the applicant (see paragraph 67 above). The applicant indicated that when the officials had finally been prepared to implement the court order, it had taken them less than an hour to finish the operation, which showed that prior to this the State authorities had been passive. In sum, unjustified reasons – such as outstanding public interest in the case, the ill will of the guardian N.V., and the authorities' possible fear of taking action – had taken priority over the applicant's right to respect for her family life.

105. The applicant lastly submitted that because of the turmoil surrounding the court proceedings neither the girl nor the applicant could live a normal social life in Lithuania. They had only had one choice, to change her name and leave the country.

(b) The Government

106. At the outset, the Government wished to set straight the facts of the case, since they saw the applicant's grievance that she had been separated from her daughter for four years as to an extent misleading. The Government thus pointed out that by a court decision of 19 March 2008 the applicant had voluntarily agreed that her child would not live with her (see paragraph 8 above). Afterwards, on 23 December 2008 temporary protective measures had been imposed on her in the case concerning the restriction of her parental rights in connection with the suspected molestation of her daughter and the applicant's alleged involvement therein (see paragraph 11 above). The applicant, for her part, had started civil court proceedings for her daughter's return only on 23 December 2009 (see paragraph 30 above). Afterwards, the Kėdainiai District Court decision of 16 December 2011 had created yet another legal situation when the child's place of residence had been changed. However, in the situation prior to the latter decision one could not talk about the child's "return" to the applicant. The Government thus considered that the applicant had mixed up all those proceedings, seemingly with the intention of making an impression that she had been separated from her daughter for a long time.

107. The Government noted that the applicant had retained the right to see her daughter throughout the period of various criminal and civil proceedings and that, taking into account the difficult situation, no excessive restrictions had been imposed on her ability to see her daughter and communicate with her. In that context the Government also pointed out that between 5 October and 17 December 2009 the applicant's visits with the girl had not taken place because of the applicant. Likewise, the applicant had failed to appear at the meeting of 21 October 2009 organised by the Kaunas childcare authorities, to which she had been invited. For the Government, this meant that the applicant at that time had not shown much interest in her daughter's situation.

The Government also disagreed with the applicant's statements that while the child had been living with her temporary guardian, she had been able to see her daughter only in an "unfriendly environment". In contrast to what had been claimed by the applicant, and at least until the Kėdainiai

District Court's decision of 16 December 2011, the temporary guardian had not been present at those meetings. As a result, and with the help of the childcare specialists and psychologists, the applicant had gradually rebuilt the capacity to maintain a close relationship with her daughter. After that court decision, and notwithstanding the fact that N.V. had refused to take the girl to the meetings with the applicant in a neutral location on the pretext that the girl had not wanted to leave the house, because of the childcare authorities' efforts and mediation, the applicant had continued seeing her daughter at N.V.'s house. Those meetings had taken place between December 2011 and March 2012, and the authorities had also provided other assistance to the applicant in order to facilitate her contact with the girl. In sum, the applicant had retained access to her daughter, and, taking the difficult situation into account, no excessive restrictions had been imposed on the applicant's ability to see her child and to communicate with her.

108. Turning to the question of execution of the Kėdainiai District Court's decision of 16 December 2011, the Government considered that the Lithuanian authorities had taken all possible steps in order to facilitate the execution of that court decision in order to hand over the child to the applicant. Firstly, the efforts of the domestic authorities had been properly coordinated and, above all, directed at the protection of the child's interests and safety. Accordingly, all possible attempts had been made to encourage execution of the court's judgment in good faith. However, the authorities' efforts had been in a large part hindered by the lack of cooperation on the side of the girl's temporary guardian N.V.

109. In that context, the Government admitted with regret that the Lithuanian institutions had been faced with an exceptional challenge when executing the court decision for the girl's transfer. The sensitive subject matter at issue itself, namely the sexual abuse of a minor, had caused highly elevated public interest. The course of the criminal proceedings concerning the alleged sexual abuse of the girl and the civil proceedings concerning the restriction of the applicant's parental rights and residence had been closely observed by the media. A large part of Lithuanian society had been touched by the girl's story and had expressed their support towards the girl's temporary guardian in various ways, including spontaneous gatherings of crowds near her house. Speeches, concerts and other events had been organised. The crowds had also declared their discontent with the Kėdainiai District Court's decision of 16 December 2011, and had objected to its execution. The case had had significant repercussions, and the national authorities had thus been placed in a unique situation when seeking to execute the court's decision.

110. That being so, during the execution proceedings the authorities had nevertheless given the highest priority to the interests of the child, taking into account not only her right to live with her biological family and retain ties with her mother, but also the right to physical and emotional integrity and security. For those reasons, the authorities had first tried to achieve the execution in goodwill, seeking to reduce the inevitable emotional distress for the girl, and it had only been afterwards, when it had become clear that N.V. had had no intention of giving up the girl, that the authorities had applied force in executing the court decision. The Government also pointed out that the Lithuanian institutions which had participated in the execution of the court's decision had not had prior experience with enforcement in such challenging situations as the one at issue. Likewise, this had been the first time when the newly elaborated procedure of handing over a child prescribed by the new wording of Article 764 of the Code of Civil Procedure (see paragraph 82 above) had been

applied. The institutions had thus sought to duly cooperate and coordinate their actions, clarify their discretion in particular situations, and analyse the experience in order to be adequately prepared for possible similar situations in the future.

111. In the light of the above, the Government considered that certain delays in the execution of the court's decision could not be regarded as disproportionate interference with the applicant's right to respect for her family life, especially taking into account the efforts demonstrated by the domestic authorities in the execution process and while maintaining the applicant's contact with her daughter. Furthermore, the bailiff had also taken measures against N.V., who had been fined for failing to obey the court decision. The Government also stated that adequate and necessary social and psychological support had been provided to the daughter and the applicant after the child had been handed to the applicant.

112. Lastly, the Government submitted that the domestic courts had showed diligence when assessing the relevant circumstances of the case, and that there had been no undue delay. In fact, the judicial examination of the case had been hindered by the numerous appeals lodged by the applicant and especially N.V., who had appealed against almost every procedural decision in the civil case.

2. The Court's assessment

(a) General principles

113. The general principles on custody and contact rights were recently summarised in the case of Khusnutdinov and X. v. Russia (no. 76598/12, §§ 76-83, 18 December 2018) as follows:

"76. The Court notes that where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be maintained. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among other authorities, Monory v. Romania and Hungary, no. 71099/01, § 70, 5 April 2005, and K. and T. v. Finland [GC], no. 25702/94, § 151, ECHR 2001-VII).

77. Moreover, even though the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life. 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 implementation, where appropriate, of specific steps (see Glaser v. the United Kingdom, no. 32346/96, § 63, 19 September 2000).

78. In relation to the State's obligation to implement positive measures, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action. This also applies to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (see Manic v. Lithuania, no. 46600/11, § 101, 13 January 2015, with further references).

79. In the context of both its negative and its positive obligations, the State must strike a fair balance between the competing interests of the individual and of the community as a whole; in both contexts, the State enjoys a certain margin of appreciation (see Glaser, cited above, § 63). Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, primary importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII, and Płaza v. Poland, no. 18830/07, § 71, 25 January 2011).

80. It follows that the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with other persons may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see Hokkanen, cited above, § 58; Ignaccolo-Zenide v. Romania, no. 31679/96, § 94, ECHR 2000-I; and Kosmopoulou v. Greece, no. 60457/00, § 45, 5 February 2004).

81. It must be borne in mind that generally the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding child custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see Sahin, cited above, § 64; Sommerfeld v. Germany [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); C. v. Finland, no. 18249/02, § 52, 9 May 2006; and Z.J. v. Lithuania, no. 60092/12, § 96, 29 April 2014). To that end, the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and a whole series of factors, in particular factors of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 139, ECHR 2010, and Antonyuk v. Russia, no. 47721/10, § 134, 1 August 2013).

82. Furthermore, while Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, an applicant has been involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests (see Z.J. v. Lithuania, cited above, § 100, with further references).

83. Lastly, the Court considers that in conducting its review in the context of Article 8, it may also have regard to the length of the local authority's decision-making process and of any related judicial

proceedings. In cases of this kind there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing. Effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere passage of time (see W. v. the United Kingdom, 8 July 1987, § 65, Series A no. 121; Sylvester v. Austria, nos. 36812/97 and 40104/98, § 69, 24 April 2003; and Z.J. v. Lithuania, cited above, § 100)."

114. The Court has also held that the margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. In particular, when deciding on custody matters, the Court has recognised that the authorities enjoy a wide margin of appreciation. However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that family relations between the parents and a young child are effectively curtailed (see Elsholz v. Germany [GC], no. 25735/94, § 49, ECHR 2000-VIII; Kutzner v. Germany, no. 46544/99, § 67, ECHR 2002-I; Sahin v. Germany [GC], no. 30943/96, § 65, ECHR 2003-VIII, and Sommerfeld v. Germany [GC], no. 31871/96, § 63, ECHR 2003-VIII (extracts)).

(b) Application to the present case

115. The Court notes, firstly, that by its very nature the tie between the applicant and her minor daughter comes within the notion of family life within the meaning of Article 8 of the Convention (see Gnahoré v. France, no. 40031/98, § 49, ECHR 2000-IX, with further references). It must therefore be determined whether the State authorities acted in such a manner as to allow that bond to develop and took the necessary measures to reunite parent and child (see Kutzner, cited above, § 61).

i. As to the period from 23 December 2009 to 16 December 2011

116. The Court observes that although it took the State authorities two years – from December 2009 to December 2011 (see paragraphs 30 and 38 above) – to reach a court decision that the applicant's daughter should be returned to her, this had been for uncontestably objective reasons. Firstly, nearly one year had to pass until in November 2010 the Regional Court upheld the prosecutor's decision to discontinue the criminal investigation against the applicant (see paragraphs 24 and 25 above). Afterwards, and also on the basis of the applicant's request lodged within the civil proceedings, expert examinations had to be performed to assist the Kėdainiai District Court to determine whether it was within the best interests of the child to be returned to her mother (see paragraphs 34 and 37 above). Once the experts had produced their report in October 2011, the Kėdainiai District Court concluded the case without undue delay, within two months. That being so, the Court cannot find that there were unjustifiable delays in the proceedings which were attributable to the Lithuanian authorities. To the contrary, they appear to have dealt with the proceedings with the requisite diligence.

117. Turning to the applicant's grievance that she had none or only limited opportunities to communicate with her daughter during numerous legal proceedings, the Court notes that on 23 December 2008 the Kaunas City District Court had imposed temporary protective measures (see paragraph 11 above). However, it has no reason to doubt that such measures were imposed for, what was at that time, a valid reason – a pre-trial investigation had just been opened in which the applicant was suspected of having assisted child molesters in the sexual abuse of her daughter (see paragraph 9 above; see also Schaal v. Luxembourg, no. 51773/99, § 47, 18 February 2003, and Article 9 § 1 of the Convention on the Rights of the Child, cited in paragraph 87 above). The Lithuanian courts placed the child's best interests first, as is required by Article 8 of the Convention (see, most recently, Strand Lobben and Others v. Norway [GC], no. 37283/13, § 204, 10 September 2019) and national law (see paragraph 77 above).

118. Even so, the contact arrangement was soon revised by the court, and as of April 2009 the applicant was permitted to see her daughter at regular intervals, in order to facilitate her and her daughter's relationship – as noted by the domestic courts (see paragraphs 12-14 above), as far as it was possible in the circumstances of this particular case whilst the criminal proceedings against the applicant and the civil litigation concerning her daughter's place of residence were still pending. This contact order was maintained until the Kėdainiai District Court's decision of 16 December 2011 (see paragraphs 40 in limine, 44 in limine and 45 above). The Court thus finds that at no stage of the civil proceedings for her daughter's return was the applicant prohibited from being in contact with her child (see paragraph 32 above). More importantly, the Court notes that the applicant had not claimed that she had been unable to have contact with her daughter because of the State authorities' actions or failure to act.

119. As to the applicant's statements that she and the girl could not act freely during their meetings, the Court notes that since 2010 the applicant was provided with a psychological consultation before meetings with her daughter and thereafter her relationship with the girl changed and became warmer, the emotional ties between the two of them were strengthened (see paragraph 40 in fine above). Likewise, on the basis of the documents submitted by the parties, the Court considers that the childcare authorities were sufficiently proactive in monitoring the situation and assisting the courts (see paragraphs 12 and 14 in fine above). Similarly, after N.V. was appointed as temporary guardian of the girl, psychological support was provided to her, having the child's best interests as the primary consideration (see paragraph 33 above).

120. In sum, as the Court finds on the facts before it, the proceedings leading to the Kėdainiai District Court's decision of 16 December 2011 to return the child to her mother were conducted with the requisite diligence, and the measures taken concerning the applicant's separation from and contact with her daughter were based on objective reasons.

ii. As to the period from 16 December 2011 to 17 May 2012

121. The Court reiterates that the applicant and her daughter's reunion was ordered by the Kėdainiai District Court on 16 December 2011, which, in line with the Court's case-law on the matter, also underlined that its decision had to be enforced without undue delay, in order to limit any possible harm to the applicant and her daughter's relationship (see paragraphs 43-45 above; see also

the Guidelines on Child Friendly Justice in paragraph 89 above). It is also clear that on already the same day N.V. took measures, such as taking the girl out of school in order to keep her at home (see paragraphs 46 and 58 above), which made the authorities' task of reuniting the daughter and the mother more difficult. Notwithstanding this, the Court has had occasion to hold that lack of cooperation between separated parents is not a factor which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child which, depending on their nature and seriousness, may override those of the parent (see Diamante and Pelliccioni v. San Marino, no. 32250/08, § 176, 27 September 2011, and the case-law cited therein). The Court considers that the preceding considerations also apply to this case, where N.V. appears to have represented the interests of her brother, D.K., as she saw fit.

122. As to the bailiff's alleged failure to enforce the court order for protective measures, the Court considers that this was caused by objective reasons. The first attempt to hand over the girl failed because N.V. did not take her to school (see paragraphs 46 and 56 above). The second attempt did not come to fruition because of the calamity at N.V.'s parents' home, when the bailiff was reluctant to use physical force to pull the child from her grandparents (see paragraph 62 above). The bailiff's conclusion, which was based on the domestic court's instruction (see paragraph 60 above) that physical force against the child was not a measure to be used in such situations and that another method of enforcement was necessary to protect the child's interests, is tantamount to the Court's position that any obligation to apply coercion to facilitate the reunion of a parent with a child must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, in particular the best interests of the child (see Hokkanen v. Finland, 23 September 1994, § 58, Series A no. 299-A). Accordingly, the fact that until 23 March 2012 the authorities' efforts foundered does not automatically lead to the conclusion that they failed to comply with their positive obligations under Article 8 of the Convention (see G.B. v. Lithuania, no. 36137/13, § 93, 19 January 2016).

123. The Court also observes that subsequently the bailiff appears to have taken the most sophisticated measures – having coordinated the plan for the girl's transfer with all the necessary authorities (police, psychologists, childcare specialists), under signature, and having listed the responsibility of each institution during the planned operation (see paragraphs 61, 63, 64 and 66 above). Eventually, the steps undertaken brought positive results and the girl was on 17 May 2012 reunited with the applicant (see paragraph 67 above). As noted by the Government, who have not been contradicted on this point by the applicant, psychological support was provided to the two of them afterwards (see paragraph 111 in fine above).

124. Furthermore, the Court gives weight to the fact that, when faced with resistance from N.V. (see also paragraph 46 above), the State did not remain a bystander to the situation. The bailiff thus requested that N.V. be fined for ignoring the Kėdainiai District Court's decision, and that request received a serious response in the court, which acknowledged N.V.'s ignorance of the law and gave her a fine which could not be considered insignificant (see paragraph 57 above). She was also found to be at fault for providing the media with information about the girl's inner emotional state, in breach of the child's interests (see paragraph 42 above). Likewise, and although the applicant pleaded that the State had taken the public reaction which N.V.'s actions had caused to the applicant

and her daughter light-heartedly, the Court is satisfied that a number of actions, including criminal prosecution, were pursued in respect of N.V. (see paragraphs 70-75 above) as well as her relatives (see paragraphs 68 and 69 above), which for the Court shows the State's serious stance. In the light of these findings the Court also dismisses the Government's objection that the applicant had not exhausted the domestic remedies in respect of her complaint concerning the State authorities' actions in the course of the court proceedings for her daughter's residency (see paragraph 99 above).

125. Lastly, it is true that after the dispute between the applicant and N.V. escalated after the 16 December 2011 decision of the Kėdainiai District Court (see paragraph 46 above), the applicant was no longer able to meet her daughter in a neutral environment (see paragraph 58 above). Notwithstanding this, with the authorities' assistance, and at least until the unsuccessful attempt to return the girl on 23 March 2012, she could still see the child at N.V.'s home or that of N.V.'s parents, even if that environment was not without fault (see paragraphs 21, 62, 68 and 69 above). Afterwards, the authorities still continued pursuing any available avenues to enforce the applicant's contact rights which could reasonably have been required in the very difficult situation at hand (see paragraph 55 above; also see Pascal v. Romania, no. 805/09, §§ 85 and 88, 17 April 2012). The Court also notes that the childcare authorities were sufficiently proactive in monitoring the situation and also having discussed it with both the applicant and N.V. (see paragraphs 50-56 above; also see the Guidelines on Child Friendly Justice, as cited in paragraph 89 above).

126. Consequently, the Court finds that the domestic authorities, when executing the Kėdainiai District Court's decision of 16 December 2011, again acted with the requisite diligence, this notwithstanding the fact that that decision had not been executed within the court prescribed fourteen days' time-limit.

iii. As to the applicant's participation during both periods of the proceedings regarding her parental rights

127. Even if the applicant did not voice specific complaints in this regard, the Court notes that she, in person or through her lawyers, was present at a number of hearings where the merits of her civil claim for her daughter's return, including the matters regarding her contact rights with her daughter, were discussed by the domestic courts (see paragraphs 12, 13 in fine, 14, 32, 34-36 and 38 above). With the benefit of legal assistance, she had the opportunity to submit requests and evidence, present her arguments and comment on the other participants' submissions before the courts, both in writing and orally (see Khusnutdinov and X, cited above, § 92; see also Article 9 § 2 of the Convention on the Rights of the Child, cited in paragraph 87 above).

128. That being the case, the Court cannot but conclude that the applicant was thus placed in a position enabling her to put forward all arguments in favour of her being granted custody of the girl and she also had access to all the relevant information relied on by the courts. Eventually, the case regarding her right to live with her daughter was resolved in the applicant's favour (see paragraphs 48 and 49 above). In addition, the child herself was heard by the investigators and by the court-appointed experts (see paragraphs 19-21 and 24 above), the need to respect the views of the child having been highlighted inter alia by the United Nations Children Rights' Committee (on this issue see, for example, G.B. v. Lithuania, cited above, §§ 65 and 105) as well as by Articles 3 and

6 of the Convention on the Exercise of Children's Rights, which, although it has not been ratified by Lithuania, nevertheless is a useful tool for the interpretation of relevant principles (see paragraph 88 above, and N.Ts. and Others v. Georgia, no. 71776/12, § 76, 2 February 2016).

129. In these circumstances, and bearing in mind that as a general rule it is for the national courts to assess the evidence before them (see Sahin and Sommerfeld, both cited above, §§ 73 and 71 respectively), the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with and that the applicant was involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interests.

iv. Conclusion

130. In the light of the foregoing, the Court holds that the Lithuanian authorities did not fail to discharge their positive obligation to guarantee the applicant's right to respect for her family life inasmuch as this concerns her admissible complaints under Article 8 of the Convention (see paragraph 100 above). There has consequently been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Joins to the merits the Government's objection as to the applicant not having exhausted the domestic remedies in respect of her complaint concerning the State authorities' actions in the course of the court proceedings for her daughter's residency, and rejects it;

2. Declares the complaint regarding the decision to impose temporary guardianship on the applicant's daughter under Article 8 inadmissible, and the remainder of the application admissible;

3. Holds that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 29 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President