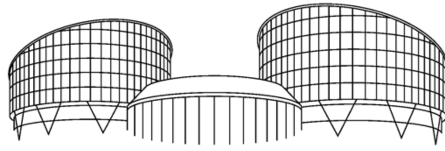

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PISICĂ v. THE REPUBLIC OF MOLDOVA

(Application no. 23641/17)

JUDGMENT

Art 8 • Respect for family life • Failure to enforce final judgment awarding mother custody • Children’s alienation from their mother • Failure to act with requisite diligence • 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.

COUNCIL OF EUROPE
CONSEIL DE L’EUROPE

In the case of Pisică v. the Republic of Moldova,

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

Robert Spano, *President,*
Marko Bošnjak,
Julia Laffranque,
Valeriu Griţco,
Ivana Jelić,
Arnfinn Bårdsen,
Saadet Yüksel, *judges,*
and Stanley Naismith, *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. 23641/17) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Nelea Pisică (“the applicant”, who subsequently changed her name to Mrs Nelea Gamarţ), on 16 March 2017.

2. The applicant was represented by Ms D. Străisteanu, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr O. Rotari.

3. The applicant alleged in particular that by failing to take effective measures so as to ensure her access to her children, the authorities had breached her right to protection of her family life.

4. On 5 May 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Ialoveni.

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

A. The applicant’s divorce and custody of the children

7. On 7 September 2002 the applicant married P. While they were married they had a son, who was born on 14 July 2003.

8. On 6 March 2006 the applicant obtained a divorce. She also obtained custody of her son.

9. The applicant remained in the family house, and after a while she again started cohabiting with her former husband and subsequently gave birth to two more sons (twins) on 5 August 2007. P. acknowledged that he was the father of the two boys.

10. According to the applicant, in 2012 P. started being aggressive towards her. On 26 December 2012 she left the family home with her three children and claimed financial maintenance from P.

11. On 29 July 2013 P. came to the house where the applicant lived and forcibly put the two younger children in his car, driving them to his house without the applicant's permission.

12. Shortly thereafter the applicant lodged a court action, requesting custody of the two younger children. On 31 July 2013 she asked the Ialoveni District Court to examine the case urgently, stating that she was certain that P. was manipulating the children and using various means to turn them against her. She submitted that since their abduction she had not been able to speak to them, and asked the court to order P. not to keep the children away from her. On 31 July 2013 she also complained about the incident of 29 July 2013 to the local police, who allegedly failed to respond.

13. On 19 August 2013 the applicant complained to the Ialoveni Department for Social Assistance and Family Protection ("the DSAFP"). She mentioned that since the children had been taken away from her she had been able to talk to them only sporadically, always in P.'s presence, and for short periods of time. During those meetings P. had been aggressive towards her, had in an authoritarian manner prohibited her from asking certain questions which he perceived as being detrimental to his position, and had prohibited the children from speaking about certain things. She was convinced that P. was manipulating the children and turning them against her.

14. On 3 September 2013 P. returned the children to the applicant. On 4 September 2013, following requests by both parents, the DSAFP recommended a schedule, according to which all three children would stay with their father every second weekend and the rest of the time would stay with their mother.

15. According to the applicant, P. continued to follow and insult her, threatening her with violence. She asked for a protection order and on 10 September 2013 the Ialoveni District Court ordered him not to approach the applicant or the three children for three months. That order was not enforced, and the children remained at P.'s house until an unknown date.

16. On 10 December 2013 P. allegedly went to the applicant's house and forcibly took the two younger children to his own house without her permission. On an unknown date the children were returned to the applicant.

17. On 20 December 2013 the applicant sought and obtained a three-month extension of the protection order of 10 September 2013.

18. On 13 January 2014 the applicant made a complaint to the Ialoveni prosecutor's office, stating that on 26 December 2013 P. had gone to the kindergarten which the two younger children attended and had taken them, despite her protests, promising to bring them back on 1 January 2014. He had done this in spite of the protection order of 20 December 2013. She added that on 10 January 2014 P. had met the children in the street and tried to convince them to go with him, telling them nasty things about the applicant. She insisted that the protection order be enforced.

19. At the Ialoveni District Court's request, on 30 January 2014 the DSAFP issued a conclusion regarding who should have custody of the two younger children. The DSAPF noted that both parents were able and willing to bring up their children. The children loved both parents equally and wanted to be close to both of them.

20. On an unspecified date in April 2014 P. took his older son to his house and refused to return him to the applicant. She complained to the police about that on 19 April 2014.

21. On 8 May 2014 the applicant complained to the police that P. had taken the older child to his house and had prevented her from having contact with him. She stated that subsequently the child had missed several days of school. She had been to see him on a day when he had had exams and had managed to talk to him for about twenty minutes. He had told her that his father took him out with him in his car all day long instead of taking him to school. She had also found out that P. was trying to turn her son against her.

22. On an unspecified date in June 2014 P. took one of the younger children to his house and refused to return him to the applicant. In August 2014 P. asked the applicant to allow the third son to spend the holidays with his brothers, promising that after that all three children would be returned to her house. However, after allowing this, the applicant was unable to see the children.

23. On 13 July 2014 the applicant complained to the local police that her older son was being held by P. without her permission, despite her having custody of the child (see paragraph 8 above). She added that her son was being manipulated by P., and that P. was convincing him that she was a bad mother and that he did not want to live with her.

24. On 14 July 2014 the applicant asked the Ialoveni District Court to issue a protection order in respect of her and the children. She stated, *inter alia*, that P. had acted aggressively towards her, threatening to take the children away, which he had ultimately done. She considered that P.'s actions had negative consequences on the children's psychological well-being.

25. On 15 July 2014 the applicant asked the Ialoveni District Court to accelerate the examination of the case concerning custody of the two

younger children, given that it concerned a sensitive issue and P. had caused several unnecessary delays. That request was rejected on 16 July 2014, the court finding that the delays were related to the fact that several judges had withdrawn from the case, and that there was no reason to find that the proceedings had been excessively long.

26. On 15 July 2014 the applicant also complained to the DSAFP that she was unable to see her sons, and that when she called her older son he would talk to her in a way which suggested that there was someone next to him indicating how he should reply. She made a similar complaint to the Human Rights Centre on 16 July 2014, stating that in the previous four months she had lodged many complaints concerning P.'s abusive actions and the breach of her parental rights with various authorities.

27. On 16 July 2014 the Ialoveni District Court rejected the applicant's application for a protection order (see paragraph 24 above). It appears that in the course of 2014 all the judges of the Ialoveni District Court withdrew from the case because they had previously issued protection orders or been otherwise involved in the proceedings. On 26 August 2014 the case was thus transferred to the Hîncești District Court.

28. On 19 November 2014 the DSAFP issued another conclusion, for the Hîncești District Court, reiterating its previous findings, but adding that the children's psychological state was being seriously affected. Although they had had a positive attitude towards both parents earlier, they had radically changed their views after living with their father. The DSAFP recommended that a report concerning the children's psychological state be produced, and that they be separated from both parents for a period of one month and placed in a placement centre, in order to receive psychological assistance in the absence of influence by either parent.

29. On 3 December 2014 a psychological report concerning the children was produced. The relevant expert concluded: that the children were being involved in the conflict between the parents; that their initially positive attitude towards both parents had clearly become negative as regards the applicant, as a result of P.'s influence; that depriving the children of contact with their mother was a form of emotional abuse; and that any meeting with their mother would constitute a traumatising event for the children while they continued to live with their father.

30. On 19 January 2015 the DSAFP issued another conclusion, largely reiterating its previous findings. On 6 February 2015 the Hâncești District Court rejected as unfounded the request made by the DSAFP in its conclusion of 19 November 2014 for the children to be temporarily placed in a placement centre.

31. On 6 February 2015 the Hâncești District Court awarded P. custody of the two younger children.

32. On 24 June 2015 the Chișinău Court of Appeal reversed that judgment, awarding the applicant custody of the two younger children.

33. On 5 August 2015 the applicant complained to the police that P. was continuing to refuse to allow her to have contact with her sons, despite the court judgment of 24 June 2015. She mentioned that P. had insulted her and had told her that while the children were with him they would not be willing to see her. She asked the police to take urgent measures to remove the children from P.'s family and allow specialists in psychology to do their work in assisting the children. She reiterated her complaint to the police on 18 September 2015, also requesting that the children be placed in a placement centre as a matter of urgency, and that P. have no access to them while they were receiving psychological assistance.

34. On 10 November 2015 the applicant complained to the Prosecutor General's Office, stating that P. had managed to influence their children to the extent that they hated her. They suffered from parental alienation syndrome and the authorities had failed to prevent that, despite her many complaints concerning P.'s actions. She asked for the children to be removed from P.'s family as a matter of urgency and placed in a placement centre in order to receive psychological assistance. She also asked for criminal proceedings to be initiated against P. The parties did not inform the Court of any reaction to this complaint.

35. On 11 November 2015 the Supreme Court of Justice rejected an appeal by P. That judgment was final.

B. Enforcement proceedings

36. On 19 January 2016 the applicant submitted a writ of enforcement in respect of the judgment of 24 June 2015 to a bailiff. On the same day the bailiff invited P. to comply with the final judgment by handing over the children. P. did not comply.

37. On 9 February 2016, after the expiry of the time-limit for voluntarily complying with the final judgment, the bailiff went to P.'s house, accompanied by the local social welfare office, a psychologist and the applicant. P. allowed them in, but the children refused to leave, stating that they wanted to stay with their father.

38. The applicant continued to complain to various authorities regarding the failure to reunite her with her children, P.'s influence on them, and how he had turned them against her. She also asked for the children to be temporarily removed from P.'s family and placed in a placement centre, where they would be protected from the influence of both parents.

39. On 29 February 2016 the prosecutor's office initiated a criminal investigation against P. after the applicant complained of domestic violence in the form of his emotional abuse of the children. At the same time, the prosecutor annulled nine previous decisions refusing to initiate criminal proceedings against P., as well as a decision rejecting a complaint by the applicant's lawyer. The case was subsequently sent to court on 17 January

2017, and was ongoing when the latest observations by the parties were received in 2018.

40. On 22 March 2016 the bailiff asked the Chișinău Court of Appeal to give an explanation for the judgment in the applicant's favour. On 11 May 2016 the court rejected that request, since the judgment was clear. In the meantime, on 30 March 2016 the bailiff had asked for a court order allowing forced entry into P.'s house. The court rejected that request on 18 January 2017, finding that the bailiff had unrestricted access to P.'s house.

41. On 15 December 2016 the Ialoveni prosecutor's office obtained a new court protection order in favour of the applicant, obliging P. to stay away from her and the three children for three months. The court largely relied on the findings in the report of 3 December 2014 (see paragraph 29 above), and found that the children were being subjected to emotional abuse which could lead to the development of parental alienation syndrome.

42. On 16 December 2016 the applicant and her brother went to the school which all three children attended, accompanied by two police officers. Since the decision of 15 December 2016 prohibited P. from approaching the children, the applicant hoped to be able to take them home. However, according to her account of the events, the school administration and the local authorities took measures to prevent this action, notably by calling P.'s relatives and allowing them to enter the room where the children were and influence them, while they also insulted the applicant. Subsequently, the deputy mayor of the village where the children lived (who was acting as a guardian local authority) ordered that the three children be placed with their grandparents (P.'s parents) on an emergency basis for a period of seventy-two hours. He subsequently extended the order for the children's placement with their grandparents for a period of up to forty-five days.

43. On 19 December 2016 another attempt to enforce the judgment failed, owing to the children being opposed to living with their mother.

44. On 27 January and 3 February 2017 the local police and the mayor's office asked the applicant to show more interest in the children's psychological state. In particular, while acknowledging that she was unable to establish contact with them, the applicant was blamed for refusing any form of cooperation, which prevented the mayor's office from adopting any relevant decision. At the same time, P. was not allowed to approach the children and she was the only legal guardian. She was urged to "assume her share of the responsibility", as the only person able to offer the children protection at that time.

45. On 6 February 2017 a psychologist issued a conclusion concerning the state of mind of the children, who were at that time with P.'s parents owing to a protection order preventing him from contacting his children. She found that all three children had been seriously affected by the

separation from their father as a result of the protection order, and that any action aimed at rebuilding their relationship with their mother would be premature, as the children were displaying clear signs of resistance against their mother, who was associated with the "loss" of their father.

46. In the weeks that followed, the reconciliation procedure between the applicant and P. continued, with the involvement of a number of officials. Three meetings between various authorities took place on 7, 14 and 17 February 2017, aimed at identifying solutions for enforcing the judgment of 24 June 2015.

47. On 6 and 13 June 2017 P. complained to the DSAFP that the applicant was not interested in rebuilding her relationship with the children, stating that she had only come to their school once every two months, for thirty minutes each time.

48. On 7 June 2017 there was a new attempt to enforce the final court judgment. P. prepared the children's belongings and the applicant was ready to take them to her house. Together with a number of officials, the applicant was able to enter P.'s home and talk with the children. However, they refused to come with her, despite being encouraged by P. to do so.

49. On 9 and 23 June, as well as on 18 and 28 September 2017 the local welfare authorities met in a working group in order to identify ways of restoring the relationship between the applicant and her children.

C. New proceedings concerning custody of the children

50. On 21 March 2018 P. lodged a court action, asking for custody of the children. On 5 July 2018 the Ialoveni District Court allowed that application in part, transferring custody of the two younger children to P., but rejecting the application in respect of the older child.

51. On 5 December 2018 the Chișinău Court of Appeal upheld the lower court's judgment. It found, *inter alia*, that both younger children, who were eleven by that time, had clearly expressed their wish to live with their father and not their mother. Moreover, the local welfare authority had concluded that the change of custody would be in the best interests of the children, who had strong ties to their father and would suffer from a change in their place of residence.

II. RELEVANT DOMESTIC LAW

52. The relevant provisions of the Code of Civil Procedure read as follows:

Article 394. The legal force of a decision by an appellate court

"The decision of an appellate court shall be final (*definitivă*) from the moment it is adopted, and shall be enforced in accordance with the present Code and other laws."

Article 435. The suspensive effect of an appeal on points of law (*recurs*)

"(1) An appeal on points of law shall suspend the enforcement of a judgment in a case concerning moving boundaries, the destruction of plants and seeds, the demolition of buildings or any other immovable items, and in other cases provided for by law.

...

(8) In non-pecuniary cases, the enforcement of a judgment may be suspended following the reasoned request of an appellant."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. The applicant complained that the authorities had not fulfilled their positive obligations under Article 8 of the Convention, which reads as follows:

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

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."

54. The Government contested that argument.

A. Admissibility

55. 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

56. The applicant submitted that since her first complaints in July 2013 the authorities had been well aware of the increasingly serious situation in which she and her children found themselves. In particular, it had been clear

that P. had emotionally abused the children and turned them against her, yet no action had been taken against him.

57. She had never given up trying to get her children back, but all her attempts to do so had been met by P.'s hostility and the authorities' indifference. On the one occasion on 16 December 2017 when she had come close to convincing her children to come home with her, the local authorities and the school administration, in cooperation with P.'s relatives, had done everything they could to prevent her being reunited with the children. The applicant's requests for the children to receive psychological assistance away from the influence of both parents had been rejected as inappropriate. Instead, she had been blamed for not being sufficiently interested in rebuilding her relationship with her children, which was not true.

58. The applicant also argued that the failure to enforce the final judgment giving her custody of the children had been in breach of Article 8.

(b) The Government

59. The Government argued that the applicant had failed to submit to the bailiff the writ of enforcement in respect of the judgment of 6 March 2006 within the three-year limitation period established by law. She had not asked the court to extend the period of enforcement. Accordingly, her complaint that there had been a failure to enforce that judgment (which had awarded her custody of her older son, see paragraph 8 above) was manifestly ill-founded.

60. As for the judgment of 24 June 2015, the authorities had taken all reasonable action to ensure its enforcement. The Government argued that the period of delay between 24 June 2015 and 19 January 2016, when the writ of enforcement had been submitted to the bailiff, was not attributable to the authorities, since the judgment of 24 June 2015 had not yet become final. They relied on the Court's case-law to emphasise that the authorities' obligation to facilitate a parent's reunion with his or her children was not absolute. When a child had been living separately from a parent for some time, reunification could require preparatory measures, which could include only limited recourse to coercion, and should always be guided by the child's best interests. The failure to enforce the judgment of 24 June 2015 had mostly been due to the children's refusal to live with the applicant, as was clear from various psychological reports, but had also been due to the applicant's own conduct – her not being sufficiently actively involved in the process of rebuilding her relationship with the children.

61. Moreover, the applicant's access to her children had not been obstructed by P., who had actually encouraged the children to go with her. The authorities had undertaken all reasonable efforts to enforce the judgment on 9 February and 19 December 2016 and 7 June 2017, and to reconcile P. and the applicant on 10, 17 and 22 February 2017. A number of

specialised authorities had been involved in 2017, such as the DSAFP, the Psychoeducational Assistance Service of the Ialoveni General Department of Education, the administration of the children's school, teachers, and a psychologist. In addition to the above-mentioned authorities, working groups involving the Ministry of Labour, Social Protection and Family, the Ministry of Justice, the Ombudsman and the National Union of Bailiffs had also been involved. However, the children's strong opposition to living with their mother and the serious animosity between the former spouses had interrupted the process.

62. Lastly, the Government argued that the authorities had not condoned P.'s alleged emotional abuse of the children, since on 29 February 2016 the prosecutor's office had started a criminal investigation into that allegation. Moreover, at the prosecutor's request, a protection order had been issued on 15 December 2016 and the applicant had not objected to any of those actions. Accordingly, the Government considered that they had taken all reasonable measures aimed at reuniting the applicant with her children. An absolute obligation to restore effective ties between the applicant and her children could not be imposed on them.

2. *The Court's assessment*

(a) General principles

63. The Court reiterates that although 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 (see, amongst other authorities, *Glaser v. the United Kingdom*, no. 32346/96, § 63). The Court has repeatedly held that in cases concerning parental contact rights, the State has in principle an obligation to take measures with a view to reuniting parents with their children, and an obligation to facilitate such reunions, in so far as the interests of the child dictate that everything must be done to preserve personal relations (see, among other authorities, *Hokkanen v. Finland*, no. 19823/92, § 55, 23 September 1994, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I, and *A.V. v. Slovenia*, no. 878/13, § 73, 9 April 2019).

64. However, the national authorities' obligation to take measures to facilitate a reunion is not absolute, since a reunion between a parent and a child who has lived with other persons for some time may not be able to take place immediately, and may require preparatory measures (ibid., § 58; see also *Ribić v. Croatia*, no. 27148/12, § 94, 2 April 2015, and *A.V. v. Slovenia*, cited above, § 74). What is therefore decisive is whether the domestic authorities have taken all necessary steps to facilitate contact that can reasonably be demanded in the special circumstances of each case (see, *mutatis mutandis*, *Kuppinger v. Germany*, no. 62198/11, § 101, 15 January 2015, and *A.V. v. Slovenia*, cited above, § 74).

65. There is currently a broad consensus in support of the idea that in all decisions concerning children, their best interests must be paramount (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010, *X. v. Latvia* [GC], no. 27853/09, § 96, ECHR 2013 and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 179, 10 September 2019). The child's best interests may, depending on their nature and seriousness, override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, for instance, *V.D. and Others v. Russia*, no. 72931/10, § 114, 9 April 2019). However, while the Court's case-law requires children's views to be taken into account, those views are not necessarily immutable, and children's objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially their interests in having regular contact with their child (see *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017). In particular, children having the right to express their own views should not be interpreted as effectively giving them an unconditional veto power without any other factors being considered and an examination being carried out to determine their best interests (*A.V. v. Slovenia*, cited above, § 72).

66. In cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a *de facto* determination of the matter (see, for example, *Ignaccolo-Zenide*, cited above, § 102; *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005; *Strömblad v. Sweden*, no. 3684/07, § 80, 5 April 2012; and *Ribić*, cited above, § 92).

(b) Application of these principles to the present case

67. The Court notes that the applicant raised two complaints under Article 8. She referred to the failure to enforce the judgment of 24 June 2015 giving her custody of the two younger children; she also complained that the authorities had failed to take action in line with their positive obligation under Article 8 to prevent the emotional abuse of the children as a result of their alienation from their mother. It considers that these are two aspects of what is essentially the same issue, namely whether the authorities complied with their positive obligations under Article 8 in the present case.

68. In deciding whether the authorities complied with their positive obligations under Article 8, the Court will take into account all relevant elements, such as the manner of enforcing the judgment of 24 June 2015, as well as the authorities' actions throughout the proceedings, not only during the enforcement phase.

69. In respect of the period leading to the adoption of the judgment awarding the applicant custody of the children, it is noted that between July 2013 and November 2015 she complained to the authorities nine times regarding P.'s actions, actions which she believed aimed to alienate the

children from her by manipulating them and turning them against her (see paragraphs 12, 13, 18, 21, 23, 24, 26, 33 and 34 above). Her complaints took various forms. The authorities were therefore well aware of the allegations made by the applicant. As a result of the applicant's many complaints (see paragraphs 13, 20, 23 and 26 above), the authorities were also aware that – against their mother's wishes – the children were staying with their father, who thus had ample opportunity to influence them, unlike the applicant. It is also worth noting that after an initial psychological examination of the children in early 2014 had shown that they loved both parents equally, by November 2014 their attitude had clearly changed, and they were rejecting their mother (see paragraphs 19 and 28 above). In view of the complaints made by the applicant and the psychological reports confirming the veracity of her claims, the authorities could not be unaware that P.'s actions were seriously threatening future relations between the applicant and her children.

70. The Court notes that after the first psychological evaluation of the children in January 2014 (see paragraph 19 above) there was no psychological follow-up for almost ten months, despite the applicant complaining on numerous occasions that P.'s manipulation of the children was aimed at turning them against her. When a new evaluation in November 2014 revealed that the children resented their mother (see paragraph 28 above), the DSAFP recommended, *inter alia*, that the children be temporarily separated from both parents in order to receive psychological assistance away from the parents' influence. That recommendation was never followed, despite another report finding, in December 2014, that the children's alienation from their mother as a result of P.'s actions constituted emotional abuse (see paragraph 29 above).

71. In the absence of any measure aimed at protecting the children from the ongoing emotional abuse, the applicant used the means at her disposal, namely complaints to the authorities and requests for protection orders barring P. from contacting the children. Although such a protection order was issued, P. was able to continue acting with impunity, notably by contacting the children and taking them to his home (see paragraphs 17 and 18 above). In this regard, the Court notes that when in 2016 a prosecutor finally initiated a criminal investigation against P., he annulled nine previous decisions refusing to do just that (see paragraph 39 above).

72. It should also be noted that the contact schedule recommended by the DSAFP which made provision for the children to alternate their stay with both parents (see paragraph 14 above) was not respected by P., who retained the children at his house.

73. It is against this background of increasing alienation of the two children from the applicant that from July 2013 she asked the court to decide the custody case in a swift manner. Despite this request and her many complaints about P.'s actions, the first-instance court took a year and

a half to decide (see paragraphs 12 and 31 above). This added to the overall period during which the applicant did not have meaningful contacts with her two children, while P. continued to be able to alienate the children from her (see paragraphs 12, 13, 18, 21, 23, 24, 26, 33 and 34 above). This delay in deciding the case is contrary to the principle of exceptional diligence referred to in paragraph 66 above.

74. As for the enforcement of the judgment itself, the Court notes that the authorities did not remain totally passive, and took a number of relevant measures. In particular, as soon as the applicant submitted the writ of enforcement to the bailiff on 19 January 2016, the bailiff set a date by which P. should voluntarily comply with the judgment (see paragraph 36 above). After P. failed to comply, the bailiff – accompanied by a psychologist, other specialised authorities and the applicant – went to P.'s house on 9 February 2016 and tried to enforce the judgment, but this was frustrated by the children's strong opposition to leaving P.'s house (see paragraph 37 above). Thereafter, on 29 February 2016 a criminal investigation into the applicant's complaint that P. had emotionally abused the children was initiated.

75. However, after the first attempt to enforce the judgment on 9 February 2016, the authorities were apparently inactive, apart from the bailiff needlessly, as determined by the Court of Appeal, asking that court to interpret the judgment and allow forced entry into P.'s house (see paragraph 40 above). The next measure was not taken until 15 December 2016, when a court issued a protection order barring P. from contacting the children.

76. On 16 December 2016 there was a second attempt to persuade the children to go with their mother, at their school. Owing to its lack of direct contact with all those involved, the Court is not in a position to judge the effect of the various actions by the authorities involved, such as P.'s parents being allowed to come and influence the children, as alleged by the applicant (see paragraph 42 above). However, it appears that no domestic authority analysed the situation on that day in order to determine whether the failure to reunite the applicant with her children was due at least in part to the actions of those involved and not just to the children's refusal to cooperate.

77. Thereafter, there were two more attempts to transfer the children to the applicant, but on each occasion the children refused to go with her (see paragraphs 43 and 48 above).

78. The Court accepts that the children's refusal to stay with their mother caused a difficult situation necessitating a variety of complex measures in preparation for their reunification with the applicant. The implementation of such measures would have certainly needed time. However, unlike the serious attempts to find a solution in 2017 (see paragraphs 46 and 49 above), there is no evidence of such activity in 2016, and the Government have given no explanation for the apparent inactivity in 2016.

79. The Court considers that the alienation of the applicant’s children, of which the applicant complained much earlier than any judgment concerning their custody was adopted, was a major factor impeding the enforcement of the judgment of 24 June 2015. Therefore, the authorities’ failure to react to the applicant’s complaints about alienation and to examine the custody case in an urgent matter must be seen as having substantially contributed to the eventual difficulties in enforcing the judgment mentioned above. Moreover, the authorities made only two attempts to enforce the judgment in the first year of the enforcement proceedings (2016). More importantly, in 2016 they did no preparatory psychological work with the children or their parents to facilitate the enforcement, despite there being clear signs that the children had been psychologically alienated from their mother (see paragraphs 28-30 above) and that complex preparations for the enforcement were therefore necessary (see, for instance, *Mijušković v. Montenegro*, no. 49337/07, § 89, 21 September 2010).

80. In the light of the above considerations, the Court finds that, in the present case, the domestic authorities did not act with the exceptional diligence required of them (see paragraphs 66 and 73) or discharge their positive obligations under Article 8 of the Convention. There has therefore been a violation of Article 8 of the Convention in the present case.

81. The Court notes that no separate complaints and arguments were made in the present case concerning the new custody proceedings and the resulting decisions to award custody of the children to their father. Therefore, the failure to enforce the judgments in the applicant’s favour mentioned above concerns the period prior to the adoption of the judgment of 5 July 2018 (see paragraph 50 above).

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. Non-pecuniary damage

83. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government argued that the sum claimed was unsubstantiated, excessive and inconsistent with the Court’s case-law in similar cases.

85. The Court considers that the authorities’ lack of reaction to the applicant’s many complaints caused her great suffering. The courts eventually decided to transfer custody of the younger children from her to

the father, a decision which confirms that the applicant suffered one of the most serious interferences with her family life. Accordingly, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant also claimed 43,896 Moldovan lei (MDL – approximately EUR 2,163) for legal costs. She submitted evidence that she had paid her lawyer MDL 21,287 for her representation before the domestic courts, and relied on detailed lists indicating the hours which her lawyer had spent on her representation before the Court.

87. The Government argued that the sum claim was both unsubstantiated and excessive.

88. The Court reiterates that in order for an award for costs and expenses to be made under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for instance, *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, § 44, 15 January 2019).

89. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,000 for costs and expenses.

C. Default interest

90. 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 as a result of the State's failure to fully discharge its positive obligations under that provision;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two 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 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 29 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	President