

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that the Greek authorities had failed to protect her family life with her daughter. She relied on Article 8 of the Convention, which provides 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.”

B. The Court's assessment

42. The Court reiterates that it follows from the concept of family on which Article 8 is based that a child born of a marital union is *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him or her and his or her parents a bond amounting to “family life” which subsequent events cannot break save in exceptional circumstances (*Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996–I, pp. 173-174, § 32; *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports* 1996-VI, p. 2030, § 60). It was not suggested that any such exceptional circumstances were present in this case. Thus, the Court finds it undisputed that the relationship between the applicant and her daughter amounted to “family life” within the meaning of Article 8 § 1 of the Convention.

43. That being so, it must be determined whether there has been a failure to respect the applicant's family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. There may in addition 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 family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (*Glaser v. the United Kingdom*, n° 32346/96, § 63, 19 September 2000). The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; nonetheless, the applicable principles are similar. In both contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community as a whole, including other concerned third parties, and in both cases the State enjoys a certain margin of appreciation (*X, Y and Z v. the United Kingdom*, judgment of 22 April 1997, *Reports* 1997–II, pp. 631-632, § 41).

44. As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take such measures. This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures, but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (*Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299, p. 20, § 55).

45. However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned is always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (*Ignacollo-Zenide v. Romania*, n° 31679/96, § 94, ECHR 2000–I).

46. The present case hinges therefore on the question whether the Greek authorities **took all steps to enable the applicant to maintain and develop family life with her daughter after separating from her husband. In this respect, the Court notes that, although the applicant had obtained visiting rights, she was unable to see her daughter or establish regular contact with her. The applicant mainly blamed the domestic authorities for their failure to do anything about the behaviour of her former husband, whom she considered responsible for her daughter's reluctance to see her.**

47. The Court reiterates in this respect that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (*Johansen v. Norway*, judgment of 7 August 1996, Reports 1996-III, pp. 1001-02, § 52; *Bronda v. Italy*, judgment of 9 June 1998, Reports 1998-IV, p. 1489, § 51; *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000–VIII). In examining whether the non-enforcement of the access arrangements amounted to a lack of respect for the applicant's family life the Court must strike a balance between the various interests involved, namely the interests of the applicant's daughter, those of the applicant herself and the general interest in ensuring respect for the rule of law (*Nuutinen v. Finland*, n° 32842/96, § 129, ECHR 2000–VIII).

48. As regards the child's interest, the Court observes that it is not for it to say how the domestic courts should have evaluated that issue. However, it finds it striking that no further action was taken by the competent authorities, despite the fact that the psychiatrist who had examined both parents and the child expressly stated in her report that the child was suffering from psychological problems and recommended regular contact with the mother (see paragraph 25 above).

49. As regards the applicant's interests, the Court notes that the national courts made two orders (on 27 August and 23 September 1997) provisionally suspending her visiting rights, **without hearing representations from her**. The visiting rights were suspended shortly after they had been granted by the Court of First Instance, namely at a moment that was particularly crucial if the nine-and-a-half year old child was to be reunited with her mother and establish regular contact with her. The Court further notes that the report prepared by the Psychiatric Department of the Athens Children's Hospital on 25 June 1998 was released to the applicant only on 22 February 2002, that is approximately three and a half years later. The Court reiterates in this respect that it is of paramount importance for parents always to be placed in a position enabling them to put forward all arguments in favour of obtaining contact with the child and to have access to all relevant information which was at the disposal of the domestic courts (*Sahin v. Germany* [GC], no. 30943/96, § 71, 8 July 2003). **The Court further notes that none of the three psychologists who drafted the medical report of 26 June 1997 examined the applicant in order to reach their conclusions. It follows that in the present case the applicant was not involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interests** (*Hoppe v. Germany*, no. 28422/95, § 52, 5 December 2002). Thus, she did not enjoy the appropriate procedural guarantees which would have enabled her to challenge effectively the suspension of her visiting rights.

50. Having regard to the foregoing and to the respondent's State's margin of appreciation, the Court is not satisfied that the procedural approach adopted by the domestic courts was reasonable in all the circumstances or provided them with sufficient material to reach a reasoned decision on the question of access to the applicant's daughter.

There has, therefore, been a violation of Article 8 of the Convention.