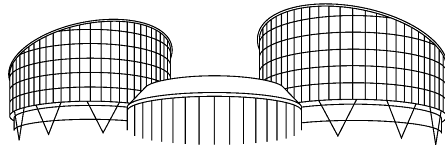

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MANSOUR v. SLOVAKIA

(Application no. 60399/15)

JUDGMENT

STRASBOURG

21 November 2017

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 Mansour v. Slovakia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 31 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 60399/15) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr Rafat Mansour ("the applicant"), on 30 November 2015.

2. The applicant was represented by Ms I. Kalinová, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged that the Slovakian enforcement courts dealing with a return order under Council Regulation (EC) No 2201/2003 of 27 November 2003 ("the Brussels II *bis* Regulation") and the Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") had failed to secure respect for his family life, in violation of Article 8 of the Convention.

4. On 5 July 2016 the complaint concerning Article 8 of the Convention 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 parties were asked for further factual information on 27 March 2017.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in Dublin, Ireland.

7. In 2004 he married a Slovak national and the couple settled in Ireland. Their two children, born in 2006 and 2008, are both Irish nationals.

8. On 6 January 2011 the mother travelled to Slovakia with the two children and they have not returned to Ireland since.

A. Proceedings on return

9. On 31 January 2011 the applicant commenced proceedings in the Slovakian courts for the return of his children to Ireland under the Brussels II *bis* Regulation and the Hague Convention.

10. On 1 July and 26 October 2011 respectively, the Bratislava I District Court and, following an appeal by the mother, the Bratislava Regional Court, ordered the return of the children to Ireland as their country of habitual residence and issued several ancillary orders.

11. The return order became enforceable on 8 July 2011.

B. The first set of enforcement proceedings

12. On 6 February 2012 the applicant applied for judicial enforcement of the return order since the mother had not complied with it.

13. On 9 February 2012 the Michalovce District Court attempted to have the mother comply voluntarily with the order. In response, she informed the District Court that she had lodged a request with the Prosecutor General for him to exercise his discretionary power to challenge the return order by way of an extraordinary appeal on points of law (*mimoriadne dovolanie*).

14. On 26 March 2012 the District Court stayed the enforcement proceedings on the return order pending the outcome of the mother's request to the Prosecutor General.

15. On 14 August 2012 the District Court resumed the enforcement proceedings after the Prosecutor General had found that there were no reasons to lodge an extraordinary appeal on points of law.

16. On 18 October 2012 and 26 June 2013 respectively, the District Court and, following an appeal by the applicant, the Košice Regional Court, found that the return order was not enforceable. They based their conclusions on the following two grounds.

Firstly, they concluded that there already existed a previous decision on provisional measures, which had been delivered by the Michalovce District Court on 16 May 2011. That decision had temporarily entrusted the children

to the care of the mother and required the applicant to pay child maintenance in the meantime. Those interim custody rights were to be determined later by the competent courts in Ireland.

Secondly, the return order had failed to specify that it was directed at the mother or to give a precise time frame for its implementation.

Given the fact that the mother had not been identified as the recipient and that the applicant had not been provisionally entrusted with the care of the children, the order could not be enforced.

C. Follow-up proceedings

17. Following the unsuccessful enforcement proceedings, the applicant applied to the same court which had delivered the return order, the Bratislava I District Court. He referred to the shortcomings in the order as identified by the enforcement courts and asked the court to specify to whom the order had been directed and to provide a time frame for the return of the children. The District Court concluded that the applicant's action was *res iudicata* and dismissed it on 6 November 2014.

D. The first set of constitutional proceedings

18. In the meantime, on 22 October 2013, the applicant challenged the enforcement courts' decisions of 18 October 2012 and 26 June 2013 by way of a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended).

19. On 9 July 2014 the Constitutional Court declared the complaint admissible and on 27 May 2015 it found on the merits that the Košice Regional Court had violated the applicant's rights, as specified below ("the first constitutional judgment").

20. In particular, it found a violation of the applicant's rights under Articles 19 § 1 (family life), 41 §§ 1 and 4 (protection of parenthood and children, right to child care), and 46 § 1 (judicial protection) of the Constitution, and under Article 6 § 1 (fairness) and Article 8 (family life) of the Convention.

21. The Constitutional Court found that the Regional Court's decision had been taken on purely formal grounds and had been arbitrary and in contravention of the Code of Civil Procedure, the Brussels II *bis* regulation, the Hague Convention and the Constitution. That arbitrary decision had meant that the positive obligations guaranteed by Article 8 of the Convention and the applicant's parental rights had been breached as well.

22. Consequently, the Constitutional Court quashed the contested decision, remitted the applicant's appeal against the District Court's decision of 18 October 2012 to the Regional Court for re-examination and awarded him 3,000 euros (EUR) in compensation for non-pecuniary

damage. In addition, the Constitutional Court awarded the applicant everything he had claimed in legal costs (EUR 276.94). It noted that he had made no claim for costs in respect of his observations in reply to those of the enforcement courts concerned by his complaint and concluded that no award was therefore possible in that regard.

23. The judgment was final and not amenable to appeal.

E. The second set of enforcement proceedings

24. Following the first constitutional judgment, the enforcement proceedings resumed before the Regional Court, which heard the case on 3 August 2015. It acknowledged that it was bound by the Constitutional Court's judgment. However, having regard to the considerable length of time that had elapsed, it deemed it necessary to assess afresh all the circumstances decisive for the enforcement of the return order, such as the children's whereabouts, their health and the possibility of their returning to Ireland. It therefore quashed the District Court's decision under appeal and remitted the matter to it for re-examination.

25. On 15 April 2016 the District Court again declared enforcement of the order impermissible on the basis of newly obtained evidence. It relied on medical reports concerning the children's health, a psychological report referring to negative consequences for them if they were separated from the mother and an opinion from the court-appointed guardian (the Michalovce office of employment, social affairs and family) about the stable family environment they had while living with their mother. It also took into account the children's wish to stay with their mother and her new husband, their social ties in Slovakia, where they had been residing since January 2011, and the applicant's lack of contact with them while in Slovakia. Relying on the Convention on the Rights of the Child and the Court's Grand Chamber judgment in the case of *Neulinger and Shuruk v. Switzerland* (no. 41615/07, ECHR 2010), it concluded that their return to Ireland would go against their best interests.

26. Following an appeal by the applicant, the Regional Court upheld the lower court's decision on 3 August 2016 and it became final and binding on 22 August 2016.

F. The second and third set of constitutional proceedings

27. In the meantime, the applicant on 22 February 2016 lodged another constitutional complaint aimed at the enforcement proceedings held before the District Court (see paragraph 25 above). He alleged a violation of Articles 6 (length) and 8 (family life) of the Convention and their constitutional equivalents.

28. On 14 December 2016 the Constitutional Court found a violation of the applicant's rights under both of those Convention provisions ("the second constitutional judgment"). When dealing with the applicant's length of proceedings complaint, the Constitutional Court took into account that it was the first time the applicant had raised such a grievance. There had accordingly been no previous constitutional assessment of that matter to prevent it from assessing the impugned enforcement proceedings in their entirety, from when they had been initiated. Having regard to the sensitive nature of the matter and its importance for the applicant's enjoyment of his parental rights, the Constitutional Court found that the District Court had proceeded with the matter over a long time (for more than four years) and inefficiently (it had stayed the proceedings, delivered an arbitrary enforcement decision on the first occasion, and had taken lengthy procedural steps). Notably, the Constitutional Court emphasised that it was precisely the passage of time which had led the District Court to dismiss enforcement of the return order. It also reproached the District Court for the inadequate way it had dealt with the mother's procedural requests. It further stressed the particular nature of the enforcement of such return orders and pointed out that they required prompt and efficient decision-making that was in accordance with international standards.

Moreover, the Constitutional Court found that there had been a violation of the applicant's right to respect for his family life as a consequence of the fact that throughout the enforcement proceedings, whose length had been in breach of his right to a hearing within a reasonable time, he had been unable to assert his parental rights before the competent courts.

29. The Constitutional Court ordered the District Court to reimburse the applicant's legal costs and to pay him EUR 4,000 in respect of non-pecuniary damage.

30. After the enforcement proceedings had been completed by a final and binding decision and before the second constitutional judgment had been issued, the applicant applied to the Constitutional Court a third time on 14 October 2016. He relied on that occasion on Article 6 (fairness and length) in conjunction with Articles 13 and 8 (family life) of the Convention and challenged the decisions of 15 April and 3 August 2016 (see paragraphs 26 and 27 above) on their merits. That complaint is still ongoing.

II. RELEVANT DOMESTIC, EUROPEAN AND INTERNATIONAL LAW

31. At the relevant time an extraordinary appeal on points of law empowered the Prosecutor General to challenge final and binding court judgments and decisions at the request of a party to the proceedings or a person affected by them, provided that the impugned judgment or decision contravened the law, that the protection of the rights and interests of

individuals, legal entities or the State so required, and that such protection could not be obtained by other legal means (Article 243e § 1 of the Code of Civil Procedure (Law no. 99/1963 Coll., as applicable at the relevant time)).

32. An unrelated international child abduction case at the Bratislava II District Court (case no. 49P 414/2007, referred to for example in *Frisancho Perea v. Slovakia* (no. 383/13, § 40, 21 July 2015)) involved an extraordinary appeal on points of law lodged by the Prosecutor General against a final, binding and enforceable return order. On 4 February 2009, in response to an enquiry prompted by the father of the child concerned, the President of the District Court provided the Office of the President of Slovakia with an update on the state of the proceedings and added the following comment:

> "It is not my task to judge the actions of the Office of the Prosecutor General. I am not privy to the reasons why an extraordinary appeal on points of law was lodged. I detect a problem in the system, which allows for such a procedure even in respect of decisions on the return of minors abroad ('international child abductions'). Irrespective of the outcome of the specific case, the possibility of lodging an appeal on points of law and an extraordinary appeal on points of law in cases of international child abduction protracts the proceedings and negates the object of the [Hague Convention], which is as expeditious a restoration of the original state [of affairs] as possible, that is to say the return of the child to their country of habitual residence within the shortest possible time."

33. The relevant provisions of the Hague Convention, the United Nations Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the Brussels II *bis* Regulation have been summarised in earlier cases, for example in the case of *X v. Latvia* ([GC], no. 27853/09, §§ 34-42, ECHR 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant, relying on Article 8 of the Convention, complained that the enforcement courts had failed to secure respect for his family life. In addition, in his observations of 3 November 2016 in reply to those of the Government on the admissibility and merits of that complaint, he submitted that he also wished to rely on Article 6 § 1 of the Convention.

35. The Court finds that the complaint most naturally falls to be examined under Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for ... 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. Victim status

36. The Government referred to the first and second constitutional judgments acknowledging a violation of a range of the applicant’s rights and awarding him damages. As to the latter judgment, they pointed out that the Constitutional Court had taken account of the overall length of the impugned proceedings and had also acknowledged a violation of the applicant’s right to respect for his family life. In sum, they considered that he had thereby lost his status as a victim of a violation of the Convention within the meaning of its Article 34.

37. The applicant disagreed and submitted that despite the Constitutional Court’s findings, his situation remained unchanged and the compensation he had been awarded was insufficient in view of its severity.

38. The Court reiterates that under the subsidiarity principle it falls first to the national authorities to provide redress for any violation of the Convention. In that regard, the question of whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Karahalios v. Greece*, no. 62503/00, § 21, 11 December 2003, and *Malama v. Greece* (dec.), no. 43622/98, 25 November 1999).

39. It is the settled case-law of the Court that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Amuur v. France*, 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 36; *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII; and *Association Ekin v. France* (dec.), no. 39288/98, 18 January 2000).

40. The Court notes that the Constitutional Court has twice acknowledged a violation of the applicant’s right to respect for his family life and provided him compensatory redress.

41. However, the Court further points out that any redress provided at the domestic level must be appropriate and sufficient. Whether the redress so provided complies with the Court’s criteria will depend on all the circumstances of the case in the light of the Court’s settled case-law on the issue (see, among many others, *Mučibabić v. Serbia*, no. 34661/07, § 117 with further references, 12 July 2016). It is therefore for the Court to verify, *ex post facto*, whether the redress afforded by the Constitutional Court in the domestic proceedings was appropriate and sufficient.

42. Examining the facts of the case in the light of the above principles, the Court notes that the applicant was respectively afforded EUR 3,000 and EUR 4,000 in compensation for non-pecuniary damage resulting from a violation of several of his fundamental rights. That level of compensation does not appear to be commensurate with that awarded in similar cases under Article 41 of the Convention (see, for example, *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 84, 24 April 2003; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 117, ECHR 2000-I; *Karadžić v. Croatia*, no. 35030/04, § 71, 15 December 2005). In addition, the Court notes that the order for the return of the applicant's children has remained unenforced, meaning that the constitutional judgments in the present case appear not to have had any effect of a preventive nature, which could have affected the amount of compensation called for.

43. In those circumstances, the Court is forced to the conclusion that there has not been appropriate or sufficient redress at the domestic level for the effects of the alleged violation and that, accordingly, the applicant can still claim to be a victim of the alleged violation of his Convention rights. The first of the Government's preliminary objections is dismissed.

2. Domestic remedies

44. In their original observations, the Government submitted that the applicant had on 22 February 2016 lodged a second constitutional complaint, which was still ongoing. That meant that in so far as his Article 8 complaint before the Court concerned matters subject to those constitutional proceedings, it was inadmissible for non-exhaustion of domestic remedies. In that respect, they relied on the Court's decision in *L.G.R. and A.P.R. v. Slovakia* (no. 1349/12, 13 May 2014).

45. In response to the Court's request of 27 March 2017 for additional information, the Government stated that the second constitutional proceedings had meanwhile been completed. In particular, on 14 December 2016 the Constitutional Court had given the second constitutional judgment, finding a violation of the applicant's rights guaranteed under Articles 6 and 8 of the Convention (see paragraph 28 above). The Government further pointed out that the proceedings in respect of the applicant's third constitutional complaint were ongoing. Accordingly, they considered that the applicant's complaint before the Court was premature to the extent it concerned matters pending before the Constitutional Court (see paragraph 30 above).

46. The applicant disagreed, emphasised that his application had at the time been aimed at the first constitutional judgment, and argued that by obtaining it he had fulfilled the requirement of the exhaustion of domestic remedies under Article 35 § 1 of the Convention. The fact that he had again had recourse to the Constitutional Court had no bearing on his application

as the return order had still not been enforced and he had not received adequate compensation on that account.

47. The Court notes that the first part of the Government's objection was lodged when the applicant's second constitutional complaint was still ongoing. As it was subsequently resolved by the second constitutional judgment, the objection has become moot and cannot be sustained.

48. At the same time, the Court considers that on the specific facts of the present case the second part of the Government's objection, which concerns the applicant's third constitutional complaint, is intrinsically linked to the merits of the relevant part of his application, which has to do with the respondent State's positive obligations under Article 8 of the Convention. It therefore considers it appropriate to join this objection to the merits of that complaint.

3. Conclusion

49. The Court considers that the complaint under Article 8 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The applicant submitted that he had first applied for enforcement on 4 February 2012 and that the enforcement courts had eventually dismissed his action after four years and six months. He had even had to seek a remedy with the Constitutional Court in order to have the first enforcement decisions overturned in 2015. In that regard, he stated that it was precisely because of the passage of time that the domestic courts had eventually found it impermissible to have his children returned as it was no longer in their best interests. By failing to take adequate steps to ensure enforcement, the domestic courts had frustrated the entire purpose of proceedings under the Brussels II *bis* Regulation and the Hague Convention. As a result, he had been prevented from exercising his parental rights for a protracted period, which had had irremediable consequences for his enjoyment of his family life.

51. In addition to their arguments on the applicant's victim status, the Government submitted that following the first constitutional judgment the enforcement courts had struck a fair balance between the competing interests of the children, their parents and the society. They had relied properly on the Court's case-law and binding international instruments and had duly examined and assessed all the circumstances relevant to the issue of enforcing the order for the children's return. The enforcement courts'

decisions had not been mechanical and had not lacked reasoning and they had proceeded with the matter expeditiously, taking into account the children's well-being. Having regard to the comprehensive reasoning the domestic courts had given and the length of their decision-making process as a whole, the Government argued that they had not violated the applicant's right to respect for his family life.

2. *The Court's assessment*

52. The Court notes at the outset that the present case concerns the non-enforcement of a final return order under the Brussels II *bis* Regulation, which in so far as the return of wrongfully removed children is concerned builds on the Hague Convention.

53. In cases of the type being examined here, what is at issue is an act or the lack of one by the State authorities. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life, even in the sphere of the relations of individuals between themselves (see, *inter alia*, *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013, and *Airey v. Ireland*, 9 October 1979, § 32, Series A no. 32).

54. What is then decisive in this case is whether the Slovakian courts took all the necessary steps that could reasonably be demanded of them to facilitate the enforcement of the final domestic order for the return of the applicant's children to their place of habitual residence (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 22, § 58) and whether the applicant was obliged to seek constitutional protection repeatedly to prevent and provide redress for his situation, as suggested by the Government.

55. The Court reiterates the general principles concerning the enforcement of return orders, which were first set out in the case of *Ignaccolo-Zenide* (cited above). There, the Court laid out a series of principles which have essentially been reproduced in most of the cases on the non-enforcement of return orders that have followed. First of all, the Court established that Article 8 includes a parent's right to have measures taken 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. In implementing such measures the authorities should take into account the best interests of the child, which are considered in terms of the possibility of using coercive measures to enforce return (§ 94). The positive obligations under Article 8 of the Convention must be interpreted in the light of the Brussels II *bis* Regulation and the Hague Convention (§ 95). The adequacy of a measure is to be judged by the swiftness of its implementation.

Proceedings relating to the execution of a decision that has been delivered require urgent handling, as the passage of time can have irremediable consequences for relations between children and the parent who does not live with them (§ 102). Also, the Court has defined its role in such cases as considering whether the measures taken by the domestic authorities were "adequate and effective" (§§ 108 and 113).

56. Requests concerning the return of children in the context of child abduction cases call by their very nature for a speedy decision (see, *mutatis mutandis*, *M.A. v. Austria*, cited above, § 88, 15 January 2015).

57. Turning to the facts of the present case, the Court notes that the applicant requested his children's return under the relevant provisions of the Brussels II *bis* Regulation and the Hague Convention, that the main proceedings on his request were completed relatively swiftly, in a matter of some ten months, and that they resulted in a final, binding and enforceable order for their return to the country of their habitual residence. As the mother did not comply with the order voluntarily and the applicant initiated proceedings for judicial enforcement, the respondent State's positive obligation was engaged and, in particular, it became incumbent on the enforcement courts to carry out the enforcement proceedings provided for by national law, the Convention, and, as the case may be, other international legal norms.

58. The Court notes that the enforcement proceedings, which commenced following the applicant's application of 6 February 2012, were stayed on 26 March 2012 on the grounds that the mother had asked the Prosecutor General to challenge the return order by way of an extraordinary appeal on points of law and that that request was still ongoing at the time. In that regard, as the Court has noted before (see *Frisancho Perea*, cited above, § 76; *Hoholm v. Slovakia*, no. 35632/13, § 49, 13 January 2015; and *López Guió v. Slovakia*, no. 10280/12, § 108, 3 June 2014), there are indications that, at least at the relevant time, there was a systemic problem in allowing appeals and extraordinary appeals on points of law in the given type of proceedings, with the attendant effect of negating the object and purpose of the Hague Convention (see paragraph 32 above).

59. It is true that the enforcement proceedings were resumed on 14 August 2012, but this was only for them to be terminated by the enforcement courts on grounds that the Constitutional Court later found to be arbitrary and in breach of the applicant's rights under Article 8 of the Convention.

60. The first constitutional judgment then resulted in a resumption of the enforcement proceedings, which was followed by a constitutional review of their length in the second constitutional judgment. Taking into account their length in its entirety, the Constitutional Court again found a breach of the applicant's right to respect for his family life.

61. Meanwhile, the resumed enforcement proceedings had been terminated as a consequence of the change of circumstances that had come about precisely because of the passage of time. In particular, in a decision that for now remains final and binding, the domestic courts concluded that the return of the applicants' children was no longer in their best interests.

62. The sequence of events and decisions as recapitulated above makes it clear that the passage of time in this case was attributable to the respondent State (see *Sylvester*, cited above, § 63).

63. In more concrete terms, the enforcement courts, by a wrongful application of the substantive law and because of the excessive length of the proceedings, which moreover took place in a legal framework allowing for the use in a problematic way of an extraordinary remedy, enabled the issue of the return of the applicant's children to the country of their habitual residence effectively to be resolved in an unendorsed and unsupervised way by the passage of time, rather than by a judicial decision.

64. In the Court's view, the above considerations lead directly to the conclusion that the procedure the respondent State followed in the matter of the return of the applicant's children to the country of their habitual residence fell short of the requirements inherent in its positive obligation to secure to the applicant his right to respect for his family life under Article 8 of the Convention.

65. It now remains to be established whether the present application or any part of it is premature in the light of the applicant's ongoing third constitutional complaint, as argued by the respondent Government.

66. In that regard, the Court observes that it has been accepted that an individual complaint to the Constitutional Court under Article 127 of the Constitution in its current wording is a remedy that, in general, has to be used for the purposes of exhaustion under Article 35 § 1 of the Convention in respect of alleged excessive length of proceedings and other alleged procedural or substantive violations of the Convention. It is also the case that on the basis of that remedy the Constitutional Court has the power, in the event of a finding of a violation of a fundamental right or freedom, to grant redress of both a preventive and a compensatory nature (see *L.G.R. and A.P.R v. Slovakia*, cited above, §§ 51 and 56).

67. In the present case the applicant made use of that remedy on three occasions. The central question raised by the Government's inadmissibility objection is whether, in the circumstances, the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention may be interpreted as requiring that the applicant seek redress from the Constitutional Court for a third time.

68. As to that question, the Court notes that the applicant's first two constitutional complaints both resulted in the finding of a violation of his Convention rights. However, the Court has found above that the compensatory redress awarded to him in that context was insufficient

to deprive him of the status of a victim, within the meaning of Article 34 of the Convention, of the alleged violation of his Article 8 rights. As the procedural history of this case shows, any preventive redress awarded by the Constitutional Court has not been effective since the return order remains unenforced to the present day.

69. On the issue last mentioned, and irrespective of the actual or potential scope of the compensatory redress granted by the Constitutional Court, the Court has already held that a purely compensatory remedy is not sufficient to address violations resulting from delays in proceedings which may have an impact on an applicant's family life. A more rigid approach is called for, which obliges States to put into place a remedy which is at the same time preventive and compensatory (see *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, § 48, 22 April 2010; *Bergmann v. the Czech Republic*, no. 8857/08, § 45, 27 October 2011; and *Furman v. Slovenia and Austria*, no. 16608/09, § 95, last sentence, 5 February 2015). The Court has observed in that regard that the State's positive obligation to take appropriate measures to ensure an applicant's right to respect for his or her family life risks becoming illusory if the interested parties only have at their disposal a compensatory remedy which could only lead to an *a posteriori* award of monetary compensation (see *Kuppinger v. Germany*, no. 62198/11, § 137, 15 January 2015, and *Macready*, cited above).

70. In sum, the enforcement procedure as such was incompatible with the respondent State's positive obligations under Article 8 of the Convention. The compensatory effect of the Constitutional Court's intervention has thus far been insufficient and there has not been any preventive effect at all.

In addition, the passage of time in this type of case has a direct impact on the circumstances relevant for the decision (see, for example, *Shaw v. Hungary*, no. 6457/09, § 75, 26 July 2011). In the present case the enforcement courts have already found, in a decision that for now remains final and binding (see paragraphs 24-26 above), that the return of the children is not in their best interests. As more time has since passed, it seems unlikely that a possible third intervention on the part of the Constitutional Court would have the potential of producing any preventive effect to reverse the existing *status quo*.

In view of those considerations and taking account of the fact that the Convention is intended to guarantee rights and freedoms that are practical and effective as opposed to ones that are theoretical or illusory, the Court finds that the present application cannot be rejected as being premature.

71. The Government's remaining inadmissibility objection is accordingly dismissed and the Court finds that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage in connection with his complaint under Article 8 of the Convention and the same amount with reference to what he considered to be a separate violation of Article 6 § 1 of the Convention (see paragraph 35 above).

74. The Government noted that no complaint under Article 6 of the Convention had been communicated to them and was the subject of examination by the Court. Hence, they proposed that the Court dismiss that claim and left the rest of the matter to the Court's discretion.

75. The Court notes that any award may only be made in relation to the violation found. It further notes that some compensation has been provided to the applicant at the domestic level. The Court finds it appropriate to award the applicant EUR 10,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

76. The applicant also claimed EUR 7,012.50 for legal costs. This amount consisted of EUR 1,812.50 for the first set of enforcement proceedings, EUR 1,600 for the first set of constitutional proceedings (filing the complaint and observations in reply to those of the courts concerned) and EUR 3,600 for the proceedings before the Court.

77. The Government contested the claim in relation to the first set of constitutional proceedings, pointing out that the Constitutional Court had awarded the applicant all the amounts claimed in that case and that it had been prevented from awarding him compensation in respect of his observations in reply to those of the defendants because he had failed to make any claim for such an award (see paragraph 22 above). As to the remainder of his claim, the Government asked the Court to resolve the matter in accordance with its case-law.

78. 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.

79. In the present case, the Court notes that part of the applicant's claim for costs in the context of his first constitutional complaint has already been awarded by the Constitutional Court itself. In addition, in so far as his claim to the Court concerns his observations in those proceedings, compensation in that respect was in principle awardable but could not be awarded in the present case as the applicant himself failed to make the necessary claim.

Regard being had to the documents in its possession and the criteria specified above, the Court considers it reasonable to award the applicant the sum of EUR 5,400 covering costs under all heads.

C. Default interest

80. 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. *Joins* the Government's objection of non-exhaustion of domestic remedies in relation to the applicant's third constitutional complaint to the merits of the application and *rejects it*;

2. *Declares* the application admissible;

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

4. *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:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,400 (five thousand four hundred 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;

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

Done in English, and notified in writing on 21 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President