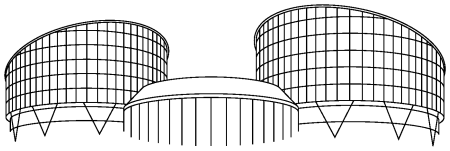

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF McILWRATH v. RUSSIA

(Application no. 60393/13)

JUDGMENT

STRASBOURG

18 July 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.

In the case of McIlwrath v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 27 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 60393/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a national of the United States of America, Mr Michael McIlwrath (“the applicant”), on 11 September 2013.

2. The applicant was represented by Mr A. Khazov, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, a disruption of his family life by the respondent State’s failure to assist him in being reunited with his children after they had been removed to Russia by their mother from their habitual place of residence in Italy.

4. On 19 March 2014 the application was communicated to the Government and granted priority treatment (Rule 41 of the Rules of Court).

5. On 3 February 2016 leave was granted to M.G., the applicant’s ex-wife, to intervene as a third party in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in Sesto Fiorentino, Italy.

7. In 1997 in New York the applicant married M.G., who held joint American and Russian nationality. On 3 October 1997 M.G. gave birth to their son.

8. In 1998 the family moved to Italy, where three more children were born: a son on 7 February 2000, a daughter on 22 July 2002 and a son on 26 February 2006. All four children hold joint American and Russian nationality.

9. In September 2007 the applicant and M.G. separated.

10. On 18 June 2009 the applicant applied for a divorce.

A. Removal of the children from Italy to Russia by their mother in August 2011, and the applicant's contact with the children thereafter

11. While the divorce proceedings were ongoing, on 27 August 2011 M.G. took the children and left Italy for Russia.

12. Since the removal of the children the applicant has travelled to Russia on over fifty occasions, trying to bring them back to Italy and maintain contact with them, however, M. G. has prevented him from doing so.

13. The case file material indicates that the applicant saw the children on several occasions at their school between 15 October and 26 October 2012 when he taught English there on a voluntary basis.

14. He also saw the children in the short period which followed Dzerzhinskiy District Court's decisions to grant his application for a temporary contact arrangement pending a decision in the proceedings in Russia to determine the children's place of residence (see paragraphs 47-48 below).

15. On 27 November 2012 the applicant went to the children's school to meet his younger son. The boy did not want to see him, he was pushing the applicant away and yelling. After failed attempts to calm the boy down, the applicant picked him up against his will, held him in both hands and carried him to an office allocated by the school administration for the applicant's meetings with the children. The boy started screaming, crying and fighting the applicant off. In the meantime, the applicant's daughter had telephoned M.G., who came to the school shortly afterwards and took the children home.

16. M.G. sought the institution of criminal proceedings against the applicant for having allegedly inflicted bodily harm on the children in the

course of the above incident. On several occasions the Juvenile Division of the St Petersburg Central District Office of the Ministry of Internal Affairs refused to institute criminal proceedings against the applicant, owing to the absence of the constituent elements of a crime in his actions. The most recent decision was on 10 June 2013. The regional prosecutor's office found the above decision lawful.

17. Following the incident of 27 November 2012, on 4 December 2012 the temporary contact arrangement for the applicant and his children was cancelled (see paragraph 49 below).

18. While exercising his contact rights in accordance with a judgment of 13 May 2014 (see paragraph 57 below), on 24 August 2014 the applicant took his second-born son and left Russia for Italy. He never returned the child to the mother and has not seen his other children since.

19. Since 2014 the applicant's eldest son has been living in Israel. The applicant's daughter and youngest son continue to live with their mother in Russia.

B. Proceedings in Italy

1. Interim decisions concerning the children's placement in care and residence arrangements pending the conclusion of the divorce proceedings

20. On 19 December 2009 the Florence District Court held that, while the divorce proceedings were ongoing, the four children should be placed in the care of social services, the children should reside with their mother, and the applicant should pay her child maintenance. The court further determined a schedule for the applicant's contact sessions with the children.

21. On 6 December 2010 the Florence District Court varied the arrangements relating to residence and who had care of the children. Relying on an expert report by a psychologist and psychoanalyst, Dr C., and noting M.G.'s continued lack of income, it ordered that, while the divorce proceedings were ongoing, the applicant should have sole care of the four children and the children should reside with him. It further ordered that the three younger children were to spend weekends with their mother in the following manner: from Friday after school to Sunday afternoon, and every other weekend from Friday after school to Sunday evening. The eldest son, who had been diagnosed with autism spectrum disorder, was to go to a day centre for children with special needs after school, and he was free to choose which parent he wanted to stay with at night. The court also ordered that during the approaching Christmas holidays the children were to spend a week with their father and the following week with their mother.

22. On 7 December 2010 the Florence District Court entrusted Dr C. with carrying out a monitoring exercise in relation to compliance with the

above court order. This exercise, carried out in the period between January and May 2011, showed that compliance with the court order of 6 December 2010 was rather good. After certain difficulties initially, the three younger children adapted quite well to their new schedule and accepted their new rhythm of life, which was more regular and settled. Dr C.'s report further mentioned that the children continued to experience psychological discomfort, partly owing to the difficult family situation (acute tensions and conflict between the parents), partly owing to their age (two children were approaching adolescence), and partly owing to M.G.'s actions (her continuing to "use" the children as "instruments" in her dispute with the applicant). Despite the remaining difficulties in the relationship between the children and their parents, the arrangement of the children's life at that stage was assessed by the expert as being the best possible from a psychological and material point of view. The main problems which came to light during the monitoring exercise were: the situation of the applicant's eldest son, who was not receiving therapy for his condition; the behaviour of M.G., who was unpredictable and eccentric and motivated by a paranoid delusion that she was a victim of plotting and persecution by the court and state institutions in general, and who gave the impression that she was suffering mentally; and M.G.'s relationship with the children, in particular, her attempts to involve the children in judicial proceedings and seek "allies" in them against the father, who she represented as cruel, dangerous and violent, all of which was harming the psychological well-being of the children. In the expert's opinion, in order to prevent further psychological trauma being inflicted on the children by the mother's behaviour, it was necessary not only to put a distance between her and the children, but also to have recourse to psychotherapy and improve the quality of the children's psychological environment at their father's home.

23. On 29 June 2011 the Florence District Court found that M.G. had not respected the previous court orders. In particular, it found that the eldest son had been living with her during the previous months. As he had refused to see his father, she had been the only parent who had had effective access to him. However, she had refused to bring him to the monitoring meetings with social services or ensure his attendance at the day centre for children with special needs, as ordered by the court. Moreover, she had sent the child to Venice in April without his father's permission and without notifying social services. Given that M.G. had not respected the arrangements fixed by the court, it was necessary to modify them. Accordingly, the court confirmed the previous arrangements in respect of the younger children in relation to who had care of them, their place of residence and contact. It further confirmed that the applicant should have sole care of the eldest son, and that the eldest son should reside with him. The eldest son was no longer given the choice as to whether he wished to stay with his father or mother at night. The court further confirmed the order for the eldest son's attendance

at a day centre for children with special needs, and noted that if M.G. continued to not comply with that order, the matter would be reported to the Minors Court for the adoption of measures limiting parental authority. It also held that the children were not allowed to leave Italy without the consent of both parents. Lastly, it fixed the manner in which the children should spend the approaching summer holidays. In particular, it ordered that from 25 August to 1 September 2011 the four children were to stay with M.G.

24. On 27 August 2011 M.G. and the children left Italy for Russia.

2. Divorce judgment

25. On 18 September 2012 the Florence District Court pronounced the divorce of the applicant and M.G. with reference to section 170(1) of the New York Domestic Relations Law, which provides that an action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on the grounds of cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well-being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant. The Florence District Court further ordered that the applicant should pay child maintenance to M.G. As regards who should have care of the children and where they should live, the court noted that M.G. had taken the children to Russia in breach of a court order, and for over a year had thereby deprived the father of any possibility of seeing the children. M.G.'s having sole care of the children, as requested by her, was therefore excluded as an option. The court ordered that the applicant and M.G. should have joint care of the children and that the children should reside with their father. After the children's return to Italy, M.G.'s contact rights would be fixed by social services so as to prevent the children being wrested once again from the environment in which they lived. Lastly, the court ordered that the applicant should bear all financial expenses in respect of the children, except medical expenses not covered by medical insurance, which should be divided between the parents. The judgment was "temporarily enforceable" (*provvisoriamente esecutivo*) pending a decision in appeal proceedings.

26. M.G. appealed against the judgment of 18 September 2012.

27. On 25 March 2014 the Florence Court of Appeal quashed the judgment of 18 September 2012 and dismissed the applicant's petition for divorce under section 170 (1) of the New York Domestic Relations Law as not meeting the required conditions. The court further noted that it could not take measures in relation to the personal relationship between the applicant and M.G. or other issues concerning the children.

3. Further proceedings initiated by the applicant

28. On 6 July 2015 the Florence Criminal Court convicted M.G. *in absentia* of abducting the children. She was given a three-year prison sentence with suspension of her parental authority.

29. On 19 November 2015 the Florence Minors Court dismissed an action by the applicant to strip M.G. of her parental authority in respect of the children.

C. Proceedings in Russia

1. Proceedings for enforcement of the interim decision of 6 December 2010

30. The applicant applied to the St Petersburg City Court ("the City Court") for recognition and enforcement of the Florence District Court's decision of 6 December 2010. He relied on both the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the 1979 Bilateral Convention on Legal Assistance in Civil Matters between Italy and the Soviet Union ("the Bilateral Convention").

31. On 19 January 2012 the City Court rejected the applicant's application. It found that the decision of 6 December 2010 was an interim decision pending a final decision in divorce proceedings. It could be modified by the judge who had made it at any time, as indeed it had been modified on 29 June 2011, and could not be appealed against. That decision was therefore not a decision rendered in civil matters within the meaning of Article 409 of the Code of Civil Procedure, and accordingly was not enforceable in Russia. The court further held that enforcement of the decision of 6 December 2010 should be refused by reference to Article 412 of the Code of Civil Procedure and Article 13 of the Bilateral Convention. It found that the decision of 6 December 2010 was manifestly incompatible with Russian public order because it ordered that the father should have sole care of the children. Russian law did not provide for one parent to have sole care unless the other parent had been formally stripped of his or her parental authority. Given that M.G. had not been stripped of her parental authority, the decision to award sole care to the applicant was incompatible with Russian law.

32. The decision of 19 January 2012 mentioned that an appeal against it could be lodged with the Appellate Panel of the City Court within fifteen days. However, the applicant never availed himself of that remedy.

2. Proceedings for enforcement of the divorce judgment of 18 September 2012

33. On 13 November 2012 the applicant applied to the City Court for enforcement of the Florence District Court's judgment of 18 September 2012. He relied on the Bilateral Convention.

34. On 25 January 2013 the City Court rejected the applicant's application. Referring to Article 412 of the Code of Civil Procedure and Article 13 of the Bilateral Convention, the City Court found that the judgment of 18 September 2012 was incompatible with the basic principles of Russian law and public order. The judgment read as follows:

> "Established case-law shows that public order in the Russian Federation is the basis of State and social organisation of the Russian Federation, [and] the violation of public order is the incompatibility with existing legal norms, social order and fundamental principles of law. Foreign court judgments violating the fundamental rights of a defendant, preventing him or her from defending his or her rights, as well as foreign court judgments whose enforcement may be in conflict with the national law of the State where they have to be enforced, are considered incompatible with public order. Reference to public order is possible when the application of a foreign law may lead to a result incompatible with Russian legal thinking.
>
> In the present case, the enforcement of a foreign court decision may be in conflict with Russian national law.
>
> In accordance with Article 163 of the Family Code of the Russian Federation, if parents and children do not have a joint place of residence their rights and obligations shall be determined in accordance with the law of the State where the children have citizenship. At a plaintiff's request, child maintenance obligations and other relationships between parents and children may be determined in accordance with the law of the State where the children permanently reside.
>
> By the time the Florence District Court delivered its decision of 18 September 2012 the children had been permanently residing in Russia for over a year (since 27 August 2011), they are Russian nationals and have no Italian nationality. These circumstances are not disputed by the parties.
>
> [The proceedings concerning residence arrangements, child maintenance and parental authority in respect of the children are ongoing before the Dzerzhinskiy District Court of St Petersburg.]
>
> Under these circumstances, examination of the dispute by the Florence court is incompatible with Russian law.
>
> Besides, the relationship between parents and children is an ongoing process, objectively it can and does change over time. As was noted above, by the time the Florence court delivered its judgment the children had been living in Russia for a long time. During this time their relationship with their parents and their perception of the possibility of living with their father could have changed, which should have been taken into consideration by the [Italian] court. However, the judgment [of 18 September 2012] indicates that the [Italian court] did not take these circumstances into consideration, thereby violating the children's fundamental rights under Article 12 of the United Nations Convention on the Rights of the Child ...

> The court also takes into account that the enforcement of the Florence court judgment might be incompatible with Russian law.
>
> In particular, enforcement of the foreign court decision in the present case would involve the return of the children to Italy, [a country] of which they are not nationals, with them being handed over to [the applicant], who also does not hold Italian nationality ...
>
> At the same time, under Article 61 of the Constitution of the Russian Federation a national of the Russian Federation may not be expelled from the territory of the Russian Federation.
>
> The applicant's argument to the effect that he did not intend to bring the children back to Italy immediately and that he first wished to restore his relationship with them cannot serve as grounds for granting [his] application [for recognition and enforcement of the judgment of 18 September 2012]. The court proceeds on the understanding that enforcement of the Florence court judgment would be impossible without the children's return to Italy ..."

35. On 7 February 2013 the applicant lodged a private complaint. Referring to Article 15 of the Constitution and Article 6 of the Family Code, he submitted that international treaties took precedence over national law. Under Article 24 of the Bilateral Convention the Italian courts had jurisdiction over the case, because at the time when the proceedings had been instituted he, M.G. and the children had all been permanently residing in Italy. The fact that M.G. had then abducted the children and taken them to Russia had no bearing on the jurisdiction of the Italian courts to proceed with the case. Further, referring to decisions by the Supreme Court (see paragraphs 74-75 below), the applicant argued that the City Court had not indicated what basic principles of the economic, social and legal organisation of Russian society had been infringed by the judgment of 18 September 2012. Moreover, the Russian courts had no competence in relation to verifying whether that judgment was lawful and justified. The applicant also submitted that the Florence District Court had taken into account the children's wishes, and proof of this had been produced before the City Court. The applicant further argued that the prohibition on deporting Russian nationals was irrelevant to the present case, because the children were not to be deported or extradited from Russia. They were to be handed over to their legal guardian and would enjoy freedom of movement, including the freedom to leave Russia. Lastly, the applicant complained under Article 8 of the Convention that the refusal to enforce the judgment of 18 September 2012 violated his right to respect for his family life.

36. On 12 March 2013 the Appellate Panel of the City Court held an appeal hearing. The parties had not been notified about the date of the appeal hearing and were therefore absent. On the same day the court upheld the decision of 25 January 2013, finding that it was lawful, well reasoned and justified. It found, in particular, that the judgment of 18 September 2012 by the Florence District Court was incompatible with Russian public order

because it was in conflict with Russian family law provisions and unacceptable in relation to Russian legal thinking.

37. The applicant lodged a cassation appeal with the Presidium of the City Court, repeating the argument set out in his appeal submissions.

38. On 8 May 2013 a judge of the City Court refused to refer the case for consideration by the Presidium of that court, finding no significant violations of substantive or procedural law which could influence the outcome of the proceedings. The first-instance and appeal courts had correctly applied domestic law.

39. On 30 September 2013 a judge of the Supreme Court of Russia refused to refer the case for consideration by the Civil Chamber of that Court.

40. On 9 December 2013 the Deputy President of the Supreme Court of Russia informed the applicant that there were no grounds to disagree with the decision of 30 September 2013, refusing to refer the case for consideration by the Civil Chamber of the Supreme Court.

3. Proceedings concerning parental authority, residence arrangements and child maintenance

41. On 10 January 2012 M.G. lodged an application with the Dzerzhinskiy District Court of St Petersburg. Claiming domestic violence and a lack of care and financial support, and referring to the children's wish to live with her, she asked for an order stripping the applicant of his parental authority in respect of the children and determining that the children should reside with her. She also asked for child maintenance.

42. The applicant lodged a counterclaim, asking for an order that the children should reside with him. He submitted that M.G. had unlawfully abducted the children despite the decisions by the Florence District Court that they should reside with him. Their residence with M.G. was detrimental to their psychological health. In particular, by falsely accusing him of domestic violence, M.G. had caused the children to fear their father. Moreover, she had prevented him and his relatives from seeing the children or supporting them financially. She had not taken proper care of the eldest son, who suffered from a mental disorder and needed specialist care.

43. On 12 April 2012 the Dzerzhinskiy District Court of St Petersburg declared M.G.'s claims inadmissible. It noted that proceedings concerning the children's residence arrangements and child maintenance were ongoing before the Florence District Court. Given that the proceedings in Italy had been initiated before the present proceedings, it was the Italian courts which had jurisdiction over the case, in accordance with Article 25 of the Bilateral Convention. Accordingly, the Russian courts had no competence to examine the case between the same parties, which was based on the same facts and had the same purpose. As regards the claim to strip the applicant of his parental authority, that claim was not part of the proceedings before the

Italian courts. However, given that the applicant was a national of the United States of America and permanently living in Italy, the Russian courts had no competence to examine the claims against him. M.G. should therefore submit her claims to the court with territorial jurisdiction over the applicant's place of residence.

44. On 6 June 2012 the City Court quashed the decision of 12 April 2012 and remitted the case for fresh consideration before the Dzerzhinskiy District Court. It found that the present proceedings were not identical to the proceedings ongoing in Italy. In particular, the claim to strip the applicant of his parental authority had only been made in the present proceedings. M.G. was entitled to lodge her claim with a court with territorial jurisdiction over her place of residence. Given that she lived in the Dzerzhinskiy District of St Petersburg, the Dzerzhinskiy District Court had competence to examine the case.

45. On 11 September 2012, having questioned the applicant's three older children aged 15, 13 and 10, who had all expressed their wish to live with their mother and refused to have any contact with their father, the Dzerzhinskiy District Court decided that, pending the resolution of the proceedings, the children should reside with their mother.

46. On the same date the applicant asked the court to determine a temporary contact arrangement for him and the children.

47. Following the applicant's application, on 30 October 2012 the Dzerzhinskiy District Court decided that, pending the resolution of the proceedings, the applicant should be able to have contact with the children at the schools they attended, in the presence of and with the active involvement of a psychologist, for one hour a week with each child: on Wednesdays after classes from 3 p.m. to 4 p.m. with the elder son; on Fridays after classes from 3 p.m. to 4 p.m. with the second son; on Mondays after classes from 2 p.m. to 3 p.m. with the daughter; and on Tuesdays after classes from 1 p.m. to 2 p.m. with the younger son.

48. Following an application by the applicant, on 21 November 2012 the Dzerzhinskiy District Court modified the interim contact arrangement between him and the children. In particular, in addition to the previously established contact hours, the applicant was allowed to: take his second son for a walk on Saturdays from noon to 1 p.m.; pick up his daughter from extracurricular activities on Sundays at 1 p.m., have lunch with her afterwards and return her to the mother by 2.30 p.m.; and take his younger son to theatres, museums and for other extracurricular activities for children every other Saturday, for a maximum of four hours starting from 10 a.m. The applicant was also allowed to accompany the three older children to and from school if the children agreed.

49. However, on 4 December 2012 the Dzerzhinskiy District Court cancelled the above interim contact arrangement on the grounds that it was not in the best interests of the children. In taking that decision, the district

court relied on a letter from the Children's Psychiatry Centre for Recovery Treatment of 29 November 2012 to the effect that, in circumstances where there was bitter parental conflict, meetings between children and the parent from whom they were living apart were psychologically highly traumatic for the children. The court also took into consideration the fact that the school principal firmly objected to having the meetings between the applicant and the children take place on the school premises. Reference was made to the incident of 27 November 2012 (see paragraphs 15-16 above).

50. On 23 July 2013 the Dzerzhinskiy District Court rejected both M.G.'s and the applicant's claims in full. It found no evidence of domestic violence in respect of M.G. or the children. It further found it established that, despite the applicant's wish to take care of the children and support them financially, he was being prevented from doing so by M.G. There were therefore no reasons to strip him of his parental authority in respect of the children. As regards residence arrangements, the court noted that the Florence District Court had already examined similar claims and had ordered by its judgment of 18 September 2012 that the children were to live with the applicant. That judgment was final and enforceable and the procedure for its enforcement in Russia was established by the Bilateral Convention and Article 409 of the Code of Civil Procedure. All the arguments raised by the parties in the present proceedings had already been examined by the Florence District Court. The parties had not produced any new evidence which could warrant changing the residence arrangements determined by the Florence District Court. Moreover, the court had been hampered in its examination of the issue by M.G.'s refusal to have the children examined by court-appointed experts. In the absence of a psychological expert report it was impossible to ascertain effectively the children's attachment to each of the parents, the parents' moral character and other relevant qualities, and the relationships between the children and each of the parents. Lastly, the court rejected M.G.'s claim for child maintenance. The parties appealed.

51. On 19 November 2013 the City Court considered it necessary, among other things, to question the three older children who had reached the age of 10 about their attitude towards each of the parents and the prospect of their living with them, and to obtain the opinion of the youngest child with the involvement of a psychologist. The hearing of 19 November 2013 was adjourned until 10 December 2013.

52. On 6 December 2013 an inspection of the children's living conditions with their mother was carried out, and there was also a discussion with the applicant's youngest child.

53. On 10 December 2013 the City Court ordered that an expert examination should be carried out so as to determine which parent the children would be most comfortable living with from an emotional perspective, with regard to the individual psychological features of the

children and the parents, the relationships between them and the existing circumstances. The examination was also to determine whether it would be possible for the children to live apart from each other with one of the parents, taking into account their psychological attachment to each other. The proceedings were adjourned pending the results of the expert examination.

54. On 14 January 2014 the City Court ordered that the forensic psychological examination should be carried out by the St Petersburg State Institution for the Social Assistance of Families and Children "The Regional Family Centre".

55. On 19 March 2014 the report of the forensic psychological examination was drawn up. It was based on an examination of the applicant and an analysis of the case file material, since M.G. had refused to take part in the examination and had not let the children be examined either. The experts' conclusion was that the applicant was polite, communicative, sincere, easy-going, in control of his emotions, sentimental, sensitive to emotional nuances, and that he wanted friendly harmonious relationships. He had broad interests. Rudeness, hostility and a dominating attitude were not part of his character. He could easily adapt to different environments. The experts did not have sufficient material to fully assess the individual psychological features of M.G. and the children. However, on the basis of an analysis of M.G.'s behaviour and the reports by the Italian specialists, and taking into account the ongoing conflict and the children's being in a psychotraumatic situation for a very long time, the experts recommended that M.G. underwent a comprehensive psychological and psychiatric expert examination. The experts further noted that, owing to the mother's behaviour, the children had a negative image of their father, which created a substantial risk for their normal mental development. In such a situation, determining the children's place of residence in accordance with their wishes could contradict their true interests.

56. On 20 March 2014 the proceedings were resumed. The City Court considered it necessary that the applicant's two older sons, aged 16 and 14, join the proceedings as third parties.

57. On 13 May 2014 the City Court quashed the decision of 23 July 2013. It took note of the fact that on 25 March 2014 the judgment of the Florence District Court of 18 September 2012 had been quashed on appeal. The City Court granted M.G.'s claims in part by ordering that the children were to live with her and that the applicant was to pay her child maintenance, and granted the applicant's claims in part by determining his contact rights in respect of the children. In particular, the applicant was allowed to spend time with the children on the second and last weekend of the month from 10 a.m. on a Saturday to 8 p.m. on a Sunday, for at least four hours on the dates of the children's birthdays, during half of the public and school holidays, and for at least thirty calendar days during the summer

holidays. During public holidays and school holidays the applicant was allowed to travel with the children both in Russia and abroad. The remaining claims by the applicant and M.G. were dismissed. In taking that decision the City Court took into consideration that: the children had been living with their mother for a long time, and they had been cared for and raised by her during this time; while living in St Petersburg they had acquired a circle of friends and teachers; the material in the case file proved M.G.'s conscientious attitude towards her parental obligations; and the children, questioned by both the court and the childcare authority, had expressed their wish to live with their mother.

4. Defamation proceedings

58. Between June and October 2011 a number of internet news sites published M.G.'s account of her relationship with the applicant, their divorce and their dispute over the children. In particular, the news sites reproduced M.G.'s accusations against the applicant, describing his alleged acts of violence against her and the children.

59. The applicant sued the news sites and M.G. for defamation.

60. On 13 August 2012 the Petrogradskiy District Court of St Petersburg allowed the applicant's claims against one of the news sites. On 20 August 2012 the Dzerzhinskiy District Court of St Petersburg allowed his claims against M.G. On 30 May 2013 the Golovinskiy District Court of Moscow allowed his claims against another news site. All the district courts found that M.G. and the news sites had not proved the truth of their allegations against the applicant. They noted that the Italian authorities had conducted an inquiry into M.G.'s allegations against the applicant and had found no evidence of domestic violence. The St Petersburg police had also conducted an inquiry which had not revealed any evidence of violent acts by the applicant against M.G. or the children. No such evidence had been produced in the present proceedings either.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

A. Relevant international law

1. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

61. The 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") entered into force in respect of Italy on 1 May 1995 and in respect of Russia on 1 October 2011. On 1 July 2016 the Convention entered into force between Italy and Russia. For the relevant provisions of the Hague Convention see *X v. Latvia* [GC], no. 27853/09, § 34, ECHR 2013.

2. The International Convention of 20 November 1989 on the Rights of the Child

62. The relevant provisions of the 1989 Convention on the Rights of the Child, which has been ratified both by Russia and Italy, reads:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

3. Convention of 25 January 1979 between the Union of Soviet Socialist Republics and the Italian Republic on Legal Assistance in Civil Matters

63. The 1979 Bilateral Convention on Legal Assistance in Civil Matters between Italy and the Soviet Union (still in force) provides that each Contracting Party recognises final judicial decisions in civil and family matters rendered in the territory of the other Contracting Party by a court considered to have jurisdiction within the meaning of this Convention. Each Contracting Party also recognises decisions rendered by the competent authorities of the other Contracting Party concerning paternity, adoption and who has care of a child (Article 19).

64. Judicial decisions rendered by the courts of one Contracting Party and recognised by the other Contracting Party are enforceable in the territory of that latter Party if they are enforceable in the territory of the Contracting Party from which they originate (Article 22).

65. The procedure for the recognition and enforcement of judicial decisions is governed by the law of the Contracting Party addressed, so far as this Convention does not provide otherwise (Article 23).

66. Courts of the Contracting Party from which a decision originates shall be considered to have jurisdiction for the purposes of this Convention if the defendant had his habitual residence in that Contracting Party at the time when proceedings were instituted, or, where the object of an action was the determination of financial maintenance payments, the plaintiff had his

habitual residence in the Contracting Party from which the decision originates at the time when the proceedings were instituted (Article 24 § 1).

67. Recognition of a judicial decision may nevertheless be refused in any of the following circumstances: (1) if the defendant did not participate in the proceedings because he had not been duly notified of the institution of the proceedings and the date of the hearing; (2) if there is a final decision by the courts of the Contracting Party addressed in the proceedings between the same parties which is based on the same facts and has the same purpose; (3) if proceedings between the same parties, based on the same facts and having the same purpose, are ongoing before the courts of the Contracting Party addressed, provided that those proceedings were the first to be instituted; or (4) if, in accordance with international treaties ratified by both Contracting Parties, the courts of the Contracting Party addressed have exclusive jurisdiction over the case (Article 25 § 1). Recognition of a judicial decision may also be refused if enforcement of that decision may be detrimental to the sovereignty or national security of the Contracting Party addressed, or if it is manifestly incompatible with the basic principles of law of the Contracting Party addressed (Article 13).

B. Relevant Russian law

1. Reviews of judgments delivered by courts of first instance

68. For the relevant provisions of domestic law from 1 January 2012 onwards, see *Abramyan and Others v. Russia* ((dec.), nos. 38951/13 and 59611/13, §§ 29-45, 12 May 2015).

2. Recognition and enforcement of foreign court judgments

69. The Constitution provides that the commonly recognised principles and norms of international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation sets out rules other than those stipulated by the domestic law, the rules of the international treaty shall apply (Article 15 § 4). A similar provision is contained in Article 6 of the Family Code.

70. The Code of Civil Procedure provides that the judgments of foreign courts must be recognised and enforced in the Russian Federation if this is stipulated in the international treaty to which the Russian Federation is a party. Proceedings for recognition and enforcement of a judgment of a foreign court must be instituted within three years of the day of its becoming enforceable (Article 409).

71. With regard to a person against whom a judgment has been issued, it is the court located where that person has a permanent or temporary residence in the Russian Federation which has territorial jurisdiction to

examine an application for the compulsory execution of a foreign court judgment. If that person has no permanent or temporary place of residence in the Russian Federation, or if the location of his place of temporary residence is unknown, it is the court where his property is located which has jurisdiction (Article 410).

72. The application for recognition and enforcement of a foreign court judgment must be considered in open court, and the person against whom the judgment was issued must be notified of the time and place of the examination of the application. That person's failure to appear, in the absence of valid reasons, does not preclude the court from examining the application. The court may grant the application for enforcement of a foreign court judgment or refuse it, after having heard the defendant and examined the evidence. In the event of there being doubts during the examination of the application, the court may seek explanation from the person who lodged the application, and may also question the defendant on the merits of the application and, if necessary, seek explanation from the foreign court which delivered the judgment in question (Article 411 §§ 3, 4 and 6).

73. Enforcement of a foreign court judgment may be refused in any of the following circumstances: (1) if the judgment is not final or enforceable in accordance with the domestic law of the State in which it was issued; (2) if the defendant was deprived of an opportunity to participate in the proceedings because he was not duly notified of the time and place of the hearing; (3) if Russian courts have exclusive jurisdiction over the case; (4) if there is a final judgment by Russian courts in the proceedings between the same parties, based on the same facts and having the same purpose, or if the proceedings between the same parties, based on the same facts and having the same purpose, are ongoing before Russian courts, provided that the proceedings before the Russian courts were the first to be instituted; (5) if enforcement of the judgment may be detrimental to Russian sovereignty or national security, or if it is manifestly incompatible with Russian public order; (6) the time-limit for applying for enforcement has expired and has not been extended by a Russian court at the plaintiff's request (Article 412).

74. In its decision no. 91-Г08-6 of 19 August 2008 the Supreme Court held that "public order" within the meaning of Article 412 of the Code of Civil Procedure could not be equated to national law. The notion of "public order" meant basic principles of the economic, social and legal organisation of Russian society set out by the Constitution and federal laws.

75. In its decision no. 59-Г09-14 of 25 August 2009 the Supreme Court held that, when examining an application for enforcement of a foreign judicial decision, Russian courts had no competence in relation to verifying whether that decision was lawful and justified.

3. Appeals against decisions concerning the recognition and enforcement of foreign court judgments

76. The Code of Civil Procedure provides that a first-instance court decision concerning the recognition and enforcement of a foreign court judgment may be appealed against before an appeal court by lodging a private complaint (*частная жалоба*) within fifteen days of the decision of the first-instance court being taken (Article 331 § 1 and Article 332).

77. A private complaint against the first-instance court decision concerning the recognition and enforcement of a foreign court judgment is examined by the appeal court without the participants being notified of the proceedings (Article 333 § 2, as in force at the material time).

78. By its ruling of 30 November 2012, 29-P the Constitutional Court of the Russian Federation interpreted Article 333 § 2 of the Code of Civil Procedure, as in force at the material time, as implying that: (a) the participants in the proceedings should be informed about the lodging of a private complaint against the decision of a first-instance court, and they should be provided with an opportunity to acquaint themselves with the contents of the private complaint and – if the private complaint is examined in the absence of an oral hearing – to submit to the appeal court in writing their position as regards the private complaint; (b) the participants in the proceedings should be informed about the time and place of the examination by the appeal court in an oral hearing of a private complaint against the decision of a first-instance court where the appeal court, taking into account the nature and complexity of the procedural issue under examination and the arguments set out in the private complaint, arrives at the conclusion that it is necessary for the proper administration of justice to provide the participants in the proceedings with an opportunity to make oral submissions as to their position before the appeal court.

79. As of 28 December 2013 Article 333 § 3 of the Code of Civil Procedure explicitly provides that the examination of a private complaint against a first-instance court decision concerning the recognition and enforcement of a foreign court judgment is carried out with the participants in the proceedings being notified about the time and place of the appeal hearing.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

80. The applicant complained of a violation of his right to respect for his family life, in that the Russian authorities had failed to assist him in being reunited with his children after they had been taken from Italy to Russia by

their mother. He referred to Article 8 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The Government's request for the application to be struck out under Article 37 § 1 (c) of the Convention

81. The Government submitted that, since the Florence Court of Appeal final judgment of 25 March 2014 had quashed the divorce judgment of 18 September 2012 in its entirety and left open the issues concerning the children, the application had lost its subject matter, and it was no longer justified to continue its examination. They therefore argued that the application should be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention.

82. The applicant submitted that the quashing of the Florence District Court's judgment of 18 September 2012 had not deprived him of his victim status in respect of the alleged violation of Article 8 of the Convention, and invited the Court to proceed with the examination of the admissibility and merits of the complaint.

83. The Court reiterates that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application."

84. The Court considers that the quashing of the judgment of 18 September 2012 on appeal cannot in itself be considered a circumstance capable of making the examination of the applicant's complaint no longer justified. Accordingly, the Government's request must be dismissed.

B. Admissibility

1. Exhaustion of domestic remedies

85. The Government argued that the applicant had failed to exhaust the available domestic remedies provided for by domestic law as of 1 January 2012 (see paragraph 68 above). Firstly, they submitted that he had not appealed against the decision of 19 January 2012 rejecting his application for enforcement of the Florence District Court's decision of 6 December 2010. Secondly, he had not lodged an application for supervisory review with the Presidium of the Supreme Court to challenge the decision of

25 January 2013 (upheld on appeal on 12 March 2013) rejecting his application for enforcement of the Florence District Court's divorce judgment of 18 September 2012. Lastly, the applicant had not pursued cassation and supervisory review proceedings to challenge the appeal judgment of the St Petersburg City Court of 13 May 2014 determining the applicant's contact rights, child maintenance obligations, and that the children should reside with their mother.

86. In order to demonstrate the effectiveness of the cassation procedure, the Government provided seven examples of domestic case-law for the period between December 2012 and April 2013 in which the Civil Chamber of the Supreme Court had reversed the judgments delivered by first-instance and appeal courts. All these examples concerned disputes between private individuals and different public authorities with regard to various social rights. While the first-instance and/or appeal courts had found against the private claimants, those judgments had been reversed by the Civil Chamber of the Supreme Court on the grounds that the lower courts had committed significant errors in the application of the substantive legislation.

87. The applicant challenged the effectiveness of the cassation review and supervisory review procedures provided for by domestic law. In particular, as regards the cassation procedure, the applicant strongly criticised the fact that it had a two-level structure (the level of presidia of the regional courts and subsequently the level of the Civil Chamber of the Supreme Court), and that it featured a stage of preliminary examination by a single judge who decided whether or not a cassation appeal was to be referred to a cassation court for examination on the merits, which made the risk of judicial error very high. As regards the applicant's failure to lodge an application for supervisory review against the decision of 25 January 2013 (upheld on appeal on 12 March 2013) with the Presidium of the Supreme Court, the applicant submitted that, under the relevant provisions of the Code of Civil Procedure, an application for supervisory review could only be lodged by a party if the Civil Chamber of the Supreme Court had previously examined his or her cassation appeal on the merits. Since the Civil Chamber of the Supreme Court had never examined his cassation appeals on the merits, he had been precluded from pursuing the supervisory review procedure.

88. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against a State to first use the remedies provided for by the national legal system, thus allowing States the opportunity to put matters right through their own legal systems before being required to answer for their acts before an international body. In order to comply with the rule, applicants should normally use remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

89. In the context of Russia, the Court has consistently held that the final judicial remedy to be exhausted prior to lodging an application with the Court is an appeal to a regional court, and that applicants are not required to submit their cases for re-examination by higher courts by way of a supervisory review procedure, which constitutes an extraordinary remedy (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June1999; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; and *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009). Following legislative amendments reforming Russian civil procedure with effect from 1 January 2012, the Court held that the new cassation procedure was no longer affected by the uncertainty which existed previously, and that any individual who intended to lodge an application in respect of a violation of his or her Convention rights should first use the remedies offered by the new cassation procedure (see *Abramyan and Others*, cited above, §§ 76-96). By contrast, the Court affirmed its consistent approach to the supervisory review procedure, which it does not consider an effective remedy to be exhausted (ibid., § 102).

90. It is however observed that the issue of whether domestic remedies have been exhausted is normally determined by reference to the date on which the application was lodged with the Court. In cases where the effectiveness of a given remedy has been recognised in the Court's case-law after the lodging of an application, the Court has deemed it disproportionate to require applicants to turn to that remedy for redress (see *Novruk and Others v. Russia*, nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14, §§ 70-76, 15 March 2016, and *Kocherov and Sergeyeva v. Russia*, no. 16899/13, §§ 64-69, 29 March 2016, with further references).

91. In the present case, the applicant lodged his application with the Court on 11 September 2013, while the Court recognised the new cassation procedure as an effective remedy for the purposes of Article 35 § 1 of the Convention in May 2015 (see paragraphs 68 and 89 above). Therefore, in order to comply with the exhaustion requirement it sufficed for the applicant to lodge an appeal before a regional court, and he was not required to pursue the remedies offered by the new cassation procedure.

92. The Court notes that the applicant did not appeal against the decision of 19 January 2012 rejecting his application for enforcement of the Florence District Court's interim decision of 6 December 2010 (see paragraph 32 above). This part of the applicant's complaint must therefore be dismissed under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

93. The Court further notes that the applicant appealed against the decision of 25 January 2013 rejecting his application for enforcement of the Florence District Court's divorce judgment of 18 September 2012. Although not required to do so, he subsequently lodged cassation appeals against the decision of 25 January 2013 (upheld on appeal on 12 March 2013), first with the Presidium of the City Court and then with the

Civil Chamber of the Supreme Court of Russia. The Court therefore rejects the Government's objection as to non-exhaustion with regard to this part of the applicant's complaint.

94. Lastly, the Court notes that the applicant appealed against the judgment of 23 July 2013 in the proceedings concerning parental authority, residence arrangements and child maintenance, and thus complied with the exhaustion requirement. The Court therefore rejects the Government's objection as to non-exhaustion with regard to this part of the applicant's complaint.

95. To sum up, the Court accepts the Government's plea as to non-exhaustion in so far as the applicant's complaint concerns issues decided in the decision of the City Court of 19 January 2012. It further rejects the Government's plea as to non-exhaustion in so far as it concerns the proceedings whereby the applicant sought to obtain recognition and enforcement of the divorce judgment of 18 September 2012 and the proceedings concerning parental authority, residence arrangements and child maintenance.

2. Alleged abuse of the right of individual application

96. The Government submitted that the application should be rejected as an abuse of the right of individual application, within the meaning of Article 35 § 3 (a) of the Convention, for the following reasons. In breach of Rule 47 § 7 of the Rules of Court, the applicant had withheld from the Court both the fact that the judgment of 18 September 2012 had been appealed against by M.G. and the outcome of the relevant appeal proceedings. He had provided the Court with a selective translation from Italian into Russian of the expert report by Dr C. of 20 June 2011 (see paragraph 22 above) evaluating the applicant's family situation, omitting the pages with information which presumably undermined his arguments, including eleven pages of the children's statements. Furthermore, the applicant had not informed the Court about the developments and outcome of the proceedings in Russia. He had also withheld from the Court the fact that on 30 October 2012 the Dzerzhinskiy District Court had granted him contact rights in respect of the children while the examination of the case in Russia in relation to parental authority, residence arrangements and child maintenance was ongoing, and that he had had contact with the children after they had been taken from Italy to Russia by their mother in August 2011. Lastly, the applicant had failed to inform the Court that he had not returned one of the children after exercising his contact rights, and that he was keeping the child in Italy in the absence of any court decision. He had thereby prevented the Court from ruling on the case in full knowledge of the facts.

97. The Court reiterates that, under Article 35 § 3 (a) of the Convention, an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts.

The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (formerly Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further extensive references).

98. Turning to the present case, the Court considers that it was not established with sufficient certainty that the application was knowingly based on untrue facts, or that the applicant intended to mislead the Court. It therefore rejects the Government's plea that the application be dismissed as abusive.

3. Conclusion

99. The Court further notes that this complaint 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, save in relation to the part rejected by the Court for non-exhaustion of domestic remedies (see paragraphs 92 and 95 above). It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The Government

(i) Initial observations

100. The Government submitted that the St Petersburg City Court's refusal to enforce the judgment of 18 September 2012 had amounted to an interference with the applicant's right to respect for his family life. That interference was prescribed by law, in particular Article 409 § 1, Article 410 and Article 412 § 1 (5) of the Code of Civil Procedure of the Russian Federation, and Article 13 and Article 25 § 1 (c) and (d) of the Bilateral Convention (see paragraphs 69-73 and 67 above). In this connection, the Government submitted that the Hague Convention did not apply to the present case, since at the material time it had not yet entered into force between Russia and Italy (see paragraph 62 above).

101. The Government further submitted that, pursuant to Article 163 of the Family Code of the Russian Federation, if parents and children did not have a joint place of residence then their rights and obligations would be determined in accordance with the law of the State where the children had citizenship. At the request of a plaintiff, child maintenance obligations and other relationships between parents and children might be determined in accordance with the law of the State where the children permanently resided.

102. By the time the Florence District Court had delivered its decision of 18 September 2012 the children had been living in Russia for over a year, qualifying their stay in Russia as permanent residence. Furthermore, they held Russian citizenship and no Italian citizenship. Therefore, pursuant to Articles 13, 20, 24 and 25 of the Bilateral Convention, initially it should have been for the Russian courts and not the Italian courts to institute proceedings concerning the children's personal status (including the determination of their place of residence).

103. The refusal by the St Petersburg City Court to enforce the decision of the Florence District Court of 18 September 2012 had been justified by the failure of that court to fully take into account the best interests and personal views of the children, in breach of Articles 3 and 12 of the 1989 Convention on the Rights of the Child (see paragraph 62 above), and by the ban in Article 61 of the Russian Constitution on the deportation of Russian citizens from Russia, which would have been breached had the Russian courts granted the applicant's application for recognition and enforcement of the judgment of 18 September 2012.

104. The St Petersburg City Court had taken into consideration the best interests of the applicants' children, paying due attention to the length of their stay in Russia with their mother, the fact that the children were Russian citizens with no Italian citizenship, and that, during their stay in Russia, their relationship with their parents could have changed, factors which had not been given any consideration by the Florence District Court. Therefore, the interference with the applicant's right to respect for his family life had pursued the legitimate aim of protecting the health, rights and freedoms of the underage children who were citizens of the Russian Federation.

105. The Government further submitted that the interference had been necessary in a democratic society. They outlined the complex and extremely hostile relationship between the applicant and the children's mother, providing details of the pre-investigation inquiry carried out into her allegations against the applicant in connection with his visit to the school on 27 November 2012 (see paragraphs 15-16 above).

106. The Government went on to say that, during the proceedings in Russia, the authorities with competence, including the Ombudsman for Children in St Petersburg and the childcare authority for the Liteyniy

District in St Petersburg, had examined the children's living conditions and made enquiries so as to obtain information on their education, health and relationship with their mother and peers. It had been found that the children were living in a suitable flat, all their essential requirements were being taken care of, they were attending public schools and participating in extracurricular activities and had adapted well to their environment. They spoke Russian and were well-behaved, educated and well-read, and were caring, warm and courteous to each other. The overall family environment was harmonious and friendly.

107. The authorities with competence had also made attempts to reconcile the applicant with M.G. In particular, they had mediated in discussions held by psychologists and specialists, reminding the parties of their equal rights and responsibilities in respect of the children and trying to convince them to act in the children's best interests. However, no agreement could be reached, and the Ombudsman for Children had advised the applicant to resolve the issue of his contact with the children through the courts in accordance with Russian law.

108. The applicant had followed this advice and applied to the Dzerzhinskiy District Court of St Petersburg, seeking to have it determined that the children should reside with him. In the course of the examination of the case, the district court had questioned the three older children. All of them had expressed a wish to continue residing with their mother. By a final judgment of 13 May 2014 the St Petersburg City Court had determined that the children were to reside with their mother and the applicant was to pay her child maintenance. That court had also determined the applicant's contact rights in respect of the children.

109. In the light of the foregoing, the Government concluded by stating that there had been no violation of the applicant's right to respect for his family life as guaranteed by Article 8 of the Convention.

(ii) Further observations

110. As regards the refusal of the St Petersburg City Court to recognise and enforce the judgment of the Florence District Court of 18 September 2012, the Government submitted that the judgment in question had been a non-final judgment by a first-instance court against which M.G. had filed an appeal. This appeal had been ongoing at the time when the applicant had applied to the City Court for its enforcement.

111. They further asserted that the Florence Court of Appeal had quashed the judgment of 18 September 2012 in its entirety by the final judgment of 25 March 2014, and had not determined any issues concerning who had care of the children, their residence arrangements, or the applicant's and M.G.'s contact rights in respect of the children. The Russian Federation therefore had no obligation to enforce the final judgment of 25 March 2014, as it contained no enforceable claims.

112. In the residence and contact order proceedings, the St Petersburg City Court had been guided by the best interests of the children. On the basis of Articles 3 and 12 of the 1989 Convention on the Rights of the Child and the corresponding provisions of Articles 57 and 65 of the Family Code of the Russian Federation, the Russian authorities had questioned the children several times, both in and out of court. The two older sons, aged 16 and 14 at the material time, had submitted their written statements to the court, stating that they wanted to live with their mother. The social services of St Petersburg had been actively involved in dealing with the applicant's family situation, they had acted as a third party in the proceedings and submitted numerous reports to help the courts ascertain what was in the children's best interests. The Ombudsman for Children in St Petersburg had also submitted reports as a third party in the proceedings concerning the children's best interests.

(b) The applicant

113. The applicant agreed with the Government that the Hague Convention was not applicable to the present case, owing to the fact that the removal of the children had occurred before that Convention had become effective in respect of the Russian Federation.

114. While the procedure for the recognition and enforcement of foreign court judgments was of a formal nature within the Russian legal system, that is limited to verifying compliance with procedural requirements, the St Petersburg City Court had overstepped its bounds and examined the merits of the Florence District Court's judgment of 18 September 2012. Furthermore, while the St Petersburg City Court had held that granting the applicant's application for enforcement of the judgment of 18 September 2012 could affect the security and sovereignty of the Russian Federation and breach the basic principles of Russian law and public order, it had not explained the effects of the possible damage to sovereignty, security and public order. The applicant had therefore concluded that the refusal of his application for enforcement of the Florence District Court's judgment of 18 September 2012 had not been in accordance with the law and had violated his right under Article 8 of the Convention.

115. The St Petersburg City Court had not taken into account the best interests of the children. In particular, it had not taken any steps to find out what their opinions were and had not concerned itself with the applicant's personality or attitude towards his children. In fact, the court had selected its own evidence supporting the idea that it was impossible to enforce the Florence District Court's decision, in breach of the applicant's right to a fair trial.

116. The applicant further submitted that the interference with his right under Article 8 of the Convention had not pursued any legitimate aim and had not been necessary in a democratic society.

117. The Russian courts had refused to take into account the fact that, by exploiting her Russian citizenship, M.G. had initiated parallel proceedings in Russia in respect of the dispute over the children, and had failed to take any measures to discontinue such measures on her part. As a result, the applicant had found himself in a situation where legal pressure was being exerted on him through the judicial bodies of two countries, creating the risk that he incur liability twice (for example, in relation to the recovery of child maintenance). Therefore, the applicant had been forced to participate in the proceedings before the Dzerzhinskiy District Court of St Petersburg, and he had also been forced to repeatedly prove the circumstances already determined by the Florence District Court.

118. The applicant strongly criticised the absence in Russia of specialised family courts. He further claimed that the social services were unable to secure the interests of parents and children. Both the childcare authority and the Ombudsman for Children had failed to assist him in securing contact with his children on the basis of the interim contact arrangements (see paragraphs 47-48 above). No State body had replied to his allegations regarding the alleged mental instability of M.G. and her exercising pressure on the children. The Russian legal system had therefore showed itself to be unable to protect his interests as a father and secure the children's safety, and lacking the necessary legal mechanisms to secure compliance with contact arrangements determined by its courts.

119. The applicant had thus been deprived of the opportunity to live a normal family life, in violation of Article 8 of the Convention.

(c) The third-party intervener

120. M.G. submitted various documents pertaining to the proceedings in which she and the applicant had been parties. In so far as they were relevant to the examination of the issues at the heart of the present case, the contents of that material were reflected in the summary of the facts of the case.

2. The Court's assessment

121. The Court notes that a parent and child's mutual enjoyment of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see, most recently, *Zdravković v. Serbia*, no. 28181/11, § 60, 20 September 2016). It is therefore common ground that the relationship between the applicant and his children falls within the sphere of family life under Article 8 of the Convention. That being so, the Court must determine whether there has been a failure to respect the applicant's family life. "Respect" for family life implies an obligation for a State to act in a manner calculated to allow these ties to develop normally (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII).

122. The Court observes that in August 2011, while the couple in the instant case was in the middle of divorce proceedings in Italy, M.G. took the children, aged 14, 11, 9 and 6 at the material time, to Russia and never returned. Between 2011 and 2014 the applicant travelled to Russia on over fifty occasions seeking to be reunited with his children, but in vain.

123. The Court reiterates that, although the essential object of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in an effective "respect" for family life (see *Maumousseau and Washington v. France*, no. 39388/05, § 83, 6 December 2007). 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 taking, where appropriate, of specific steps. The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition. The applicable principles are nonetheless 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 (see *Kosmopoulou v. Greece*, no. 60457/00, § 43, 5 February 2004).

124. As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 of the Convention 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 involving 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 (see *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and *Kosmopoulou*, cited above, § 44).

125. The Court observes that cases with comparable factual circumstances, that is, where a child habitually resident in one State has been removed to or retained in the territory of another State by a parent, are usually examined with reference to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. That Convention sets out criteria for defining whether the removal of a child to another country by one parent was "wrongful" and whether it required appropriate measures to be taken by the authorities of the State where the child was retained. In particular, in cases of international child abduction, the Court has presumed, save for certain exceptions, that the best interests of the child are better served by the restoration of the *status quo* by means of a decision ordering the child's

immediate return to his or her country of habitual residence in the event of abduction (see *X v. Latvia*, cited above, §§ 96-98 and 106-107).

126. In such cases, the presumption is in favour of the prompt return of the child to the "left-behind" parent. That rule is supported by serious considerations of public order: the "abductor" parent should not be permitted to benefit from his or her own wrong, should not be able to legalise a factual situation brought about by the wrongful removal of the child, and should not be permitted to choose a new forum for a dispute which has already been resolved in another country. Such a presumption in favour of return is supposed to discourage this type of behaviour and promote "the general interest in ensuring respect for the rule of law" (see, *mutatis mutandis*, *Nuutinen v. Finland*, no. 32842/96, § 129, ECHR 2000-VIII; see also *M.R. and L.R. v. Estonia* (dec.), no. 13420/12, § 43, 15 May 2012).

127. Turning to the present case, the Court notes, however, that in August 2011 when M.G. left Italy for Russia with the children, the Hague Convention was not yet in force between the two States, and therefore had no direct application to the case (see paragraphs 61, 100 and 113 above).

128. In this connection, the Court reiterates that its primary task is to examine the applicant's situation in the light of the requirements of Article 8 of the Convention.

129. The Court observes that, pursuant to the interim decision of the Florence District Court of 6 December 2010, modified on 29 June 2011, pending the conclusion of the divorce proceedings, the applicant was granted care of the children and they were to reside with him, and M.G. was granted contact rights, including contact rights in respect of the period between 25 August and 1 September 2011. The variation on 29 June 2011 explicitly provided that the children were not allowed to leave Italy without the consent of both parents (see paragraphs 21 and 23 above). While exercising her contact rights, on 27 August 2011, unbeknownst to the applicant, M.G. left Italy for Russia with the children. Moving to Russia with the children enabled her to become the children's *de facto* resident parent and evade the effects of the interim decision of 6 December 2010 as modified on 29 June 2011.

130. In such circumstances, the Court concludes that the children were removed against the order of the Florence District Court and retained in Russia by their mother (see paragraph 125 above), and that consequently Article 8 of the Convention required the Russian authorities to take action and assist the applicant in addressing his demands regarding the situation.

131. The Court reiterates, however, that the Hague Convention was not applicable between Russia and Italy at the relevant time, and so the applicant was prevented from seeking the children's immediate return to their habitual place of residence in Italy (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 157, 11 December 2014). In such a situation a

prompt decision by the Florence District Court in the divorce proceedings, which were to determine who should have care of the children and with whom the children should reside, would have allowed the applicant to institute enforcement proceedings in Russia. The Court observes, however, that it was over a year after the children's removal, on 18 September 2012, that the Florence District Court pronounced the divorce judgment, by which it determined that the applicant and M.G. should have joint care of the children and that the children should reside with the applicant.

132. The Court observes that in November 2012 the applicant instituted proceedings in Russia for recognition and enforcement of the divorce judgment of 18 September 2012. However, by a decision of 25 January 2013, upheld on appeal on 12 March 2013, the St Petersburg City Court refused the applicant's application, citing the incompatibility of the judgment of 18 September 2012 with the basic principles of Russian law and public order as a reason for the decision (see paragraph 34 above). In arriving at this conclusion the City Court attached particular importance to the fact that between the time of their removal to Russia in August 2011 and the pronouncement of the divorce judgment in September 2012 by the Florence District Court the children had been residing in Russia. This circumstance, in the opinion of the City Court, changed the children's permanent residence from Italy to Russia and, taking further into account the fact that the children were Russian nationals and had no Italian nationality, made the examination of the dispute by the Italian court incompatible with the Russian law.

133. In the meantime, in January 2012 M.G. instituted proceedings before the Dzerzhinskiy District Court of St Petersburg seeking to strip the applicant of his parental authority in respect of the children and to determine that the children should reside with her. The applicant counterclaimed (see paragraphs 41-42 above). The Court notes that, as regards M.G.'s claim for a residence order in respect of the children, the Russian court permitted her to choose a new forum for a dispute which was already under consideration by the Florence District Court and in the course of which it had already been decided that it was with their father, the applicant, that the children should reside pending the resolution of the divorce proceedings.

134. The Court observes that it was not until rather late in those proceedings, on 30 October 2012, that a temporary contact arrangement was determined for the applicant and the children, which consisted of one hour communication with each child weekly on the premises of the schools attended by the children and in the presence of a psychologist (see paragraph 47 above). This delay, as well as the frequency and the quality of the contact arrangement, could not but have furthered the alienation between the father and the children.

135. The Court further observes that this contact arrangement, amended on 21 November 2012 to broaden the applicant's ability to see his children

so that they could rebuild the relationships between them, was cancelled shortly afterwards, on 4 December 2012 on the grounds that it was not in the best interests of the children. This decision was taken following an incident of 27 November 2012 in which the applicant's youngest son fiercely resisted the meeting with the applicant, and was based on a letter by the Children's Psychiatry Centre for Recovery Treatment of 29 November 2012 to the effect that, in circumstances where there was bitter parental conflict, meetings between children and the parent from whom they were living apart were psychologically highly traumatic for the children, and the letter by the school principal with firm objections to having the meetings between the applicant and the children take place on the school premises. It does not however appear from the case file material that when taking the decision to cancel the temporary contact arrangement between the applicant and his children the domestic authorities took any measures to ascertain whether all four children resisted contacts with the applicant, to identify the causes of such resistance and to try to address them accordingly. As a result, the applicant was deprived of his right to see his children or establish regular and meaningful contact with them while the proceedings were ongoing and this drifted them further apart.

136. After the refusal of the applicant's request for recognition and enforcement of the divorce judgment of 18 September 2012 by the Russian courts, it was within the proceedings pending before the Dzerzhinskiy District Court concerning parental authority, residence arrangements and child maintenance that the applicant could expect the Russian authorities to comply with their positive obligation under Article 8 of the Convention and to assist him in being reunited with his children. The Court notes, however, that it was not until the divorce judgment of the Florence District Court 18 September 2012 was quashed on appeal by the Florence Court of Appeal on 25 March 2014 (see paragraphs 43, 50 and 57 above) that the City Court finally decided on the matter on 13 May 2014 ordering that the children were to live with M.G., that the applicant was to pay her child maintenance, and determining the applicant's contact rights in respect of the children. In taking this decision the City Court took into account that the children had been living for a long time with their mother and settled in their new environment and that they expressed their wish to live with their mother. The Court considers that the time it took the domestic court to finally determine the dispute, along with the absence of any temporary regulation of the applicant's contact rights since December 2012, had irremediable consequences for relations between the applicant and his children and resulted in *de facto* determination of the matter.

137. Having regard to the circumstances of the case as a whole, the Court considers that the Russian authorities failed in their duty to assist the applicant in addressing the claims he was making and thus to comply with their positive obligation under Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

138. The applicant complained that the proceedings concerning the recognition and enforcement of the Florence District Court's judgment of 18 September 2012 had been unfair, in that he had not been informed of the date of the appeal hearing on 12 March 2013, and had therefore been absent from that hearing. He relied on Article 6 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

A. Admissibility

139. The Court notes that this complaint is linked to the one examined above, and must therefore likewise be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

140. The Government submitted that the applicant's case had been civil in nature and had not concerned issues pertaining to his personal characteristics, lifestyle or conduct. During the consideration of his application for recognition and enforcement of the Florence District Court's judgment of 18 September 2012, the St Petersburg City Court had not re-examined that judgment on its merits, but had only considered if there were reasons to recognise and enforce the judgment in question in the Russian Federation, based on the documents submitted by the applicant. This had included considering whether there was a treaty which linked Russia and Italy, whether the applicant had followed the procedures for submitting his application for enforcement of the decision of a foreign court, whether all the necessary documents had been attached to the application, whether the *lis alibi pendens* principle had been honoured, whether the enforcement of a foreign court judgment would threaten the sovereignty, security and public order in Russia, whether the parties had been duly notified about the time and venue of the court proceedings abroad, and other formal criteria.

141. The applicant's application for recognition and enforcement of the Florence District Court's judgment of 18 September 2012 had been examined by the St Petersburg City Court on 25 January 2013 in the presence of the applicant and his representative. The applicant had then submitted a private complaint on 7 February 2013 against the decision of 25 January 2013 refusing recognition and enforcement of the Florence

District Court's judgment of 18 September 2012. Article 333 of the Code of Civil Procedure of the Russian Federation did not provide that an applicant who had submitted a private complaint was to be notified of the appeal hearing. It had therefore been legally justified for the appeal court to review the case without the applicant being present. There had been no need for the applicant to be personally present, as he had already had an opportunity to be present during the St Petersburg City Court's examination of the case on 25 January 2013. The applicant had had ample opportunity to present his arguments in full in both the private complaint against the decision of the St Petersburg City Court of 25 January 2013 and the supplements to that complaint.

142. The Government therefore concluded by saying that, as the applicant's legal position had been fully taken into consideration by the first-instance and appeal courts, there had been no violation of his right to a fair trial enshrined in Article 6 § 1 of the Convention.

(b) The applicant

143. The applicant submitted that, although the procedure for the recognition and enforcement of foreign court judgments in Russia was formal in nature, in his case the St Petersburg City Court had nevertheless cast doubt on the Florence District Court's judgment of 18 September 2012 and reviewed it. In such circumstances, he should have been given the opportunity to be present during the examination of the case by the appeal court.

2. The Court's assessment

144. The Court reiterates the difference in nature of the interests protected by Articles 6 and 8 of the Convention. While Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. The difference between the purposes pursued by the respective safeguards in Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (see *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 76, 24 April 2003, with further reference).

145. The Court further reiterates that Article 6 of the Convention does not guarantee the right to appear in person before a civil court, but rather a more general right to present one's case effectively before the court and enjoy equality of arms in relation to the opposing side. Article 6 § 1 of the Convention leaves to the State a free choice in the means to be used in guaranteeing litigants these rights. The Court should establish whether the applicant, a party to civil proceedings, was given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party, and present his case in conditions which did not

place him at a substantial disadvantage *vis-à-vis* his opponent. In determining issues concerning the fairness of proceedings for the purposes of Article 6 of the Convention, the Court must consider the proceedings as a whole, including the decision of an appellate court (see, most recently, *Gankin and Others v. Russia*, nos. 2430/06, 1454/08, 11670/10 and 12938/12, § 25, 31 May 2016, with further references).

146. As regards the form of proceedings, the right to a "public hearing" under Article 6 § 1 of the Convention has been interpreted in the Court's established case-law as including an entitlement to an "oral hearing". Nevertheless, the obligation under this Article to hold a hearing is not an absolute one. An oral hearing may not be necessary, owing to the exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations. Provided that an oral hearing has been held at first instance, a less strict standard applies to the appellate level, where the absence of such a hearing may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 of the Convention even though an appellant has not been given an opportunity to be heard in person by the appeal or cassation court (see *Gankin and Others*, cited above, § 26, with further references). The fact that proceedings are of considerable personal significance to an applicant is not decisive for the necessity of a hearing (see *Jussila v. Finland* [GC], no. 73053/01, § 44, ECHR 2006-XIV).

147. Turning to the circumstances of the present case, the Court observes that the applicant applied to the St Petersburg City Court for recognition and enforcement in Russia of the Florence District Court's judgment of 18 September 2012 granting him and M.G. joint care of the children and determining that the children's place of residence should be with him. The scope of the examination of that application consisted of verifying its compliance with the formal criteria set out in Article 412 of the Russian Code of Civil Procedure, and did not include scrutiny of whether the judgment was lawful and justified (see paragraphs 74 and 75 above).

148. The Court further observes that, in accordance with the procedure set out for processing applications for the recognition and enforcement of foreign court judgments (see paragraph 73 above), both the applicant and M.G. were informed of the time and place of the examination of the applicant's application for enforcement. They were both present at its examination by the City Court and made oral submissions. However, having examined the applicant's application, the City Court rejected it on 25 January 2013 as incompatible with the basic principles of Russian law and public order. The Court notes that that conclusion was based on facts which were not disputed by the parties, namely the fact that the children had

been residing permanently in Russia for over a year when the Florence Court pronounced its decision of 18 September 2012, and that the children were Russian nationals with no Italian nationality (see paragraph 34 above). The applicant filed a private complaint against the decision of 25 January 2013.

149. The Court notes that, pursuant to the domestic law in force at the material time, private complaints against first-instance court decisions concerning the recognition and enforcement of foreign court judgments were to be examined by an appeal court without the participants in the proceedings being notified (see paragraph 77 above). At the same time, the Russian Constitutional Court held that this provision was to be interpreted as implying, in particular, that participants in the proceedings were to be informed of the time and place of the hearing where this was in the interests of the proper administration of justice, with regard to the nature and complexity of the issues under examination (see paragraph 78 above). The Court observes that, in the present case, the St Petersburg City Court proceeded to examine the applicant's appeal without notifying him or M.G., and therefore without their participation.

150. The Court has regard to the following: the nature of the proceedings in question, the grounds put forward by the St Petersburg City Court in refusing the applicant's application for recognition and enforcement of the Florence District Court judgment of 18 September 2012, the underlying facts which were not in dispute between the parties, and the fact that the applicant participated in the examination of his application before the first-instance court. Consequently, the Court considers that the failure of the St Petersburg City Court to inform the applicant of the date and place of the appeal hearing, and therefore afford him an opportunity to participate in the examination of his private complaint against the refusal to recognise and enforce the Florence District Court judgment of 18 September 2012, did not render those proceedings unfair for the purposes of Article 6 § 1 of the Convention. That provision has not been violated in the instant case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

151. Lastly, the applicant complained under Article 13 of the Convention that he did not have at his disposal an effective remedy for his complaint under Article 8 of the Convention. Article 13 of the Convention reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

152. The Court considers that the issue raised under this Article overlaps with the merits of the applicant's complaint under Article 8. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 8 of the Convention (see paragraph 137 above), the Court considers it unnecessary to examine that issue separately under Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

155. The Government submitted that no award in respect of non-pecuniary damage should be made to the applicant.

156. The Court sees no reason to doubt that the applicant suffered and continues to suffer profound distress as a result of his inability to enjoy living with and sharing the lives of his children, and considers that sufficient just satisfaction would not be provided solely by the finding of a violation. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 12,500 under this head.

B. Costs and expenses

157. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

158. 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. *Rejects* the Government's request to strike the application out of the Court's list of cases;

2. *Declares* the application admissible, with the exception of the part of the complaint under Article 8 of the Convention concerning matters decided in the decision of the St Petersburg City Court of 19 January 2012, which is inadmissible;

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

4. *Holds* that there has been no violation of Article 6 of the Convention;

5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

6. *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, EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President