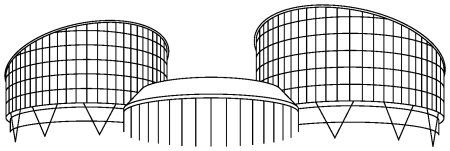

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CAVANI v. HUNGARY

(Application no. 5493/13)

JUDGMENT

STRASBOURG

28 October 2014

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

In the case of Cavani v. Hungary,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 7 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 5493/13) against the Republic of 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 Francesco Cavani ("the first applicant") and his two daughters, Ester Cavani ("the second applicant") and Anna Maria Cavani ("the third applicant"), both of whom have dual Hungarian and Italian citizenship, on 16 January 2013.

2. The first, second and third applicants ("the applicants") were represented by Mr G. Thuan dit Dieudonné, a lawyer practising in Strasbourg. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicants alleged that the Hungarian authorities had failed to enforce a legally binding court decision granting the first applicant access in respect of the second and third applicants.

4. On 12 December 2013 the application was communicated to the Government.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1971 and lives in Formigine (Italy). The second and third applicants were born in 2003 and 2004 respectively and apparently live with their mother in Budakeszi (Hungary) or somewhere nearby.

7. In June 2004 the first applicant's then wife, whom he had married in 2002 and who is the mother of the second and third applicants, took the second and third applicants from Italy, where the family was living, to Hungary.

8. In August 2004 the first applicant travelled to Hungary. The family was supposed to return to Italy but the first applicant's wife refused to leave and the first applicant returned to Italy alone.

9. In December 2004 the first applicant joined his family in Hungary for the Christmas holidays and his wife again refused to return to Italy with him and kept the children with her.

10. In February 2005 the first applicant wrote to his wife requesting that she return to Italy with their daughters.

11. On 3 March 2005 the first applicant asked the Italian Ministry of Justice to initiate proceedings for the return of the children to Italy. On 23 March 2005 he also instigated proceedings before the Court of Modena (Italy) for separation from his wife and the return of his daughters to Italy.

12. On 25 April 2005 his wife started parallel divorce proceedings before the Buda Surroundings District Court.

13. On 2 May 2012, the applicants lodged a complaint before the European Commission alleging a violation of Article 11 of the Council Regulation (EC) no. 2201 of 2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility ("the EU Regulation on Recognition of Judgments"), which is still pending.

14. In 2011 the marriage between the first applicant and his ex-wife was annulled (see paragraph 26 below). As at the date of introduction of the present application, the first applicant had been unable to see his daughters since 2005.

A. Proceedings before the Hungarian courts

15. On 25 August 2005 the Pest Central District Court found that the first applicant's ex-wife was keeping the children in Hungary illegally, in violation of Article 3 of the Hague Convention on the Civil Aspects of

International Child Abduction ("Hague Convention"). However, it considered that given their young age, the children needed to be cared for by their mother and therefore refused to order their return to Italy.

16. On 9 November 2005 the Budapest Regional Court quashed the decision of the Pest Central District Court and ordered that the children be returned to Italy by 10 December 2005 at the latest, but this failed to happen.

17. An enforcement order was issued against the first applicant's ex-wife by the Buda Surroundings District Court on 26 April 2006 and upheld by the Pest County Regional Court on 5 September 2006. The decision was not enforced.

18. On 5 February 2007 the Buda Surroundings District Court ordered the enforcement of the decision of 9 November 2005, this time with the assistance of the police. Again, the decision was not enforced.

19. On 21 July 2010, following the issue of a European arrest warrant by the Italian authorities, the first applicant's ex-wife was arrested by the Hungarian police but was released shortly thereafter with no progress having been made regarding a possible return of the second and third applicants to Italy.

20. On 14 October 2011, she was sentenced *in absentia* by the Buda Surroundings District Court to a 200-day fine for illegally changing the custody of a minor.

21. On 8 November 2012 the headmaster of Széchenyi István Primary School, located in Budakeszi, initiated proceedings before the Budakeszi district guardianship authority to bring the second and third applicants under its protection.

22. On an unspecified date, the first applicant and his ex-wife reached an agreement pursuant to which the second and third applicants would remain with their mother in Hungary but would be able to visit the first applicant in Italy several times per year. In the light of that agreement, on 19 February 2013 the first applicant requested the suspension of the enforcement proceedings against his ex-wife, and the Buda Surroundings District Court duly suspended the proceedings until 19 August 2013.

23. On 16 August 2013, the first applicant withdrew his enforcement request.

24. Following a proposal drafted by the competent Social and Child Welfare Service (*HÍD Szociális és Gyermekjóléti Szolgálat*) – which was of the view that the children were no longer in danger – the Buda Surroundings District Court discontinued the enforcement proceedings.

B. Proceedings before the Italian courts

25. On 28 November 2005, the Court of Modena granted exclusive custody of the children to the first applicant.

18. On 15 December 2005, the first applicant pressed criminal charges against his ex-wife for child abduction.

26. On an unknown date the Criminal Court of Modena sentenced the ex-wife to 18 months' imprisonment, suspended.

27. The marriage between the first applicant and his ex-wife was annulled by the ecclesiastical tribunal of the Umbria region, whose decision was granted *exequatur* by the Court of Appeal of Bologna on 18 July 2011.

28. On 4 October 2011, following an appeal by the prosecutor, the Court of Appeal of Bologna sentenced the applicant's ex-wife to 18 months' imprisonment, suspended.

29. The first applicant's ex-wife appealed against her conviction before the Italian Court of Cassation. One month before the hearing the first applicant withdrew his criminal suit in the hope of appeasing the situation and allowing his ex-wife to travel freely to Italy with their two daughters.

30. On 30 November 2012 the Court of Cassation quashed the judgment of the Court of Appeal of Bologna in the light of the first applicant's decision to withdraw his criminal suit.

II. RELEVANT DOMESTIC LAW

31. The relevant rules concerning the enforcement of contact orders are contained in Government Decree no. 149/1997 (IX. 10.) on Guardianship Authorities, Child Protection Procedure and Guardianship Procedure, which provides:

Section 33

"(2) A child's development is endangered where the person entitled or obliged to maintain child contact repeatedly neglects, deliberately, to comply or to properly comply with the [contact rules], and thereby fails to ensure undisturbed contact.

...

(4) Where, in examining compliance with subsections (1)-(2), the guardianship authority establishes [culpability on the parent's side], it shall, by a decision, order the enforcement of the child contact within thirty days from the receipt of the enforcement request. In the enforcement order it shall:

a) invite the non-complying party to meet, according to the time and manner specified in the contact order, his or her obligations in respect of the contact due after the receipt of the order and to refrain from turning the child against the other parent,

b) warn the non-complying party of the legal consequences of own-fault non-compliance with the obligations under subsection (a),

c) oblige the non-complying party to bear any justified costs incurred by the frustration of contact.

(5) Where the person entitled or obliged to maintain contact fails to meet the obligations specified in the enforcement order under subsection (4), the guardianship authority may ...

a) initiate the involvement of the child contact centre of the child welfare service or take the child into protection in the event that the maintenance of contact entails conflicts, or is continuously frustrated by obstacles, or the parents have communication problems,

b) initiate a child protection mediation procedure ....

...

(7) If it is established that during the child's upbringing the custodial parent/person obliged to allow access by the non-custodial parent/person continuously turns him/her against the person entitled to contact and, despite the enforcement measures specified under subsections (4)-(5), fails to comply with the contact order, the guardianship authority:

a) may bring an action seeking a change of placement if it is the best interests of the child,

b) shall file a criminal complaint ..."

III. RELEVANT INTERNATIONAL LAW

32. The relevant provisions of the EU Regulation on Recognition of Judgments read:

Article 1 - Scope

"1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access"

Article 2 - Definitions

"For the purposes of this Regulation:

11. the term "wrongful removal or retention" shall mean a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and

(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the

removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility."

Article 10 - Jurisdiction in cases of child abduction

"In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention."

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 21 - Recognition of a judgment

"1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required."

Article 23 - Grounds of non-recognition for judgments relating to parental responsibility

"A judgment relating to parental responsibility shall not be recognised:

...

(c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally; ..."

Article 40 - Scope

"1. This Section shall apply to:

(a) rights of access;

and

(b) the return of a child entailed by a judgment given pursuant to Article 11(8)."

Article 41 - Rights of access

"1. The rights of access referred to in Article 40(1)(a) granted in 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 of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal."

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."

Article 60 - Relations with certain multilateral conventions

"In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

(e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."

33. The relevant provisions of the Hague Convention read:

Article 3

"The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicants complained that since 2005 the Hungarian authorities had repeatedly failed to enforce a legally binding court decision granting the first applicant child access in respect of the second and third applicants and their return to Italy. They relied on Article 8 of the Convention, which reads:

> "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."

35. The Government contested that argument.

A. Admissibility

36. The Court notes that on 2 May 2012, the applicants lodged a complaint before the European Commission alleging a violation of Article 11 of the EU Regulation on Recognition of Judgments, which is still pending.

37. However, in their observations the Government did not allege that this circumstance precluded the examination of the case by the Court pursuant to Article 35 § 2 (b) of the Convention, which provides as follows:

> "2. The Court shall not deal with any application submitted under Article 34 that ...
>
> (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

38. In any event, the Court reiterates that it has already held that such individual complaints to the European Commission do not qualify as "another procedure of international investigation or settlement" for the purposes of Article 35 § 2 (b) of the Convention (see *Karoussiotis v. Portugal*, no. 23205/08, §§ 60–77, 1 February 2011).

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

B. Merits

1. The parties' submissions

a. The applicants

40. According to the applicants, it was established that, at the time of the first and second applicants' abduction, the first applicant and his ex-wife shared parental authority over both children. The first applicant had never consented to nor acquiesced to the children remaining in Hungary with their mother. Moreover, the return of the second and third applicants to Italy would not have exposed them to any physical or psychological harm, the first applicant being financially stable and having a close relationship with his daughters.

41. The applicants therefore considered that the abduction of the second and third applicants was contrary to Article 3 of the Hague Convention.

42. The applicants emphasized that the Budapest Regional Court had ordered the return of the second and third applicants to Italy on 9 November 2005 but it was only on 5 February 2007 that the Buda Surroundings District Court ordered that decision to be enforced. Before the latter order, nothing had been done to ensure the return of the children to Italy. However, the Buda Surroundings District Court order did not have any practical effect and it was only on 21 July 2010 that the first applicant's ex-wife was arrested by the Hungarian police, and then released shortly thereafter. According to the applicants, despite her arrest and several previous interrogations by the police, the Hungarian authorities had not managed to locate the children and had therefore failed to seize an opportunity to ensure their return to Italy. Moreover, the 200-day fine to which the first applicant's ex-wife had been sentenced on 14 October 2011 had been too low. It could not therefore be considered as an appropriate enforcement measure and, in any event, had never been implemented.

43. The applicants also found it surprising that on 8 November 2012 the headmaster of Széchenyi István Primary School had initiated proceedings before the Budakeszi district guardianship authority to bring the children under its protection. In their view, this showed that the authorities were in possession of information regarding the place where the second and third applicants were living.

44. Lastly, the applicants considered in general that the absence of contact between children of a young age and one of their parents for such a long period of time might cause serious and irreparable harm to their relationship with that parent. In the present case, they alleged that the absence of any contact between the first applicant and his daughters, due to the passivity of the Hungarian authorities, had compromised the chances of the second and third applicants accepting reunion with their father, in particular because the second and third applicants had probably forgotten

how to speak Italian. In this respect, referring to the Court's analysis in the case of *Piazzi v. Italy* (no. 36168/09, 2 November 2010), the applicants concluded that the Hungarian authorities should have taken more concrete and direct steps, such as the involvement of social services as a mediator and the adoption of stricter sanctions against the mother, in order to ensure contact between the first applicant and his two daughters.

b. The Government

45. The Government were of the view that for the entire duration of the proceedings, all the authorities concerned had fully complied with the applicable domestic laws and had taken all the necessary measures for the return of the second and third applicants to Italy. In particular, the Government believed that the police had done their best to locate the first applicant's ex-wife and the two children.

46. The Government also stressed that since the child's best interests are of paramount importance under the EU Regulation on Recognition of Judgments, the Hague Convention and relevant Hungarian law and in order to avoid any risk of physical or psychological harm to the child, coercive measures were as a rule ordered only as a last resort where the imposition of a fine on the abducting parent had proved ineffective. However, the Government did not explicitly state that a decision not to resort to coercive measures in the instant case had been taken by the relevant authorities in the best interests of the second and third applicants.

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

2. The Court's assessment

a. General principles

48. 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; and in both contexts the State enjoys a certain margin of appreciation (see *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290).

49. 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 reunion (see, among other authorities, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I, and *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 49,

ECHR 2003-V; see also *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII).

50. 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 v. Austria*, nos. 36812/97 and 40104/98, § 59, 24 April 2003; cf. *Ignaccolo-Zenide*, cited above, § 96).

51. 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 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 (*Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 140, ECHR 2010). In proceedings under the EU Regulation on Recognition of Judgments 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 issue a judgment no later than six weeks after the application is lodged (*Shaw v. Hungary*, no. 6457/09, § 66, 26 July 2011).

52. The Court has also held that although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live (see *Ignaccolo-Zenide*, cited above, § 106; *Shaw*, cited above, § 67).

53. 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 lay 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).

b. Application of the above principles to the present case

54. The Court notes, firstly, that it is common ground that the relationship between the applicants comes within the sphere of family life under Article 8 of the Convention.

55. The main issue in the present case is the transfer abroad and illicit non-return of the second and third applicants to Italy under the guardianship of the first applicant. It is undisputed that the mother's non-return of the second and third applicant to Italy was wrongful according to the EU Regulation on Recognition of Judgments and the Hague Convention, as also stated by the Budapest Regional Court in its judgment of 9 November 2005, and that Hungary was under an obligation to return the children 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 applicants' rights to their reunification (see *Ignaccolo-Zenide*, cited above, § 95).

56. In 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 after the application is lodged, unless exceptional circumstances arise. In the present case, the applicants did not complain about the speediness with which the Hungarian courts had ordered the reunification of the applicants and the return of the second and third applicants to Italy but only about the non-enforcement of such orders, in particular of the order by the Budapest Regional Court of 9 November 2005, which settled the issue.

57. In this respect, the Court notes that an enforcement order was issued against the first applicant's ex-wife by the Buda Surroundings District Court on 26 April 2006, more than five months after the decision by the Budapest Regional Court. This order was upheld by the Pest County Regional Court on 5 September 2006 but was not enforced. On 5 February 2007 the Buda Surroundings District Court again ordered the enforcement of the decision of 9 November 2005, this time with the assistance of the police but, again, the decision was not enforced.

58. It was only on 21 July 2010, almost five years after the decision of the Budapest Regional Court, and following a European arrest warrant issued by the Italian authorities, that the first applicant's ex-wife was arrested. The Court notes, however, that the first applicant's ex-wife was released shortly thereafter and that despite the fact that she had been in police custody for several hours, the police not only failed to ensure the reunification of the applicants but also failed to locate the children's whereabouts.

59. The Court further notes that it was only on 14 October 2011 that the first applicant's ex-wife was sentenced to a 200-day fine. That was the only measure ordered against her. The Court recalls that although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of manifestly unlawful behaviour by one of the parents.

In the present case, the Government did not provide any specific explanation or justification for the failure to enforce the judgment of 9 November 2005 of the Budapest Regional Court. Furthermore, the Government did not establish that a formal decision not to resort to coercive measures had been taken by any authority in the best interests of the second and third applicants and in any event coercive measures were not the only option available to the domestic authorities, which could have imposed further and heavier fines on the first applicant's ex-wife.

60. Lastly, the Court stresses that because of the domestic authorities' failure to locate the second and third applicants and communicate their location to the first applicant, not only were the applicants prevented from being reunited but, for over seven years, they were also prevented from merely seeing each other occasionally. In this respect, like the applicants, the Court finds it relevant that on 8 November 2012 the headmaster of Széchenyi István Primary School initiated proceedings before the Budakeszi district guardianship authority for taking the children under protection. In the Court's view, this shows that the second and third applicants were 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.

61. Having regard to the foregoing, and notwithstanding the respondent State's margin of appreciation in the matter, the Court concludes that the Hungarian authorities failed to fulfil their positive obligations to ensure the applicants' reunification and the return of the second and third applicants to Italy.

62. There has consequently been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants did not submit any claim in respect of pecuniary damage but claimed 150,000 euros (EUR) in respect of non-pecuniary damage, to be divided into EUR 100,000 in respect of the first applicant and EUR 25,000 each in respect of the second and third applicants.

65. The Government did not comment on the applicants' just satisfaction claims.

66. The Court has found that the Hungarian authorities failed to take adequate measures to facilitate the reunification of the applicants and considers that the applicants must have suffered anguish and distress as a result of the forced separation and the perspective of the father and daughters never seeing each other again. Ruling on an equitable basis, the Court awards to the first applicant the sum of EUR 3,000 and to the second and third applicants, jointly, the sum of EUR 3,000, to be paid to the first applicant and to be held by him on behalf of the second and third applicants equally (see, *mutatis mutandis, M.D. and Others v. Malta,* no. 64791/10, § 64, 17 July 2012).

B. Costs and expenses

67. The applicants also claimed EUR 20,000 for the costs and expenses incurred before the domestic courts, EUR 58,482.49 for those incurred before the Italian courts, EUR 7,523.95 for the costs relating to the first applicant's travels to Hungary during the proceedings and during his attempts to have access to his daughters and EUR 4,132.20 for the costs and expenses incurred before the Court, increased by a 20% retainer fee on the total of any sum awarded by the Court in respect of damages.

68. The Government did not comment on the applicants' claims for costs and expenses.

69. 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 considers it reasonable to award the sum of EUR 6,500 covering costs under all heads, to be paid to the first applicant.

C. Default interest

70. 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, 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 3,000 (three thousand euros), plus any tax that may be chargeable, to the first applicant, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, to the second and third applicants, jointly, in respect of non-pecuniary damage, to be transferred to the first applicant and to be held by him on behalf of the second and third applicants equally;
      (iii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, to the first 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President