



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

## FIRST SECTION

### CASE OF KATSIKEROS v. GREECE

*(Application no. 2303/19)*

### JUDGMENT

Art 8 • Private life • Relevant and sufficient reasons for imposing restrictive contact schedule between applicant and his daughter, not overstepping respondent State's margin of appreciation • Applicant's intended relationship with biological child not attracting protection under "family life", where lack of established family relationship attributable to applicant

Art 6 (civil) • Access to court • Court of Cassation's rejection of applicant's additional grounds of appeal on points of law as being lodged out of time neither disproportionately hindering very essence of right nor transgressing national margin of appreciation

STRASBOURG

21 July 2022

*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 Katsikeros v. Greece,**

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Lorraine Schembri Orland,

Ioannis Ktistakis,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 2303/19) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Panagiotis Katsikeros (“the applicant”), on 4 January 2019;

the decision to give notice to the Greek Government (“the Government”) of the complaint concerning the contact schedule set by the domestic courts between the applicant and his daughter, the complaint concerning the rejection of the applicant’s additional grounds of appeal on points of law, and his complaint concerning his right to have his case heard by an impartial tribunal, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 21 June 2022,

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

## INTRODUCTION

1. The applicant complained under Article 8 of the Convention that the domestic courts had set a very restrictive contact schedule with his daughter, not allowing him to establish a relationship with her. He also complained under Article 6 of the Convention that the additional grounds of appeal on points of law that he had lodged with the Court of Cassation were rejected on formalistic grounds, and that his appeal on points of law was not examined by an impartial tribunal.

## THE FACTS

2. The applicant was born in 1970 and lives in Nea Ionia. He was represented by Mr V. Chirdaris, a lawyer practising in Athens.

3. The Government were represented by their Agent’s delegates, Mrs A. Dimitrakopoulou and Mrs A. Magrippi, Senior Advisor and Legal Representative A at the State Legal Council.

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

#### I. BACKGROUND OF THE CASE

5. The applicant met K.P. at the end of 2013 and soon started a relationship with her. They started living together in January 2014. The applicant ended their relationship in June 2014, approximately a month before their scheduled wedding in July 2014 and while K.P. was pregnant with their child.

6. On 1 December 2014 K.P. gave birth to M., their daughter. In the months following the birth of their child, communication between the applicant and K.P. was non-existent and every attempt in that respect failed. On 26 January 2015 the applicant voluntarily recognised the child as his own through a declaration before a notary, although without the consent of K.P.

#### II. PROCEEDINGS FOR PARENTAL RESPONSIBILITY AND CONTACT WITH M.

7. On 18 March 2015 the applicant lodged an application for interim measures, requesting that the situation be temporarily resolved until a final judgment was delivered, and specifically that he should exercise parental responsibility of M. jointly with K.P., or alternatively, that he should be given contact rights. By judgment no. 6821/2015 of 5 August 2015, his application was accepted as to its second part, and he was allowed to see M. every Saturday for three hours at K.P.'s house, in her presence and in the presence of one of her relatives until such time as a final judgment was delivered.

8. In the meantime, on 30 March 2015, 8 May 2015 and 25 May 2015, the applicant lodged applications for a provisional order (*αιτήσεις για προσωρινή διαταγή*) with the President of the Court of First Instance to have a temporary contact schedule set. However, as his paternity had not been established either judicially or before a notary, because of the mother's lack of consent, his applications were rejected.

9. The applicant additionally lodged an application with the One-Member Court of First Instance requesting that a final judgment be delivered and repeating the same requests as previously.

10. By decision no. 2884/2016 of 13 June 2016, the One-Member Court of First Instance held that the applicant's relationship with K.P. was tense because of the applicant's selfish and aggressive behaviour. According to the evidence produced during the hearing, the applicant easily lost his temper during his disputes with K.P., throwing and smashing various objects, and once even hit K.P. The court further recognised that the applicant was the father of M., who was ten months old at the time of the hearing, but rejected his request for shared parental responsibility, because of the tense relationship

he had with K.P. It set the applicant's contact schedule with his daughter as follows: for the first year following the judgment, the applicant could see his daughter on the first and third Saturday of each month and the second and fourth Sunday of each month, from 12 noon to 5 p.m. The meetings would take place at K.P.'s residence, in her presence with the additional presence of one of her relatives, given the tension and worry that the applicant's presence caused to the defendant. For the second year following the judgment, the contact schedule would be extended from 12 noon to 7 p.m., and the applicant would pick M. up and drop her off at her mother's house. When setting the schedule, the domestic court took into account the complete lack of closeness between the applicant and his daughter, as he had only met M. once; the young age of the child, who had been used to the exclusive care of her mother; the lack of a specially adapted place for the child in the applicant's residence; and the help that the applicant was going to need in taking care of M., at least at the beginning. The court further stated that M. should not yet spend the night at the applicant's residence until at least some minimum communication was established between them.

11. Following appeals lodged by both the applicant and K.P., the Athens Court of Appeal delivered judgment no. 2798/2017 of 8 June 2017. By that judgment, the appellate court rejected the applicant's appeal in so far as it concerned parental responsibility, as that decision was susceptible only to an appeal on points of law. It accepted that the relationship between K.P. and the applicant had been tense mostly because of the selfish behaviour of the applicant, who lost his temper easily and acted in a condescending way towards K.P., throwing objects and even, in one incident, acting violently towards her. The court took note of the fact that the applicant had chosen not to make use of the contact schedule set by the first-instance court and had only seen M. once, on 7 March 2015, when she was about three months old. He had sent two extrajudicial messages to K.P. criticising the first-instance decision, and had not made any child maintenance payments. The same lack of interest had been demonstrated by the applicant's relatives. Nevertheless, the child's best interests dictated that she should have contact with her father so that a bond could gradually form between them. Having regard to the fact that the applicant had by choice only met his daughter once and that, owing to her young age, M. had been used to the exclusive care of her mother, the Court of Appeal ruled that, at least for the first period, the applicant's contact with his daughter should be regular but limited. In particular, M. should not spend the night at the applicant's house until the latter's interest became clear and unquestionable and until their natural bond was gradually strengthened, otherwise it would have damaging effects on M.'s emotional and mental development, given that the applicant was completely unknown to her. In addition, the meetings during the same period should take place in the presence of K.P. and one of her relatives. In her turn, K.P. should try to facilitate the applicant's contact with their daughter being meaningful. Both

parents should avoid putting M. in the middle of their dispute and should encourage a relationship of love and respect towards the other parent.

12. In view of the above, the Court of Appeal considered that, for the time being, the most appropriate contact schedule for the applicant to have with M. would be as follows: for the first six months following the judgment, the applicant would meet M. on the first and third Saturday of every month from 12 noon to 3 p.m., and on the second and fourth Sunday from 12 noon to 5 p.m. at K.P.'s residence, in her presence and that of one of her relatives. For the second six months following the judgment, the schedule would remain the same, but the contact on Saturdays would also be until 5 p.m. The meetings would take place alternately at K.P.'s residence or in an internal or external playground. For the second year following the judgment, the applicant's contact with M. should take place on the first and third Saturday of each month and on the second and fourth Sunday of each month from 12 noon to 7 p.m. The applicant would pick the child up from K.P.'s residence, where he would return her after the end of the scheduled contact.

13. Following the above judgment, the applicant lodged an appeal on points of law requesting that judgment no. 2884/2016 of the Athens One-Member Court of First Instance be quashed, in so far as it concerned the rejection of his request to jointly exercise parental responsibility over M., and that judgment no. 2798/2017 of the Athens Court of Appeal be quashed in so far as it concerned the contact schedule for him and M. He argued, *inter alia*, that the appellate court had erroneously interpreted the best interests of the child when setting the contact schedule, as it was excessively restrictive and had given undue priority to the mother over him. On 23 March 2018 he lodged additional grounds of appeal on points of law in a separate document.

14. On 13 July 2018 Section A2 of the Court of Cassation delivered judgment no. 1286/2018, by which it rejected the applicant's appeal on points of law. It also rejected the additional grounds put forward in the separate document as having been lodged out of time. It specifically held that under Article 569 § 2 and Article 577 §§ 1 and 2 of the Code of Civil Procedure, the lodging of additional grounds of appeal on points of law, and their service on the other party, should take place at least thirty full days before the initially scheduled hearing. Referring to its previous case-law, it reiterated that that time-limit referred to both action time-limits and to preparatory time-limits such as the one in the present case, and that if the thirtieth day was a holiday, the additional grounds would not be submitted in time. In the applicant's case, the thirtieth day following the lodging of his additional grounds of appeal on points of law and their service on K.P. was a Sunday, and thus the time-limit was extended to Monday which, however, coincided with the scheduled hearing date. The additional grounds were therefore rejected as having been lodged out of time.

15. As regards the applicant's arguments, the Court of Cassation considered that the One-Member Court of First Instance had included

sufficient reasoning and had adequately taken into account the evidence before it when it had decided to award parental responsibility solely to the mother. It further considered that the Court of Appeal had taken various elements into consideration when setting the restrictions on the applicant's contact with his daughter, including but not limited to, the biosocial superiority that a mother has when taking care of such a young child. The judgment was finalised on 13 September 2018.

### III. SUBSEQUENT DEVELOPMENTS

16. In his observations to the Court, the applicant informed of the following developments. K.P. had lodged an application for interim measures with the Athens One-Member Court of First Instance, which had delivered judgment no. 5114/2018 of 25 July 2018. By that judgment, the presence of a relative of K.P.'s choice during the applicant's contact with M. had been lifted. In addition, the contact between the applicant and M. would take place alternately at the mother's residence, at a playground and at the office of a child psychologist jointly chosen by both parents.

17. Following a new application for interim measures by the applicant, the Athens One-Member Court of First Instance had delivered judgment no. 9127/2018 of 31 December 2018. By that judgment, it was held that for three months the applicant should meet K.P. and their daughter, M., at the office of a child psychologist and at K.P.'s residence with the applicant's father or mother; for the next three months, the applicant would meet M. once a week alone and after that, M. would spend one night a week at the applicant's house.

18. Lastly, by decision no. 8853/2020 of the Athens One-Member Court of First Instance of 29 May 2020, M. could spend the first and third weekend of every month at the applicant's house without the presence of any other person being required, as well as one week in the Easter and Christmas holidays, and fifteen days during the summer. According to the applicant, K.P. had never complied with that decision.

### IV. DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT

19. On 2 and 23 March 2017, the lawyer representing K.P. in the domestic proceedings submitted a report and request to the President of the Inspection Council of the Court of Cassation. By that report, the lawyer informed the President that the applicant had possibly committed disciplinary offences in the proceedings relating to M.

20. Following an investigation conducted by a member of the Court of Cassation, on 23 October 2017 a disciplinary action was lodged against the applicant under Article 91 of the Code on the Organisation of the Courts and the Status of Judges, for undignified or inappropriate behaviour. On the

grounds of the pending disciplinary action and another pending disciplinary action for undue delay in drafting certain penal decisions, the applicant was excluded from promotion to appellate judge by decision no. 149/2017 of the Supreme Judicial Council, which consists of eleven judges of the Court of Cassation. He had already been excluded twice for the same reasons, by decisions nos. 25/2017 and 56/2017 of the Supreme Judicial Council. The applicant lodged an appeal against decision no. 149/2017 with the plenary of the Court of Cassation, which by decision no. 1/2018 of 18 January 2018, finalised on 2 February 2018, rejected the applicant's appeal, even though it noted that the applicant had completed the penal decisions for which there had been a delay. The applicant was later promoted to appellate judge by decision no. 5/2018 of the Supreme Judicial Council.

## RELEVANT LEGAL FRAMEWORK

### I. CIVIL CODE

21. The relevant provisions of the Civil Code, as in force at the material time, read as follows:

#### **Article 1510** **Parental responsibility**

“Responsibility for a minor child is the parents’ duty and right (parental authority), and shall be exercised jointly. Parental authority shall include custody of the child (*επιμέλεια*), the administration of the child’s property, and the representation of the child in any legal matter, action or trial concerning him or her or his or her property.

In the event that parental responsibility ceases by reason of death, declaration of absence or forfeiture of parental responsibility by one of the parents, parental responsibility shall belong exclusively to the other parent.

If one of the parents is unable to exercise parental responsibility for factual reasons, or because he or she lacks or has limited legal capacity, then it shall be exercised solely by the other parent. Custody of the child shall however also be exercised by a parent who is a minor.”

#### **Article 1511**

“Any decision made by the parents regarding the exercise of parental responsibility must aim at the promotion of the best interests of the child.

The best interests of the child must also be the aim of a court decision when, according to the provisions of the law, the court decides on an award of parental responsibility or on the way in which it will be exercised. The court’s decision shall additionally respect equality between the parents and shall not discriminate on the basis of sex, race, language, religion, political or other convictions, nationality, ethnic or social origin, or property.

Depending on the child’s maturity, his or her view shall be sought and shall be taken into account before any decision relating to parental responsibility is made, to the extent that that decision concerns his or her interests.”



**Article 1512**  
**In the event of disagreement**

“In the event of the parents’ disagreement in the exercise of parental responsibility, and the interests of the child require that a decision be made, the court shall make the decision.”

**Article 1515**  
**Child born out of wedlock**

“Parental responsibility of a minor child who was born and remains without his or her parents being married, shall be exercised by his or her mother. In the event that the child is acknowledged by his or her father, the father shall also have parental responsibility but shall exercise it if there is an agreement between the parents under Article 1513 or if the mother’s parental responsibility has ceased or if the mother is unable to exercise it on legal or factual grounds.

On an application by the father, the court may award him the exercise of parental responsibility or part of it to the extent that it is required by the interests of the child.

...”

**Article 1520**  
**Personal communication**

“The parent who does not reside with the child shall have the right of personal communication with him or her.

The parents do not have the right to obstruct the child’s communication with his or her ancestors unless there are serious grounds for doing so. In cases contemplated in the preceding paragraphs, the means of communication shall be regulated by the court.”

**II. CODE OF CIVIL PROCEDURE**

22. The relevant provisions of the Code of Civil Procedure, as applicable at the material time, read as follows:

**Article 52**  
**Recusal of judges and registry staff**

“1. Judges, prosecutors or registry staff, acting in any capacity, may propose their recusal or be exempted from any proceedings:

(a) if they are parties or are connected to the parties as joint beneficiaries, are jointly liable, or are liable for compensation or have a direct or indirect interest in the proceedings;

(b) if they are the direct relatives of one of the parties, either through a blood relationship, or a relationship by marriage or by adoption; if they are indirect relatives through a blood relationship of up to the fourth degree, or through a relationship by marriage of up to the second degree if they are or were the spouse or fiancé of one of the parties;

(c) if they are blood relatives, or relatives by marriage, either directly or related by adoption, or blood relatives or relatives by marriage of up to the second degree, of a person who receives a salary or other payment with a monetary value for services

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provided or for any other reason, from a natural or legal person or any kind of company that has a direct or indirect private interest in the outcome of the proceedings;

(d) if in the same case they were examined as witnesses or participated as lawyers or in general as proxies, or have participated or may participate as representatives of one of the parties;

(e) if they conducted the case from which the dispute arose, or acted in the trial as experts or consultants or arbitrators or drafted the document being challenged or were part of the composition of the court whose decision was appealed against or against which an appeal on points of law had been lodged;

(f) if they caused or could cause a suspicion of bias, especially if they had with one of the parties a special friendship, a special relationship of duty or dependence, or a dispute or a hostile relationship.

2. Prosecutors may not be exempted when acting as parties.”

**Article 53**

“An application for the exemption of all the members of the Court of Cassation or of its prosecution service or for the exemption of so many members of the Court of Cassation that it would no longer be lawfully composed, shall be inadmissible.

...”

**Article 55**

“If there is a reason for them to be exempted, judges of multi-member courts and prosecutors must declare it to the president of the court.

...”

**Article 57**

“1. An exemption shall be put forward by the relevant party five days before the relevant hearing, however [it may be put forward] at the latest before the end of the hearing, only if it is likely that the event or the reasons for exemption will take place or became known to the party after the end of the five-day time-limit ...

...

3. An application for exemption which is not submitted in accordance with the preceding paragraph shall be inadmissible and shall be rejected by the same court from which the exemption is requested ...”

**Article 58**

“An application for exemption that is submitted up until the start of the hearing shall be made by submitting a document to the registry of the relevant court. The request shall include the reasons for exemption and shall be inadmissible if it does not do so.”

**Article 59**

“When the application for exemption is submitted during the hearing, it shall be made by a statement that shall be recorded in the court record and shall refer to the reasons for exemption. In multi-member courts, the application shall be heard immediately, without the presence of the member in respect of whom the application was submitted.

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The latter shall be obliged to abstain from any action from the moment that he or she learns that an application for exemption has been submitted, unless there are any risks arising from the abstention.”

### Article 144

“1. The time-limits that are set by law or by the courts shall commence from the day after notification or after the relevant fact that constitutes the commencement of the time-limit, and shall end at 7 p.m. of the final day, and if that day is by law a day that must be exempted (*εξαιρετέα*), at the same time of the next non-exempted day.

2. A time-limit that commences by the notification of documents shall also run against the person who ordered the notification.

3. Saturday shall be considered for the purposes of the present Code as an exempted and non-working day.”

### Article 568

“...

2. The registry of the Court of Cassation shall submit the documents that have been submitted, without delay to the President of the Court of Cassation, who shall assign the relevant section, and to the president of the section with a note on the copy of the appeal on points of law stating:

- a) a date for the hearing of the case;
- b) the time-limit within which the notification of the hearing has to be served;
- c) the judge rapporteur of the Court of Cassation to whom the case file shall be transmitted for the purposes of Article 571.

...”

### Article 569

“1. Additional grounds of appeal on points of law shall be admissible, even if the appeal on points of law does not contain a reason that is admissible and specific.

2. Additional grounds of appeal on points of law concerning the same parts of the challenged decision and the parts that are obligatorily connected with them, shall be lodged only by a document that is submitted to the registry of the Court of Cassation, at least thirty full days before the hearing of the appeal on points of law, as provided for by Article 281, under which a report shall be drafted. A copy of the document containing the additional grounds of appeal on points of law shall be served before the [expiry of] the same time-limit on the person against whom the appeal on points of law has been made and on the other parties ...”

### Article 577

“1. The court shall first consider the admissibility of the appeal on points of law.

2. If the appeal on points of law has not been made lawfully or if one of the conditions of admissibility is missing, the Court of Cassation shall reject the appeal of its own motion.

3. If the Court of Cassation considers the appeal on points of law to be lawful and admissible, it shall examine the admissibility and well-foundedness of [each of] its grounds.”

### III. CODE ON THE ORGANISATION OF THE COURTS AND THE STATUS OF JUDGES

23. The relevant provisions of the Code on the Organisation of the Courts and the Status of Judges read as follows:

#### **Article 91 Disciplinary Offences**

“1. A disciplinary offence shall consist of a culpable and imputable (*υπαίτια και καταλογιστή*) act or omission of a judge, inside or outside the service, which is contrary to the obligations stemming from the Constitution and the relevant provisions or which is incompatible with his or her office and harms his or her reputation or the reputation of justice.

2. Disciplinary offences of a judge shall be:

...

d) undignified or improper behaviour inside or outside the service;

...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant complained that the limitations imposed by the domestic courts when setting his contact schedule with his daughter violated his right to respect for his family life under Article 8 of the Convention, which reads as follows:

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

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

#### **A. Admissibility**

##### *1. The parties' arguments*

25. The Government argued that the applicant had not exhausted the available domestic remedies. In particular, in his appeal on points of law to the Court of Cassation, the applicant had failed to rely on his rights under

Article 8 of the Convention. His only reference to the provision of the Convention had been included in the additional grounds of appeal on points of law that had been rejected as having been lodged out of time.

26. The applicant denied this allegation by arguing that he had relied on the domestic provisions of the Civil Code having the same effect as Article 8 of the Convention. He had additionally cited several of the Court's judgments that he had considered pertinent for his case. Moreover, he had submitted additional grounds in his appeal on points of law, including as a separate ground a violation of Article 8 of the Convention; however, the Court of Cassation had rejected the additional grounds as inadmissible.

## 2. *The Court's assessment*

27. The Court reiterates that the purpose of the rule on the exhaustion of domestic remedies is to afford Contracting States the opportunity of preventing or putting right violations that they are alleged to have committed before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II).

28. The rule on exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time, it requires, in principle, that the complaints intended to be made subsequently at international level should have been aired before those same courts – at least in substance, and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 84-87, 9 July 2015).

29. It is not necessary for a Convention right to be explicitly raised in domestic proceedings, provided that the complaint is raised “at least in substance” (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 39, ECHR 1999-I, and *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III). If the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (see *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010, and *Karapanagiotou and Others v. Greece*, no. 1571/08, § 29, 28 October 2010).

30. In the present case, the Court notes that the applicant did provide the Court of Cassation with a complete account of the proceedings before the Court of Appeal and presented arguments that were in substance relevant to Article 8 of the Convention. In particular, in the initial document by which he had lodged his appeal on points of law, the applicant argued that the contact schedule set by the appellate court had been very restrictive and had impeded

him from bonding with his daughter (see paragraph 13 above). The Court of Cassation, for its part, examined (to the extent of its powers) the applicant's arguments and dismissed them (see paragraph 15 above).

31. In view of the foregoing, the Court is satisfied that through the arguments that he raised before the Court of Cassation, the applicant did complain, albeit implicitly, that his right to respect for his family life had been breached. In doing so, he raised, at least in substance, a complaint under Article 8 of the Convention before the Court of Cassation, and the court examined that complaint. It follows that he provided the national authorities with the opportunity that is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention – namely, the opportunity to put right the violations alleged against them (see *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016). The Government's objection concerning the alleged failure to exhaust domestic remedies must therefore be dismissed.

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

#### **(a) The applicant**

33. The applicant submitted that pursuant to the Court's case-law, he had had a family bond with M. despite the fact that she had been born out of wedlock. In any event, he had a right protected under Article 8 of the Convention to have a contact schedule defined which would allow for the creation of a strong emotional bond with his daughter. Nevertheless, the domestic authorities had failed to do so and had instead consolidated the applicant's alienation from his daughter.

34. In particular, the domestic courts had imposed excessive limitations on his contact rights with M. with regard to the place, the time and the manner of that contact, thus violating Article 8 of the Convention. The hours defined by the domestic courts had been very few, ranging from three to seven hours per week; the contact would take place only in the mother's residence or a playground, thus excluding his residence, which had included a nursery, or the residence of his relatives who had been willing to assist in raising M.; and the mother and one of her relatives had had to be present during all contact between the applicant and M. That fact alone had been an indication that the domestic authorities had taken the parents' relationship into account when defining the applicant's contact rights with his daughter, which should not have been the case. In addition, K.P. had chosen Ms Ch.P. as the relative to be present, who had testified against him in the proceedings and who was his

hierarchical superior at work. Both K.P.'s and Ch.P.'s presence could, therefore, only have made the applicant's contact with M. more difficult.

35. None of those limitations had been justified by the evidence before the domestic courts or by the applicant's personality, and had not served M.'s best interests. M.'s young age and her dependence on her mother should have been taken into account in the opposite way, that is to say the applicant should have been allowed more contact with her so that she could develop a closeness with her father. In addition, the domestic courts had counted against the applicant the alleged violence that he had inflicted on K.P. which, however, had not been proven, but the courts had failed to properly consider the behaviour of K.P., who had refused to consent to the recognition of the applicant's paternity in respect of M. The courts had counted against the applicant the fact that he had not adhered to the contact schedule set by the first-instance court, without acknowledging that contact under those restrictions would not have been beneficial for the child and had been, in general, impossible.

36. The fact that those domestic decisions had been erroneous was proven, in the applicant's view, by interim decisions nos. 5114/2018 and 9127/2018 of the Athens One-Member Court of First Instance, which had amended the restrictive conditions set by the earlier decisions (see paragraphs 16-17 above). In particular, the first of those decisions had found that there was no need for one of K.P.'s relatives to be present during the applicant's contact with M., and that those meetings could take place at the mother's residence, at a playground or at the office of a jointly chosen child psychologist for a few months, at the end of which the applicant could meet M. at his residence. The second decision had allowed for the presence of a relative of the applicant at the meetings and had decided that the meetings would take place for the first three months of 2019 at the mother's residence or at the office of a child psychologist chosen by the applicant. From April 2019, the applicant would meet M. at his residence and from June onwards, M. would be able to spend the night at her father's house every weekend. Nevertheless, K.P. had refused to comply with that decision. In any event, even the new decisions could not compensate for the fact that the former decisions had been erroneous and had managed to alienate the applicant from his daughter for five years.

**(b) The Government**

37. The Government submitted that given the fact that the applicant and K.P. had never married or lived together after M.'s birth, there had never been *ipso jure* or *ipso facto* a relationship between the applicant and his daughter that had broken because of the court decisions. On the contrary, it had been through the domestic court decisions that such a relationship had begun. The task of the judges had not been easy, but they had managed to achieve a

balance between the parents' competing interests, after considering the child's best interests for the first two years of her life.

38. More specifically, the limitations to the contact schedule between the applicant and M. had been considered necessary by the domestic courts in view of M.'s young age, her dependence on her mother and the specific features of the case. In decision no. 2884/2016, the Athens One-Member Court of First Instance had taken into account the following factors in defining the contact schedule: the complete lack of closeness between the applicant and his daughter, as they had only met once; M.'s young age, and the fact that she had been used to the exclusive care of her mother; the lack of a specially adapted place for the child in the residence where the applicant lived, and the help that he was going to need with the child's care when spending time with her, at least in the beginning (see paragraph 10 above).

39. Similarly, the Athens Court of Appeal had given specific reasons for which the limitations in the contact between the applicant and M. were necessary, namely the lack of closeness between the applicant and his daughter, M.'s young age, and her being used to the exclusive care of her mother, and had defined the contact schedule accordingly (see paragraph 11 above).

40. All of the domestic decisions had based their findings on the evidence adduced before them, with the child's best interests and the relevant circumstances of the case in mind. The Athens Court of Appeal had defined the contact schedule as a way for the applicant and M. to get to know each other and develop a bond; it was up to the applicant to submit a fresh application and to obtain a new ruling on the matter once the situation was amended.

41. In the Government's view, all of the domestic decisions had been reasoned; therefore, in view of the subsidiarity principle, the Court should abstain from questioning their outcome. The applicant had been heard at all levels of jurisdiction and had been able to exercise all his procedural rights and have a fair trial as provided for by Article 6 of the Convention.

## 2. *The Court's assessment*

### (a) **Applicability of Article 8**

42. The Court reiterates that the notion of "family life" under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together out of wedlock. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment, and by the very fact, of the birth (see *Keegan v. Ireland*, 26 May 1994, § 44, Series A no. 290; *L. v. the Netherlands*, no. 45582/99, § 35, ECHR 2004-IV; and *Znamenskaya v. Russia*, no. 77785/01, § 26, 2 June 2005).



43. However, a biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, is insufficient to attract the protection of Article 8 (compare *L. v. the Netherlands*, cited above, § 37). As a rule, cohabitation is a requirement for a relationship amounting to family life. Exceptionally, other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* “family ties” (see *Kroon and Others v. the Netherlands*, 27 October 1994, § 30, Series A no. 297-C, and *L. v. the Netherlands*, cited above, § 36).

44. Moreover, the Court has considered that intended family life may, exceptionally, fall within the ambit of Article 8, in particular in cases in which the fact that family life has not yet fully been established was not attributable to the applicant (compare *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 143 and 146, ECHR 2004-V). In particular, where the circumstances warrant it, “family life” must extend to the potential relationship which may develop between a child born out of wedlock and the natural father. Relevant factors which may determine the real existence in practice of close personal ties in these cases include the nature of the relationship between the natural parents and a demonstrable interest in and commitment by the father to the child both before and after the birth (see *Nylund v. Finland* (dec.), no. 27110/95, ECHR 1999-VI; *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003; *L. v. the Netherlands*, cited above, § 36; and *Hülsmann v. Germany* (dec.), no. 33375/03, 18 March 2008; compare also *Różański v. Poland*, no. 55339/00, § 64, 18 May 2006).

45. The Court further reiterates that Article 8 protects not only “family” but also “private” life. It has been the Convention institutions’ traditional approach to accept that close relationships short of “family life” would generally fall within the scope of “private life” (see *Znamenskaya*, cited above, § 27, with further references). The Court thus found in the context of proceedings concerning the establishment or contestation of paternity that the determination of a man’s legal relations with his legal or putative child might concern his “family” life but that the question could be left open because the matter undoubtedly concerned that man’s private life under Article 8, which encompasses important aspects of one’s personal identity (see *Rasmussen v. Denmark*, 28 November 1984, § 33, Series A no. 87; *Nylund*, cited above; *Yildirim v. Austria* (dec.), no. 34308/96, 19 October 1999; and *Backlund v. Finland*, no. 36498/05, § 37, 6 July 2010).

46. In the present case, the Court must first determine whether the decision of the Court of Appeal, upheld by the Court of Cassation, to put certain restrictions on the applicant’s contact with M. disregarded the applicant’s existing “family life” with his child within the meaning of Article 8. It notes at the outset that, despite K.P.’s initial refusal to acknowledge that the applicant was the biological father of M., it was then established that that was indeed the case; the applicant’s paternity is now

uncontested between the parties. In examining whether there is, in addition, a close personal relationship between him and the child which must be regarded as an established “family life” for the purposes of Article 8, the Court observes on the one hand, that the applicant cohabited with M.’s mother for a short period of time and they intended to get married; on the other hand, the applicant has never cohabited with M. and, despite the contact rights granted by the domestic decisions, he had only met M. once on 7 March 2015 until the end of the domestic proceedings in question, when M. was around three and a half years old. There are no signs of any commitment on the part of the applicant towards M. before she was born. In these circumstances, their relationship does not have sufficient constancy to be characterised as an existing “family life”.

47. However, the Court has found that intended family life may, exceptionally, fall within the ambit of Article 8 in cases in which the fact that family life has not been established is not attributable to the applicant (see the references in paragraph 44 above). This applies, in particular, to the relationship between a child born out of wedlock and the child’s biological father, who are inalterably linked by a natural bond while their actual relationship may be determined, for practical and legal reasons, by the child’s mother and, if married, by her husband (see *Anayo v. Germany*, no. 20578/07, § 60, 21 December 2010). In the present case, the Court notes that the applicant expressed his wish to be recognised as M.’s father, to share parental responsibility with K.P. and to have regular contact with M. through his applications to the domestic courts. However, after his paternity was established and his contact rights were granted by the domestic courts, the applicant refused to exercise his rights under the conditions that had been set out in the decisions and, as a result, he only saw M. once during the period covered by the domestic decisions in question. In the Court’s view, that conduct was not sufficient to demonstrate the applicant’s interest in his child. Thus, the present case should be distinguished from *Anayo* (cited above), in which the applicant had not had any contact with his biological children because their mother and their legal father had refused his requests to allow contact with them. It follows that in the circumstances of the present case, the fact that there was not any established family relationship between the applicant and M. can be attributed to the applicant.

48. Having regard to the foregoing, the Court considers that the applicant’s intended relationship with his biological child does not attract the protection of “family life” under Article 8. It notes, however, that in any event, the issue of whether the applicant’s contact schedule with M. was excessively restrictive, even if it fell short of falling within “family life”, concerned an important part of the applicant’s identity and thus his “private life” within the meaning of Article 8 § 1 (see paragraph 45 above).

**(b) Whether there has been an interference**

49. The Court notes that there has been no dispute between the parties that the domestic courts' decision to restrict the applicant's contact with his child interfered with his right to respect for, at least, his private life, and sees no reason to hold otherwise. The interference will constitute a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society".

**(c) Whether the interference was justified**

*(i) In accordance with the law*

50. The Court observes that the parties did not contest that the decisions in issue had a basis in national law, namely, Article 1520 of the Civil Code as in force at the relevant time.

*(ii) Legitimate aim*

51. In the Court's view the domestic court decisions of which the applicant complained were clearly aimed at protecting the "health or morals" and the "rights and freedoms" of M. Accordingly, they pursued legitimate aims within the meaning of paragraph 2 of Article 8.

*(iii) "Necessary in a democratic society"*

*(α) General principles*

52. In determining whether the interference was "necessary in a democratic society", the Court refers to the principles established in its case-law. It has to consider whether, in the light of the case as a whole, the reasons adduced to justify that interference were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V, and *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII).

53. According to the Court's well-established case-law, it must further be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see, *inter alia*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; *Görgülü v. Germany*, no. 74969/01, § 41, 26 February 2004; and *Sommerfeld*, cited above, § 62).

54. The margin of appreciation to be accorded to the relevant national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the

authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner v. Germany*, no. 46544/99, § 67, ECHR 2002-I).

55. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom*, cited above, § 71; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII).

(β) Application to the present case

56. Turning to the present case, the Court notes that the domestic courts set a restrictive contact schedule between the applicant and his daughter. In particular, the limitations concerned the hours he was allowed to spend with her, the place where the contact would take place and the persons that had to be present in the room, namely the child's mother, K.P., and a relative of her choice. As regards the reasons adduced by the domestic courts for these limitations, they referred to M.'s young age, the fact that she had been used to the exclusive care of her mother, and the lack of closeness between the applicant and M., as the applicant had chosen not to follow the contact schedule set by the first-instance court, for reasons similar to those argued before the Court. The Court of Appeal considered that M. should not spend the night at her father's residence until his interest in her was unquestionable and until they had become acquainted with one another, otherwise it could potentially damage M.'s emotional and mental development. They also took into consideration the fact that it had been the applicant's choice not to maintain a closer relationship with his daughter, as he had refused to see M. under the conditions set out by the first-instance court. As regards the presence of K.P. and her relative during the contact, the domestic courts considered it necessary following K.P.'s request. The domestic courts additionally included recommendations for both parents to refrain from communicating the tension between them to their child, and a recommendation for K.P. to try and make the contact between the applicant and M. meaningful (see paragraph 11 above).

57. In the Court's view, the reasons adduced by the domestic courts were relevant. In particular, they based their findings on the child's best interests as specified in the circumstances of the case. In their reasoning, they attached great importance to the lack of closeness between the applicant and M., to her very young age and to the applicant's choice not to follow the contact schedule set by the first-instance court, and thus concluded that the applicant's contact with M. should initially be limited until the father and daughter had started to get to know each other and until the former's interest in forming a relationship with his daughter became clear (see, in this regard, *Giorgioni v. Italy*, no. 43299/12, § 81, 15 September 2016, and compare *Gobec v. Slovenia*, no. 7233/04, § 144, 3 October 2013, and *Grujić v. Serbia*, no. 203/07, §§ 72-73, 28 August 2018 in which the applicant's conduct was a factor taken into consideration by the Court). In the Court's view, the limitations imposed on the applicant's contact with M. were not so extreme that they would impede the applicant from forming a solid relationship with her, but allowed for a gradual connection to be made between them. It is also noted that the relevant limitations were gradually alleviated, as in the second six months following the judgment of the Court of Appeal, the applicant could spend more time with M., and in the second year following the judgment, he could meet M. without her mother's presence and in places other than her home. As regards the applicant's argument that he should have been allowed to spend more time with his child so that they could bond, the Court observes that the national courts, which dealt with the case continually and gave decisions stating full reasons, were in a better position than the Court to strike a fair balance between the interests of M. in living in a peaceful environment and the applicant's interest in seeing his daughter more often.

58. The Court additionally notes that, as circumstances may change over time, the domestic law does not rule out the possibility of the applicant lodging another application in the future for the revision of the contact arrangements in respect of M. In fact, from the documents submitted to the Court, it appears that this was indeed the case, as the applicant lodged a new application and had a new contact schedule set, which entailed fewer restrictions (see paragraphs 16-17 above).

59. The Court considers that it cannot satisfactorily assess whether the reasons relied on by the domestic courts were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests (see *Sommerfeld*, cited above, § 66). In this regard, the applicant has not argued, nor can it be discerned from the material in the case file, that his meaningful participation in the proceedings was in any way hindered. The Court observes that the applicant was placed in a position enabling him to put forward all of his arguments in favour of obtaining a contact arrangement, and he also had access to all relevant information which was relied on by the courts. He was directly involved in

the proceedings in person and was advised by counsel. Furthermore, in making the decision to limit contact, the Court of Appeal had regard to the entire family situation and relied on the evidence adduced before it, namely the sworn testimony of Ch.P., the aunt of K.P., as well as the parties' testimony before the first-instance court, multiple testimonies of witnesses for both parties and pictures that were relied on before the court. While it is essential that the courts consider what is in the best interests of the child after directly communicating with the child, the Court has already held that it would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sahin v. Germany* [GC], no. 30943/96, § 73, ECHR 2003-VIII). In the present case, the Court considers that the omission was justified by the young age of the child, who was at the time less than three years old.

60. The Court further observes that the applicant argued that the domestic courts had given undue consideration to his tense relationship with K.P., without taking into account the latter's refusal to consent to the establishment of the applicant's paternity. However, these arguments concern the assessment of evidence, rather than the applicant's ability to participate by raising those arguments before the national authorities. In this regard, the Court observes that as a general rule it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B).

61. Lastly, as regards the length of the domestic proceedings, they lasted three and a half years at all levels of jurisdiction, namely from March 2015 until September 2018, which cannot be considered unreasonable, in particular as a contact schedule was in place during this time.

62. Having regard to the foregoing and to the respondent State's margin of appreciation, the Court is satisfied that the Greek courts' procedural approach was reasonable in the circumstances and provided sufficient material to reach a reasoned decision on the question of contact in the particular case. The Court can therefore accept that the procedural requirements implicit in Article 8 of the Convention were complied with.

63. It follows that reasons adduced by the domestic courts to justify the interference with the applicant's private life were relevant and sufficient for the purposes of paragraph 2 of Article 8 and that the domestic authorities did not overstep their margin of appreciation. Accordingly, there has been no violation of Article 8 of the Convention in the present case.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE REJECTION OF THE ADDITIONAL GROUNDS OF APPEAL ON POINTS OF LAW

64. The applicant further complained that the rejection of the additional grounds of appeal on points of law violated his right to a fair trial as provided for in Article 6 of the Convention, which in relevant parts reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

### A. Admissibility

65. The Government argued that the applicant’s complaint relating to the rejection of his supplementary appeal on points of law should be rejected for non-exhaustion of domestic remedies. Being a judge himself, the applicant should have been aware of the case-law of the Court of Cassation in relation to the calculation of the time-limits set by domestic law. In addition, he had never argued before the Court of Cassation that the time-limits or their calculation constituted excessive formalism in violation of Article 6 of the Convention or that *force majeure* had prevented him from submitting the additional grounds of the appeal on points of law in time.

66. The applicant submitted that the issue in the present case did not concern his knowledge or lack thereof of the case-law of the Court of Cassation and that he had never argued that there was an issue of *force majeure*. What was at stake was the formalistic approach of the Court of Cassation in calculating the time-limit set for the lodging of additional grounds of appeal on points of law, which had prevented him from having unobstructed access to the Court of Cassation.

67. The applicant further submitted that he could not possibly have raised the relevant argument about excessive formalism before the Court of Cassation as he had only become aware of the rejection of his additional grounds after decision no. 1286/2018 had been delivered.

68. The Court notes that, as regards the Government’s objection of non-exhaustion, they did not refer to a remedy that the applicant should have used before lodging his application with the Court. As the applicant rightly pointed out, he could not have raised the relevant argument about excessive formalism with the Court of Cassation, as he could not have been aware of that court’s decision to reject his additional grounds as being out of time before decision no. 1286/2018 was delivered. The rest of the parties’ arguments concern more the substance of this complaint than its admissibility and therefore, the Court will examine them under the merits.

69. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

**B. Merits***1. The parties' arguments*

70. The applicant argued that the rejection of his additional grounds of appeal on points of law as out of time had been formalistic and had prevented him from having unobstructed access to the Court of Cassation. The thirtieth day before the hearing date was a Sunday and the law required thirty full days to have passed from lodging and notifying the other party of the additional grounds before the hearing date. However, that time-limit was a preparatory one and should not be equated to a time-limit for performing an action. That interpretation by the Court of Cassation had been formalistic and had impeded him from having meaningful access to the supreme court, as he had included in the additional grounds all his arguments emanating from Article 8 of the Convention that were in the end never examined.

71. The Government submitted that the applicant was represented by a lawyer throughout the domestic proceedings, including for the submission of his appeal on points of law and the additional grounds of his appeal on points of law before the Court of Cassation. In addition, as he was a judge, he had known or ought to have known the case-law relating to the interpretation of the domestic provisions concerning the time-limits, in particular in relation to Article 569 of the Code of Civil Procedure in conjunction with Article 144 § 1 of the Code of Civil Procedure.

72. More specifically, it was apparent from Article 144 of the Code of Civil Procedure, and from Article 1 § 12 of Law no. 1157/1981, which were identical, that the end of a time-limit set by law was calculated in the same way in respect of both time-limits for performing an action and in respect of preparatory time-limits, that is to say those that had to pass before a certain procedural action could be completed. The time-limit set in Article 144 § 1 of the Code of Civil Procedure was such a preparatory time-limit, which meant that thirty full days needed to have passed from the submission and notification of the additional grounds of appeal on points of law until the date of the hearing of the appeal on points of law, under Article 569 § 2 of the Code of Civil Procedure. The date of the hearing was considered to be the initial date set by the President of the Court of Cassation or the Section President under Article 568 § 2 of the Code of Civil Procedure. If the last (thirtieth) day before the hearing was a Saturday or a holiday, the additional grounds would not have been submitted in time and should be rejected as inadmissible under Article 577 § 2 of the Code of Civil Procedure.

73. The Government argued that, in any event, the Court of Cassation was a supreme court and access to it was legitimately subject to certain conditions. The restriction in question was clear and its interpretation by the Court of Cassation was consistent and straightforward. It could not therefore be considered as disproportionate or contrary to the right of access to the Court of Cassation.



## 2. *The Court's assessment*

74. The relevant principles on the right of access to a court and, in particular, on access to superior courts have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018).

75. Applying those principles in the circumstances of the present case, the Court notes that in the Greek legal order, access to the Court of Cassation in civil matters is secured through an appeal on points of law. The law also provides for the possibility of lodging additional grounds of appeal on points of law, subject to certain conditions, namely the obligation to submit the relevant document and to notify the rest of the parties to the proceedings thirty full days before the hearing date, as provided for by Article 569 of the Code of Civil Procedure. The Court additionally notes that Article 144 of the Code of Civil Procedure contains detailed provisions on the calculation of the time-limits. The Court of Cassation rejected the applicant's additional grounds of appeal on points of law as having been lodged out of time. More specifically, the law provided that notification should take place thirty full days before the hearing; as the thirtieth day before the hearing date was a Sunday, the Court of Cassation considered that the notification should have taken place on the previous working day, that is to say on the Friday.

76. The Court is satisfied that the limitation on the admissibility of the additional grounds of appeals on points of law in civil cases before the Court of Cassation pursues a legitimate aim, namely the effective and proper administration of justice. It should thus be ascertained whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means employed to attain it. In such cases, the Court has had regard to the extent to which the case was examined before the lower courts, the (non-)existence of issues relating to the fairness of the proceedings conducted before the lower courts, and the nature of the role of the court at issue (see *Zubac*, cited above, § 84, and the references cited therein).

77. The Court first observes that the applicant's case was heard at two national judicial levels of jurisdiction (the One-Member Court of First Instance and the Athens Court of Appeal) which exercised full jurisdiction in the matter, and that no discernible issue of lack of fairness arises in this case. The Court notes that the Court of Cassation's role is limited to reviewing the application of the relevant domestic law by the lower courts, which allows for the conditions of admissibility of an appeal on points of law to be stricter than for an ordinary appeal (see *Zubac*, cited above, § 108). The Court considers that in such circumstances the authorities of the respondent State enjoy a wide margin of appreciation regarding the manner of application of the relevant restrictions.

78. In this regard, the Court accepts that the manner in which that limitation is set out in Article 569 of the Code of Civil Procedure, in conjunction with Article 144 of the Code of Civil Procedure, is within the

State's margin of appreciation (see *Pasquini v. San Marino*, no. 50956/16, § 159, 2 May 2019). In particular, with regard to the foreseeability of the restriction on lodging additional grounds of appeal on points of law, there appears to be consistent and clear case-law of the Court of Cassation on the calculation of time-limits, to which the Court of Cassation referred in its contested decision. The applicant did not refer to any contradictory case-law or any recent changes in interpretation of the relevant provisions that could have led him to believe that his additional grounds had been lodged in time; all the more so as a judge, he should have been aware of the relevant case-law of the Court of Cassation.

79. The foregoing considerations are sufficient for the Court to conclude that the procedure to be followed for the additional grounds of appeal on points of law was regulated in a coherent and foreseeable manner. In these circumstances, considering that the applicant's case was heard at two levels of jurisdiction of national courts which exercised full jurisdiction in the matter, that no discernible issue of lack of fairness arose in the case, that the limitation was foreseeable, and that the Court of Cassation's role was limited to reviewing the application of the relevant domestic law by the lower courts, it cannot be said that its decision amounted to a disproportionate hindrance impairing the very essence of the applicant's right of access to a court as guaranteed under Article 6 § 1 of the Convention, or transgressed the national margin of appreciation.

80. There has accordingly been no violation of Article 6 of the Convention in respect of the rejection of the applicant's additional grounds of appeal on points of law.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE PARTICIPATION OF JUDGES IN THE COMPOSITION OF THE COURT OF CASSATION

81. Lastly, the applicant complained that three out of the five judges of the Court of Cassation who heard his appeal on points of law had not been impartial, as they had already refused to promote him by decision no. 1/2018 of the plenary of the Court of Cassation on the basis of considerations relating to the dispute he had with K.P. concerning parental responsibility and contact rights in respect of M. In this regard, he relied on Article 6 of the Convention.

#### A. The parties' arguments

82. The Government argued that the applicant had not exhausted domestic remedies. In particular, the applicant had raised for the first time the issue of the partiality of three judges of the Court of Cassation in his application to the Court. However, domestic law provided in Article 52 of the Code of Civil Procedure for a specific procedure to be followed within the time-limit set

out in Article 57 of that Code. The applicant had known or could have known the identity of the judges who had voted against his promotion on the basis of his private dispute with K.P. from 2 February 2018, the date on which he could have received a copy of decision no. 1/2018. Moreover, the judges assigned to the section that would adjudicate his case were already known in September, as each September the composition of each section of the Court of Cassation was published in the Government Gazette. The applicant could also have found out the names of the judges who would hear his appeal of points on law, among the judges assigned to that section, by attending the hearing of his case.

83. The Government also noted that the applicant had lodged an appeal against decision no. 149/2017 of the Supreme Judicial Council with the plenary of the Court of Cassation and the latter had delivered a judgment with the participation of more than fifty judges. The formation of the Supreme Judicial Council, which had delivered decision no. 149/2017, by which the applicant was not promoted to an appellate judge, and no. 5/2018 by which the applicant was promoted, had each included eleven judges of the Court of Cassation. It followed that there were almost no judges of the Court of Cassation left who had not participated in the disciplinary case concerning the applicant and thus, the judges of Section A2 of the Court of Cassation, to which the applicant's appeal on points of law had been assigned, were bound to be among them. In any event, it did not follow from the above that the judges sitting in the applicant's appeal on points of law had had any reason to be exempted under Article 52 of the Code of Civil Procedure. In addition, the applicant had not relied on any specific reasons, such as deviation from standard case-law or judicial practice, which could potentially reverse the presumption of the independence of the judges sitting in his case.

84. The applicant submitted that three out of the five judges sitting in Section A2 of the Court of Cassation, which had delivered judgment no. 1286/2018, had also participated in the plenary of the Court of Cassation which had delivered decision no. 1/2018 excluding him from promotion as an appellate judge. However, the latter decision had been based on considerations relating to the dispute he had regarding parental responsibility and contact rights with M. Those judges had therefore already expressed a view on the matter, ruling in January 2018 that he should not be promoted on the basis of that dispute. However, in April 2018, they had heard the applicant's appeal on points of law and had voted to reject it. Moreover, they were enough to form a majority.

85. The applicant further argued that the fact that he had not lodged an application for their recusal had not removed the judges' responsibility to themselves request to be exempted under Article 55 § 1 of the Code of Civil Procedure. It also did not change the fact that his case had been heard by a tribunal that was not impartial. The case had been assigned to Section A2 of the Court of Cassation in November 2017. The judges in question had

therefore, when deciding upon the applicant's promotion in January 2018, known that they were expressing their views on a matter that would have to be decided by them three months later. However, they had not exempted themselves and had voted against the applicant's promotion even though the remaining number of judges was sufficient to form a quorum. In particular, forty-eight members were required to form a quorum out of the ninety-five members of the Court of Cassation, and fifty-four were present in the deliberations concerning the applicant's promotion; out of those, forty-five had voted against his promotion. Whereas it was true that decision no. 1/2018 had been finalised on 2 February 2018, the applicant had only received a copy on 22 June 2018; he was not therefore aware of the reasons for his non-promotion or of the composition of that court and thus it was not possible for him to request the recusal of the three judges.

### **B. The Court's assessment**

86. The Court has held that when the domestic law offers a possibility of eliminating concerns regarding the impartiality of a court or a judge, it is expected that an applicant who truly believes that there are arguable concerns on that account would raise them at the first opportunity (see, for example, *Miljević v. Croatia*, no. 68317/13, § 88, 25 June 2020, and the cases cited therein). In particular, in order for an applicant to be able to call into question the independence and/or impartiality of a judge under Article 6 § 1 of the Convention, the applicant must show that he or she had made an application for recusal of that judge at the domestic level in accordance with the relevant procedural law (compare, among many other authorities, *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 304, 18 July 2019, and the case-law cited therein). This would above all allow the domestic authorities to examine the applicant's complaints at the relevant time, and ensure that his or her rights were respected (see *Miljević*, cited above, § 88).

87. The Court considers that in a situation such as that in the present case, where no further remedy is available because the applicant alleges a violation of Article 6 § 1 of the Convention on account of a lack of impartiality of the last-instance judicial authority of the domestic legal system, the principle of subsidiarity may require special diligence from the applicant in complying with the obligation to exhaust domestic remedies. In such cases preventive remedies are of particular importance. Naturally, these considerations apply only if the applicant knew or could have known of the composition of the court in question (see *Croatian Golf Federation v. Croatia*, no. 66994/14, §§ 112-13, 17 December 2020).

88. The Court also reiterates that even in situations such as the one which obtains in the present case, it should not be forgotten that judges should maintain and enforce high standards of conduct and should personally

observe those standards so as to maintain the integrity of the judiciary (see *Škrlj v. Croatia*, no. 32953/13, § 43, 11 July 2019). Any breach of such standards diminishes public confidence which the courts in a democratic society must inspire in the public (*ibid.*). Therefore, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see, for example, *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015).

89. Turning to the present case, the Court firstly notes that under Articles 52 and 57 of the Code of Civil Procedure, a party to a case may request the recusal of a judge for specific reasons up to five days before the hearing or even during the hearing if the reason for recusal could not have been known within the time-limit of five days before the hearing (see paragraph 22 above).

90. It further observes that the applicant could have received a copy of decision no. 1/2018 of the plenary of the Court of Cassation on 2 February 2018, the date that the decision was finalised. The applicant was therefore aware or could have been aware of the identity of the judges who voted against his promotion to an appellate judge for reasons pertaining to the private dispute he had already had with the mother of his child on 2 February 2018.

91. Moreover, the applicant's appeal on points of law had been scheduled since November 2017 to be heard on 23 April 2018 by Section A2 of the Court of Cassation. According to the Government Gazette, for that judicial year Section A2 was comprised of a vice-president of the Court of Cassation acting as Section President, and six members of the court, and a case scheduled in Section A2 would therefore have been heard by five members from among those judges assigned to that section.

92. It follows that the applicant could have known which forty-five members of the Court of Cassation had voted against his appeal in decision no. 1/2018 and which of those members had been assigned to Section A2, which was scheduled to hear his appeal on points of law. From a review of the members assigned to Section A2, as published in the Government Gazette, and of the members of the Court of Cassation who delivered decision no. 1/2018, the Court observes that five out of the six judges assigned to that section had participated in adjudicating on the applicant's appeal against the decision not to promote him. Three of them had voted in favour of upholding the applicant's appeal and two of them had voted against. When hearing the applicant's case, Section A2 was comprised of two members of that section who had voted in favour of the applicant, two who had voted against him, and a fifth member of the Court of Cassation, who had not originally been assigned to Section A2, according to the Government Gazette.

93. In view of the above, the Court considers that there was a strong likelihood that the applicant's appeal on points of law would have been heard by a panel of five judges (from among the six assigned to that section) that would include at least the two judges that had been assigned to Section A2

and had voted against upholding the applicant's appeal (see *Juričić v. Croatia*, no. 58222/09, § 63, 26 July 2011, and contrast *Croatian Golf Federation*, cited above, § 118). In addition, the applicant must have been aware of that possibility, however he failed to submit an application for recusal even though he had already known or ought to have known from 2 February 2018 about the facts on which he could ground his recusal application.

94. In these circumstances the Court finds that the applicant should have requested the judges' withdrawal, irrespective of the judges' obligation to withdraw in cases in which there is a legitimate reason to fear their lack of impartiality in order to maintain the integrity of the judiciary (see paragraph 88 above).

95. It follows that the applicant's complaint concerning the alleged lack of impartiality is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 8 of the Convention and Article 6 of the Convention relating to the rejection of the additional grounds of appeal on points of law admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that there has been no violation of Article 6 of the Convention on account of the rejection of the additional grounds of appeal on points of law.

Done in English, and notified in writing on 21 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt  
Deputy Registrar

Marko Bošnjak  
President