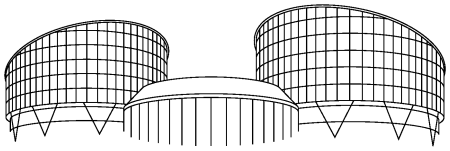

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TONELLO v. HUNGARY

(Application no. 46524/14)

JUDGMENT

STRASBOURG

24 April 2018

This judgment is final but it may be subject to editorial revision.

In the case of Tonello v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Vincent A. De Gaetano, *President,*
Georges Ravarani,
Marko Bošnjak, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 46524/14) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Andrea Tonello ("the applicant"), on 10 June 2014.

2. The applicant was represented by Mr L. Serino and Mr G. Romano, lawyers practising in Rome. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that the Hungarian authorities had failed to act swiftly in the proceedings concerning the abduction of his daughter and had not made adequate and effective efforts to enforce his right for his child to be returned after she had been illegally removed from Italy.

4. On 13 January 2015 the complaint concerning the failure of the Hungarian authorities to ensure the applicant's daughter's return to Italy was communicated to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

5. The Italian Government did not exercise their right under Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Vigonza (Padua).

7. The applicant met his former partner, K.S., a Hungarian national, in 2008. They began living together in Abano Terme (Italy) and had a daughter, who was born on 15 September 2011.

8. According to the applicant, after the baby was born K.S. began engaging in obsessive behaviour and their relationship deteriorated.

9. In November 2011 K.S. spent a week in Hungary with their daughter. In December of the same year she again travelled to Hungary with the baby. It was agreed that the applicant would fetch them on 30 December and drive them back to Italy. While on his way to Hungary, the applicant was informed by K.S. that she did not intend to return to Italy.

10. The applicant first returned to Italy (without having reached Hungary); he then set off again for Hungary, where (after arriving) K.S. initially denied him access to his daughter. After several days, K.S. allowed the applicant to see the baby and informed him that he could see her again, provided that he agreed to let his daughter stay in Hungary with K.S. and pay 500 euros (EUR) per month in child support. The applicant rejected this proposal and on 9 January 2012 returned to Italy.

11. On 21 February 2012 the applicant lodged an application with the Venice Minors Court requesting that the court strip K.S. of parental authority over their daughter, order the return of the child to Italy and grant him exclusive custody.

12. On an unspecified date the applicant lodged a request with the Pest Central District Court for the child's return, pursuant to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter, "the Hague Convention").

13. On 13 September 2012 the Pest Central District Court found that K.S. was keeping the child in Hungary illegally and ordered that she return the child to the applicant's residence in Italy by 21 September 2012. Alternatively, the child should be handed to the applicant or his proxy in Budapest no later than 24 September 2012.

14. Following an appeal by K.S., on 8 November 2012 the Budapest High Court upheld the decision of the Pest Central District Court and ordered that the child be returned to Italy by 30 November 2012 or to the applicant or his proxy in Budapest by 4 December 2012.

15. Following a further appeal by K.S., that decision was upheld by the Supreme Court on 22 January 2013; nevertheless, the child was not returned to the applicant.

16. An enforcement order based on the second-instance decision of 8 November 2012 was issued on 21 January 2013 against K.S. The bailiff of the Mezőtúr District Court instructed the mother to comply with the final decision and return the child to the applicant within fifteen days and ordered her to pay a fine of 152,400 Hungarian forints (HUF – approximately EUR 490).

17. Criminal proceedings against K.S. were initiated in 2013 by the Padua public prosecutor and a European arrest warrant was issued against her.

18. On 14 January 2013 the Venice Minors Court found that it had jurisdiction to examine the applicant's case pursuant to articles 8, 10, 11 and 42 of Council Regulation (EC) No. 2201/2003 of 27 November 2003 (see paragraph 49 below), allowed the applicant's application (see paragraph 11 above), stripped K.S. of her parental authority and, like its Hungarian counterpart, ordered the immediate return of the child to Italy.

19. On 18 January 2013 the preliminary-investigations judge (*giudice per le indagini preliminari*) issued an arrest warrant against K.S. for the offence of international child abduction.

20. On 23 January 2013 a European arrest warrant was issued against K.S. by the Padua Court.

21. On 15 February 2013 the court bailiff sent a copy of the return order to the guardianship office of Mezőtúr District in order to enable the said authority to serve it on K.S. and to inform her of the consequences of failing to comply with the order.

22. On 28 February 2013 two members of the Mezőtúr guardianship office's staff attempted to serve the order on K.S.; they were unsuccessful as they were unable to enter her home. As K.S.'s post box was in a locked part of the building, they were not able to leave behind any notification either. They went to the registered address of K.S.'s mother but they could not find anybody there either. They left behind a notification in the post box there informing K.S. of their attempt to enter her home and of the date of the next visit by guardianship office staff.

23. On 4 March 2013 guardianship office staff again visited the registered permanent address of K.S. and the registered residential address of her mother but again failed to serve the enforcement order on her.

24. In March 2013 the Department of International Private Law of the Hungarian Ministry of Justice conducted mediation proceedings through the legal representatives of K.S. and the applicant in order to try to reach an amicable agreement.

25. On 6 March 2013 the Padua public prosecutor lodged by means of a letter rogatory an application with the Budapest Prosecutor's Office for judicial assistance. The application was dismissed on 29 October 2013 on the grounds that the judgment of the Venice Minors Court (see paragraph 18 above) was not yet enforceable (see paragraph 31 below) and the requirement of dual criminality was not satisfied.

26. On 20 March 2013 the Mezőtúr District Court allowed an application lodged by K.S. for the return order issued by the Budapest High Court (see paragraph 14 above) to be suspended, but this decision was subsequently quashed by the Szolnok High Court on 19 June 2013. On 16 October 2013 the Mezőtúr District Court refused another similar application lodged by K.S. Following an appeal by K.S., the latter decision was upheld by Szolnok High Court on 4 December 2013.

27. On 5 September 2013 the deputy court bailiff, accompanied by police officers and guardianship office staff, visited K.S.'s registered address and the residential address of her mother, but no one answered the door.

28. On 20 September 2013 the bailiff attempted to serve the enforcement order at the same addresses, but with no success, as K.S. and her daughter had absconded. The guardianship office informed the court bailiff that they had no useful information concerning the whereabouts of K.S. and her daughter.

29. On an unspecified date, K.S. lodged an application for the enforcement proceedings to be terminated; that application was refused by the Pest Central District Court on 4 October 2013. That judgment was upheld by the Budapest High Court on 10 December 2013.

30. On 21 January 2014 an international search warrant was issued by the Mezőtúr police.

31. On 17 March 2014 the Szolnok District Court declared the judgment of the Venice Minors Court (see paragraph 18 above) enforceable. On 30 June 2014, following an appeal by K.S, that decision was quashed by the Szolnok High Court.

32. The Mezőtúr district prosecutor's office ordered an investigation in respect of K.S. concerning the unauthorised custody of a minor and the endangering of a minor on 17 February and 18 March 2014 respectively.

33. On 5 May 2014 K.S. was summoned as a suspect, but she failed to appear.

34. On 19 May 2014 an arrest warrant was issued against K.S.

35. On 5 November 2014 the bailiff unsuccessfully tried to serve the enforcement order on K.S. at her registered residential address. Residents of the area were not able to provide any useful information to the bailiff.

36. Following an appeal by the applicant against the Szolnok judgment of 30 June 2014 (see paragraph 31 above), on 25 November 2014 the Kúria declared the judgment of the Venice Minors Court (see paragraph 18 above) enforceable.

37. On 23 December 2014 the Padua public prosecutor lodged by means of a letter rogatory a further application for judicial assistance and requested that the Padua police be authorised to assist the local judicial police with the execution of the arrest warrant. On 18 March 2015 the Budapest Prosecutor's Office dismissed this application on the grounds that the conduct described in the criminal complaint could be classified as kidnapping under the Italian Criminal Code, but not under Article 190 of the Hungarian Criminal Code.

38. On 10 and 12 March 2015 staff of the Mezőtúr guardianship office visited K.S.'s registered address and her mother's home, but their attempts to serve the enforcement order failed.

39. The Government pointed out that several searches and other procedural actions had failed to generate any results. In order to identify K.S.'s place of residence, they had checked the database of the National Health Insurance Fund and requested data from all those of the country's financial institutions that provided payment services. Moreover they had requested data from the mobile phone companies, the Hungarian State Treasury, the Hungarian tax and customs authorities, and regional and local tax and customs agencies; they had also run checks in the databases of companies providing card services to regular customers in the territory of Hungary.

40. On 13 October 2016 the Mezőtúr District Court, during the criminal prosecution against K.S. for child abduction, heard M.A., the child's paediatrician. M.A. said that she had visited the child several times over the years. In particular, on 1 September 2016 she had issued a medical certificate which had been required for the child's enrolment in a kindergarten.

41. By a letter dated 13 December 2016 the Italian Central Authority informed the applicant that the Hungarian authorities were still not able to execute the return order because they had still not identified K.S.'s place of residence.

42. At the hearing of 15 December 2016 the Mezőtúr District Court heard four of K.S.'s relatives, who all stated that K.S. was living in hiding.

43. On 20 April 2017 K.S. was acquitted by the Mezőtúr District Court. The text of this judgment was not produced before the Court.

44. The Mezőtúr Attorney-General lodged an appeal against this judgment with the Szolnok High Court.

45. On 10 May 2017 the Padua public prosecutor lodged by means of a letter rogatory a further application for judicial assistance. This application was dismissed.

46. According to the latest information received by the Court, in February 2018 the criminal proceedings against K.S. were still pending Szolnok High Court and the return order of the applicant's daughter had not yet been enforced.

II. RELEVANT DOMESTIC LAW, INTERNATIONAL LAW AND EUROPEAN UNION LAW

A. Domestic law

47. According to section 172(1) of Act No. LIII of 1994 on Judicial Enforcement, the obligor is first called to voluntarily fulfil his or her obligation within a given deadline. In case of non-compliance, the bailiff immediately submits the case file to the competent court in order to determine the method of enforcement.

The possible methods of enforcement are governed by section 174 of the Act and include the possibility to impose a fine of up to HUF 500,000 (approximately EUR 1.600), which may be renewed. Moreover, the court may order the enforcement with police assistance. In such cases, the bailiff sets a date for the on-site proceedings and informs the competent guardianship authority, the obligor, the applicant and the police. If the child to be returned cannot be found at his or her place of residence, the bailiff orders a search warrant.

B. International law

48. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction read as follows (see *Cavani v. Hungary*, no. 5493/13, § 33, 28 October 2014, and *A. v. Austria*, no. 4097/13, § 67, 15 January 2015):

Article 12

"Where a child has been wrongfully removed or retained ... and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. ..."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

...

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

Article 16

"After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice."

C. European Union Law

49. The relevant provisions of Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 ("the Brussels IIa

Regulation"), read as follows (for more details see *Cavani*, cited above § 32, and *A. v. Austria*, cited above, § 68):

Article 11 - Return of the child

"1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "the 1980 Hague Convention"), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply. ...

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged. ...

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child."

Article 42 - Return of the child

"1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable."

Article 47 - Enforcement procedure

"1. The enforcement procedure is governed by the law of the Member State of enforcement.

2. Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. The applicant complained that the Hungarian authorities had failed to take timely and adequate measures to ensure that he was reunited with his daughter following her abduction. In particular, he argued that they had not made sufficient attempts to locate K.S. and the child. He relied on Article 8 of the Convention, which, in so far as relevant, 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

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

B. Merits

1. The parties' submissions

(a) The applicant

52. The applicant submitted that the order had not been enforced and the Hungarian authorities had failed to locate the official place of residence of K.S. and the applicant's daughter, who were believed to be living in Mezőtúr.

53. The applicant considered that the Hungarian authorities had not fully cooperated with the Italian authorities in order that the arrest warrants could be executed and an end be put to the unlawful abduction of the child.

54. According to the applicant, despite the role and the actions of the bailiff (who had very limited skills), the Hungarian authorities had failed to locate the child and had therefore failed to seize the opportunity to ensure her return to Italy. He stated that the authorities had not filed any criminal charges against K.S. – despite evidence that she had committed the crime of illegally changing the place of residence of a child – after the second-instance judgment ruling that the child had been illegally transferred.

55. According to the applicant, the Mezőtúr police had been completely incapable of conducting an investigation. They had refused to publish in the newspapers the fact that an arrest warrant had been issued against K.S. The actions of the police had been insufficient for this type of investigation. In this connection, the applicant raised doubts as to the efficacy of the warrant, as the police had had no power to arrest K.S. in the absence of criminal proceedings pending against her.

56. Lastly, the applicant considered in general that the absence of contact between a child of a young age and one of its parents for such a long period of time might cause serious and irreparable harm to the child's relationship with that parent. In the present case, the applicant alleged that the absence of any contact between him and his child, owing to the passivity of the Hungarian authorities, had compromised the chances of the child accepting a reunion with her father.

(b) The Government

57. The Government emphasised the importance of protecting children's rights, pointing out that removal of the child from her usual environment could have a negative effect on her physical and psychological health. The authorities had therefore to decide carefully on which method of enforcement was in the best interests of the child.

58. Referring to the judgments of *Maire v. Portugal* (no. 48206/99, ECHR 2003-VII), and *Ignaccolo-Zenide v. Romania* (no. 31679/96, ECHR 2000-I), the Government stressed that the national authorities' obligation to take measures to facilitate reunion was not absolute. Moreover, they emphasised that coercion in this area had to be limited.

59. The Government then gave a detailed overview of the steps taken by the Hungarian authorities during the proceedings, which had even included their initiating mediation proceedings, with the involvement of the legal representatives of both parties (see paragraph 24 above). In the light of the above-mentioned steps, the Government was of the opinion that the Hungarian authorities had done everything possible to ensure the child's return to her father. They had ordered the child's return, invited the mother to voluntarily comply with the order, and imposed a fine on her. Following the disappearance of K.S. and her daughter, the authorities had issued arrest warrants, and the guardianship office and the bailiff had regularly tried to serve them on K.S. at her registered address.

60. The Government maintained that the Hungarian legal system afforded prompt and efficient means of ensuring the enforcement of such decisions. However, objective circumstances, such as the absconding of the mother and child in question to an unknown location, might arise which temporarily prevented the authorities from taking further measures. Such events could not be imputed to the authorities. Therefore, the Government

were of the opinion that the applicant's rights under Article 8 had not been violated.

61. In general terms, the Government concluded that the unsuccessful outcome of the proceedings could not be imputed to the domestic authorities; rather, it was essentially due to external factors.

2. The Court's assessment

62. The main point to be assessed in the present case is whether the Hungarian authorities acted expeditiously and took all the measures that they could reasonably have been expected to take in order to ensure the child's return to her father once they had issued a final return order under the Hague Convention.

(a) Principles established by the Court's case-law

63. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by public authorities. There are in addition positive obligations inherent in effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck 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, among other authorities, *Raw and Others v. France*, no. 10131/11, § 78, 7 March 2013; *Maire*, cited above, § 69, ECHR 2003-VII; *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 55, 24 April 2003; *Ignaccolo-Zenide*, cited above, § 94; and *M.A. v. Austria*, no. 4097/13, § 104, 15 January 2015).

64. In relation to the State's obligation to take 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 being reunited with his child and an obligation on the national authorities to facilitate such a reunion (see, among other authorities, *Ignaccolo-Zenide*, cited above, § 94, and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49, ECHR 2003-V).

65. In cases concerning the enforcement of decisions in the sphere of family law, the Court has repeatedly held that what is decisive is whether the national authorities have taken all necessary steps to facilitate execution as can reasonably be demanded in the special circumstances of each case (see *Sylvester*, cited above, § 59, and *Ignaccolo-Zenide*, cited above, § 96).

66. The Court reiterates that in cases of this kind, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child in question and the parent who does not live with him or her (see *Ignaccolo-Zenide*, cited above, § 102). The Hague Convention recognises this fact because it provides for a range of measures to ensure the prompt return of children removed to or wrongfully retained in any Contracting State. Article 11 of the Hague Convention requires the judicial or

administrative authorities concerned to act expeditiously to ensure the return of children, and any failure to act for more than six weeks may give rise to a request for explanations (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 140, ECHR 2010). In proceedings under the EU Regulation on Recognition of Judgments (see paragraph 49 above) this is likewise so, as Article 11 § 3 requires the judicial authorities concerned to act expeditiously, using the most prompt procedures available in domestic law, and to issue a judgment no later than six weeks after the application is lodged (see *Shaw v. Hungary*, no. 6457/09, § 66, 26 July 2011).

67. Although coercive measures in the context of child care and relations with children are not desirable, the Court reiterates that the use of sanctions must not be ruled out in the event of manifestly unlawful conduct by the parent who owes enforcement (see *Aneva and Others v. Bulgaria*, nos. 66997/13 and 2 others, § 110, 6 April 2017; *Shaw*, cited above, § 67; and *Ignaccolo-Zenide*, cited above, § 106). Even if the domestic legal order does not allow for effective sanctions, the Court considers that each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it by Article 8 of the Convention and the other international agreements that it has chosen to ratify (see *Ignaccolo-Zenide*, cited above, § 108).

68. Lastly, the Court reiterates that the Convention must be applied in accordance with the principles of international law, in particular with those relating to the international protection of human rights (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 90, ECHR 2001-II; *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; and *X v. Latvia* [GC], no. 27853/09, §§ 93 and 94, ECHR 2013). Consequently, the Court considers that the positive obligations that Article 8 of the Convention lays on the Contracting States in the matter of reuniting a parent with his or her children must be interpreted, in the present case, in the light of the Hague Convention and the EU Regulation on Recognition of Judgments (*see Ignaccolo-Zenide*, cited above, § 95, and *Cavani v. Hungary*, no. 5493/13, § 53, 28 October 2014).

(b) Application of these principles to the present case

69. The Court notes, firstly, that it is not contested by the Government that the relationship between the applicant and his child falls within the sphere of family life under Article 8 of the Convention.

70. The main issue in the present case is the transfer abroad and illicit non-return of the applicant's child. It is undisputed that the mother's non-return of the child to Italy was wrongful according to the EU Regulation on Recognition of Judgments and the Hague Convention, and as also stated by the Pest Central District Court in its judgment of 13 September 2012 (see paragraph 13 above), and by the Kúria on 25 November 2014 (see paragraph 36 above), and that Hungary was under an obligation to return the

child to Italy, in accordance with the provisions of the EU Regulation on Recognition of Judgments and the Hague Convention. The Court must accordingly examine whether, seen in the light of their international obligations arising in particular under the EU Regulation on Recognition of Judgments and the Hague Convention, the domestic authorities made adequate and effective efforts to secure compliance with the applicant's right to reunification with his daughter (see the case-law quoted in paragraph 68 above).

71. In respect of proceedings relating to the return of a child, Article 11 § 3 of the EU Regulation on Recognition of Judgments sets a clear obligation on the domestic courts to issue a judgment within six weeks of the application for the return of the child being lodged, unless exceptional circumstances arise (see paragraphs 49 and 66 above). In the present case, the applicant did not complain about the speed with which the Hungarian courts ordered the return of the child to Italy and the reunification of the applicant and his daughter, but only about the non-enforcement of such an order, in particular of the order by the Pest Central District Court of 13 September 2012 (see paragraph 13 above), which settled the issue.

72. In this respect, the Court notes that an enforcement order was issued against the applicant's ex-partner. This order was supposed to be enforced with the assistance of the police; however, at the date of the latest information available to the Court (see paragraph 46 above), which is almost five and a half years after the issuing of the order on 13 September 2012, the decision had not yet been enforced.

73. The Court further notes that it was only on 21 January 2013 that the applicant's ex-partner was sentenced to a fine of HUF 152,400 (see paragraph 16 above).

74. In the present case, the Government explained that the Pest Central District Court's judgment of 13 September 2012 had not been enforced because of K.S. disappearance and the ensuing impossibility of tracing her whereabouts (see paragraphs 59-61 above). The Court notes that since 2012 K.S. has been in hiding with the child. It appears, therefore, that in order to make it possible for the applicant to maintain family ties with his child, the domestic authorities were required in the first place to establish the whereabouts of K.S.

75. The Court further observes that the attempts at enforcement of the return order, between January 2013 and March 2015, were unsuccessful. As regards the alleged lack of measures for establishing the whereabouts of K.S., the Court notes that the bailiff visited the presumed places of residence of K.S. and K.S.'s mother on several occasions, but did not find her there (see paragraphs 22, 23, 27, 28, 35 and 38 above). It was further established that K.S. had not been receiving her correspondence. The Court notes, however, no further steps were taken in order to locate K.S. and her daughter elsewhere. In this respect, it is worth noting that it was not until

October 2016 that the child's pediatrician and K.S.'s relatives were questioned by the Court about K.S.'s whereabouts (see paragraphs 40 and 42 above). In particular, the pediatrician told the Mezőtúr District Court that she had issued a medical certificate for the child's enrolment in kindergarten. In the Court's view, this shows that the child was probably registered in the school system and could easily have been located by the domestic authorities had they diligently tried to enforce the relevant court decisions.

76. The Court further observes that bailiff substantially confined himself in requesting K.S. to voluntarily return the child (see paragraph 16 above), while the proceedings aimed at enforcing the return order remained *de facto* dormant and did not bring any result until the date of the latest information available to the Court (see paragraph 46 above), which is for approximately five and a half years. Without overlooking that the enforcement proceedings have to protect the rights of all those involved, with the interests of the child being of paramount importance, the Court reiterates that the lapse of time risks compromising the position of the non-resident parent irretrievably, and, as long as the return decision remains in force, the presumption stands that return is also in the interests of the child (see, for instance, *M.A. v. Austria*, § 136, and *Severe v. Austria*, no. 53661/15, § 110, 21 September 2017; all cited above).

77. Moreover, the Court considers that the facts of the case indicated that the financial sanction imposed on K.S. (see paragraph 16 above) constituted an inadequate means of improving the situation at hand and overcoming the mother's lack of cooperation. It is true that the authorities took some other measures, including the organisation of mediation proceedings by the Ministry of Justice (see paragraph 24 above) and the institution of criminal proceedings against the mother. However, these measures proved to be ineffective or not sufficiently prompt, resulting in a situation wherein the applicant had been, until at least February 2018 (see paragraphs 46 and 72 above), still not able to see his daughter.

78. The Court also stresses that because of the domestic authorities' failure to locate K.S. and the child, not only were the applicant and his daughter prevented from being reunited but, for over six years, they were also prevented from merely seeing each other occasionally. Not once in that period has the applicant been able to see or communicate with his daughter.

79. Lastly, the Court notes that the Hungarian authorities rejected, on rather formalistic grounds, three applications for judicial assistance coming from their Italian counterparts (see paragraphs 25, 37 and 45 above) and underlines that stronger efforts to ensure an effective cooperation would have been welcomed in a situation like the present one, where parents were of different nationalities and return orders were issued by the authorities of both countries.

80. Having regard to the foregoing, and notwithstanding the respondent State's margin of appreciation in respect of the matter and without overlooking the difficulties created by the resistance of the child's mother, the Court concludes that the Hungarian authorities failed to take without undue delay all the measures that could reasonably be expected of them to enable the applicant and his child to maintain and develop family life with each other. This resulted in the disruption of the emotional ties between the father and the child and thereby breached the applicant's right to respect for his family life, as guaranteed by Article 8.

81. There has therefore been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

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

A. Damage

83. The applicant claimed 20,449.99 euros (EUR) in respect of pecuniary damage for the travel costs and expenses incurred between September 2013 and July 2015 through his efforts to have his daughter returned.

84. The applicant also claimed EUR 300,000 in respect of non-pecuniary damage, arguing that owing to the Hungarian authorities' conduct he had not seen his daughter for more than six years.

85. The Government found the claims to be excessive. As to the claim for pecuniary damage, they were of the view that it was not connected to the violation alleged.

86. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, *inter alia*, *Aktaş v. Turkey*, no. 24351/94, § 352, ECHR 2003-V (extracts)). As regards pecuniary damage, the Court discerns a causal link between the violation found and the pecuniary damage alleged, given that, had the violation not occurred, the applicant would not have had to travel repeatedly to Hungary specifically to take measures in order to attempt to have his daughter returned, who was illegally retained there owing to the delays of the Hungarian authorities in enforcing the return order. However, on the basis of the documentary evidence submitted by the applicant, in particular his flight bookings and the costs related to his car journeys (such as fuel, car hire and restaurants), the Court only partially

allows this claim, and awards him EUR 8,000 in respect of pecuniary damage.

87. As regards non-pecuniary damage, the Court accepts that the applicant must have suffered distress as a result of the Hungarian courts' failure to take swift and adequate measures to enforce the return of his child to Italy, which is not sufficiently compensated by the mere finding of a violation of the Convention. Having regard to the sums awarded in comparable cases (see, notably and *mutatis mutandis*, *Maire*, § 82; *Shaw*, § 84; *M.A. v. Austria*, § 142; and *Severe*, § 126, all cited above) and making an assessment on an equitable basis, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. On the basis of bills of costs issued by his representatives, the applicant also claimed EUR 105,573.87 (including VAT) for costs and expenses. This sum is composed of EUR 90,381.37 incurred in the civil and criminal proceedings before the Italian and Hungarian courts, and EUR 15,192.50 for the costs incurred before the Court.

89. The Government submitted that the applicant's claim was not supported by any evidence and requested the Court to reject it.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court finds that the costs and expenses for the proceedings before Italian and Hungarian courts were at least in part aimed at redressing the breach of the applicant's rights under Article 8 and considers it reasonable to award the total sum of EUR 25,000, covering costs and expenses under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 25,000 (twenty five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-mentioned amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 24 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Vincent A. De Gaetano
Deputy Registrar	President