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This Factsheet does not bind the Court and is not exhaustive

International child abductions

"… [I]n the area of international child abduction the obligations imposed by Article 8 [of the European Convention on Human Rights[1]] on the Contracting States must be interpreted in the light of the requirements of the Hague Convention [on the Civil Aspects of International Child Abduction of 25 October 1980] … and those of the Convention on the Rights of the Child of 20 November 1989 …, and of the relevant rules and principles of international law applicable in relations between the Contracting Parties …

This approach involves a combined and harmonious application of the international instruments, and in particular in the instant case of the [European] Convention [on Human Rights] and the Hague Convention, regard being had to its purpose and its impact on the protection of the rights of children and parents. Such consideration of international provisions should not result in conflict or opposition between the different treaties, provided that the [European] Court [of Human Rights] is able to perform its task in full, namely "to ensure the observance of the engagements undertaken by the High Contracting Parties" to the [European] Convention …, by interpreting and applying the Convention's provisions in a manner that renders its guarantees practical and effective …

The decisive issue is whether the fair balance that must exist between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters …, taking into account, however, that the best interests of the child must be of primary consideration and that the objectives of prevention and immediate return correspond to a specific conception of 'the best interests of the child' …

The child's best interests do not coincide with those of the father or the mother … [and,] in the context of an application for return made under the Hague Convention, which is accordingly distinct from custody proceedings, the concept of the best interests of the child must be evaluated in the light of the exceptions provided for by the Hague Convention, [particularly those] concerning the passage of time … and the existence of a 'grave risk' … This task falls in the first instance to the national authorities of the requested State, which have, *inter alia*, the benefit of direct contact with the interested parties. In fulfilling their task under Article 8 [of the European Convention], the domestic courts enjoy a margin of appreciation, which, however, remains subject to a European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power …

[A] harmonious interpretation of the European Convention and the Hague Convention … can be achieved provided that the following two conditions are observed. Firstly, the factors capable of constituting an exception to the child's immediate return in application of [the Hague] Convention … must genuinely be taken into account by the requested

[1]. Article 8 (right to respect for private and family life) of the European Convention on Human Rights provides that:

"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."

court. That court must then make a decision that is sufficiently reasoned on this point, in order to enable the Court to verify that those questions have been effectively examined. Secondly, these factors must be evaluated in the light of Article 8 of the [European] Convention …

In consequence, … Article 8 of the Convention imposes on the domestic authorities a particular procedural obligation in this respect: when assessing an application for a child's return, the courts must not only consider arguable allegations of a 'grave risk' for the child in the event of return, but must also make a ruling giving specific reasons in the light of the circumstances of the case. …

Furthermore, as … the Hague Convention provides for children's return 'to the State of their habitual residence', the courts must satisfy themselves that adequate safeguards are convincingly provided in that country, and, in the event of a known risk, that tangible protection measures are put in place." (*X v. Latvia* (application no. 27853/09), Grand Chamber judgment of 26 November 2013, §§ 93-108)

Applications lodged by the parent whose child had been abducted by the other parent

Ignaccolo-Zenide v. Romania

25 January 2000

Following the applicant's divorce a French court ruled, in a judgment that had become final, that the two children of the marriage were to live with her. In 1990, during the summer holidays, the children went to stay with her former husband, who held dual French and Romanian nationality and lived in the United States. However, at the end of the holidays, he refused to return them to the applicant. After changing addresses several times in order to elude the American authorities, to whom the case had been referred under the Hague Convention of 25 October 1980 on international child abduction, the applicant's former husband managed to flee to Romania in March 1994. In December 1994 the Bucharest Court of First Instance issued an injunction requiring the children to be returned to the applicant. However, her efforts to have the injunction enforced proved unsuccessful. Since 1990 the applicant had seen her children only once, at a meeting organised by the Romanian authorities on 29 January 1997. The applicant alleged that the Romanian authorities had not taken sufficient steps to ensure rapid execution of the court decisions and facilitate the return of her daughters to her.

The European Court of Human Rights held that there had been a **violation of Article 8** of the European Convention on Human Rights, finding that the Romanian authorities had failed to make adequate and effective efforts to enforce the applicant's right to the return of her children and had thereby breached her right to respect for her family life. The Court observed in particular that the authorities had not taken the measures to secure the return of the children to the applicant that are set out in Article 7 of the Hague Convention of 25 October 1980.

See also: **Cavani v. Hungary**, judgment of 28 October 2014.

Iglesias Gil and A.U.I. v. Spain

29 April 2003

The applicant alleged that the Spanish authorities had not taken appropriate measures to ensure the prompt enforcement of judicial decisions awarding her custody and exclusive parental authority in respect of her child – who had been taken to the United States of America with her father. She complained in particular that the authorities had lacked diligence in dealing with her abduction complaint.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Spanish authorities had failed to make adequate and effective efforts to enforce the first applicant's right to the return of her child and the child's right to join his mother, thereby breaching their right to respect for family life. It observed in particular

that it was for the authorities to implement the appropriate measures provided for in the relevant provisions of the Hague Convention of 25 October 1980, to ensure the child's return to her mother. No measures had however been taken to ensure the enforcement of decisions taken in favour of the applicant and her child.

Maire v. Portugal

26 June 2003

The applicant, a French national, complained of the Portuguese authorities' inactivity and negligence in failing to enforce decisions of the French courts awarding him custody of his child whom the mother, a Portuguese national, had abducted and taken with her to Portugal.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Portuguese authorities had not made adequate and effective efforts to enforce the applicant's right to the return of his child. The Court reiterated in particular that in cases of this kind the adequacy of a measure was to be judged by the swiftness of its implementation. Custody proceedings required urgent handling as the passage of time could have irremediable consequences for relations between the child and the parent from whom he or she was separated. Here, the Court accepted that the difficulties in ascertaining the child's whereabouts had been chiefly due to the conduct of the child's mother, but considered that the authorities should have taken appropriate measures to punish her lack of cooperation. The lengthy period that had elapsed before the child had been found had created a factual situation that was unfavourable to the applicant, particularly in view of the child's tender age.

Bianchi v. Switzerland

22 June 2006

This case concerned the abduction of a child from his Italian father by his Swiss mother. The father complained about the length of the proceedings before the Lucerne Cantonal authorities and the failure by the Swiss authorities to enforce court decisions ordering his son's return to Italy.

The Court held that there had been a **violation of Article 8** of the Convention. It found that the Swiss authorities' inaction, in breach of the object and purpose of the Hague Convention of 25 October 1980, had caused the complete break-off in contact between father and son, which had lasted almost two years and which, given the very young age of the child, was liable to result in growing alienation between them which could not be said to be in the child's best interests. Accordingly, the Court could not consider that the applicant's right to respect for his family life had been protected in an effective manner as required by the Convention.

See also: **Monory v. Romania and Hungary**, judgment of 5 April 2005; **Carlson v. Switzerland**, judgment of 6 November 2008; **Ferrari v. Romania**, judgment of 28 April 2015.

Bajrami v. Albania

12 December 2006

In 1998 the applicant and his wife separated and his wife moved out with their daughter (born in January 1997) to live with her parents. The applicant only managed to see his daughter once after the separation as his ex-wife and her parents refused to give him access to her. In June 2003 he brought divorce proceedings. At the same time he requested the police to block his daughter's passport in view of the fact that his wife was planning to take her to Greece without his consent. Despite that request, in January 2004 the applicant's wife managed to take her daughter to Greece. The divorce was granted in February 2004 and custody of the child was given to the applicant. This judgment, however, was never enforced.

The Court held that there had been a **violation of Article 8** of the Convention. It noted in particular that the custody judgment had remained unenforced for approximately two years for which no blame could be attributed to the applicant, who had regularly taken steps to secure the return of his daughter. Recalling that the European Convention on

Human Rights required States to take all necessary measures to secure the reunion of parents with their children in accordance with a final judgment of a domestic court, and irrespective of the non-ratification by Albania of relevant international instruments in that area, the Court found that the Albanian legal system, as it stood, did not provide any alternative framework affording the applicant the practical and effective protection that was required by the State's positive obligation enshrined in Article 8 of the Convention.

Shaw v. Hungary

26 July 2011

After the applicant, an Irish national living in France, and his Hungarian wife divorced in 2005, they were granted joint custody of their then five-year-old daughter. In this case the Court was called upon to examine whether, seen in the light of their international obligations arising in particular under the Council Regulation of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility[2] and the Hague Convention of 25 October 1980, the Hungarian authorities had made adequate and effective efforts to secure compliance with the applicant's right to the return of his child (who had been taken to Hungary by her mother and enrolled there in a school without the applicant's consent) and the child's right to be reunited with her father.

The Court held that there had been a **violation of Article 8** of the Convention. It observed in particular that almost eleven months had elapsed between the delivery of the enforcement order ordering the child's return to France and the mother's disappearance with the daughter. During that time, the only enforcement measures taken were an unsuccessful request for the voluntary return of the child and the imposition of a relatively modest fine. The situation had further been aggravated by the fact that more than three and a half years had passed without the father being able to exercise his access rights. This was essentially due to the fact that the Hungarian authorities had declined jurisdiction in the matter despite the existence of a final court decision that had been certified in accordance with Article 41 of the Council Regulation of 27 November 2003.

See also: **Adžić v. Croatia**, judgment of 12 March 2015.

Karrer v. Romania

21 February 2012

This case concerned a complaint by a father and his daughter (born in 2006) about proceedings before the Romanian courts under the Hague Convention of 25 October 1980 for her return to Austria. In February 2008 the child's mother had applied in Austria for divorce from the first applicant. A few months later, both the child and her mother had left Austria for Romania while the custody proceedings in respect of the child were still pending. The applicant had then requested the return of his daughter to Austria claiming that she had been removed unlawfully. In a final judgment of July 2009, the Romanian courts had found that the child's return to Austria would expose her to physical and psychological harm.

The Court held that there had been a **violation of Article 8** of the Convention, finding in particular that the Romanian courts had not carried out an in-depth analysis to assess the child's best interests and had not given the first applicant the opportunity to present his case in an expeditious manner, as required by the European Convention on Human Rights, interpreted in the light of the Hague Convention of 25 October 1980. Further, as to the fairness of the decision-making process, the first applicant had never been afforded the opportunity to present his case before the Romanian courts either directly or through written submissions. Finally, the Court observed, the Hague Convention

[2]. Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ("Brussels II bis Regulation").

proceedings had lasted a total of eleven months before two levels of jurisdiction, notwithstanding that such proceedings should have been terminated within six weeks.

İlker Ensar Uyanik v. Turkey

3 May 2012

This case concerned proceedings brought in Turkey by the applicant to obtain the return of his child to the United States of America, where he lived with his wife. She had remained in Turkey with their daughter after a holiday in that country. The applicant complained that the proceedings before the Turkish courts had been unfair, in that the courts had failed to comply with the provisions of the Hague Convention of 25 October 1980.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Turkish courts had not carried out a thorough assessment of the entirety of the applicant's family situation, failing among other things to examine it in the light of the principles laid down in the Hague Convention of 25 October 1980, and that the decision-making process in Turkish law had not met the procedural requirements inherent in Article 8 of the European Convention.

Raw and Others v. France

7 March 2013

This case concerned the failure to execute a judgment confirming an order to return underage children to their mother in Great Britain, their separated children having shared residence rights. The children wished to stay with their father in France. The applicants – the mother stated that she was acting in her own name and on behalf of her minor children – complained about the failure by the French authorities to ensure that the two children were returned to Great Britain.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the French authorities had not taken all of the measures that they could reasonably have been demanded of them to facilitate execution of the Court of Appeal's judgment of April 2009, ordering the return of the two children to the United Kingdom. The Court considered in particular that, in the context of application of the Hague Convention of 25 October 1980 and Brussels Regulation II bis[3], although the children's opinion had to be taken into consideration, their opposition did not necessarily prevent their return.

López Guió v. Slovakia

3 June 2014

In May 2009 the applicant had a child with a Slovak national. They lived together in Spain until July 2010, when the mother took the child from Spain to Slovakia, without ever returning. Subsequent to her departure, he initiated proceedings in Slovakia against the mother for an order for the child's return to Spain under the Hague Convention of 25 October 1980. The applicant complained that these proceedings had been arbitrarily interfered with by a judgment of the Constitutional Court of Slovakia, and that, as a result, he has been deprived of contact with his child for a protracted period of time.

The Court held that there had been a **violation of Article 8** of the Convention. It observed that the applicant had had no standing in the proceedings before the Constitutional Court which lead to the quashing of a final and enforceable order previously issued by the ordinary courts for the return of his child to Spain. He had not been informed of the constitutional proceedings, let alone been able to participate in them, despite having a legitimate interest in the matter. In addition, the Court took into account that the Constitutional Court's intervention in the case had come at a point when all other remedies had been exhausted, and that there was an indication that there might be a systemic problem due to the fact that those remedies were available in child return proceedings in Slovakia.

See also: **Hoholm v. Slovakia**, judgment of 13 January 2015 (where the Court declared the applicant's complaint under Article 8 of the Convention inadmissible and found that

[3]. See footnote 2 above.

there had been a violation of Article 6 § 1 (right to a fair trial within a reasonable time) taken both alone and in conjunction with Article 13 (right to an effective remedy) of the Convention); **Frisancho Perea v. Slovakia**, judgment of 21 July 2015 (where the Court found a violation of Article 8 of the Convention).

Blaga v. Romania

1 July 2014

The applicant and his wife, both Romanian and American national, had three children, born in 1998 and 2000. They all lived in the United States of America until September 2008, when the mother took the children to Romania, without ever returning. The applicant alleged in particular that the Romanian courts, which had in March 2014 awarded sole custody of the children to their mother, had misinterpreted the provisions of the Hague Convention of 25 October 1980, relying exclusively on the opinion of his children to deny him their return to the United States.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the applicant had suffered a disproportionate interference with his right to respect for his family life, in that the decision-making process under domestic law had not satisfied the procedural requirements inherent in Article 8.

Hromadka and Hromadkova v. Russia

11 December 2014

The first applicant, a Czech national, married a Russian national in 2003. The couple settled in the Czech Republic and in 2005 had a daughter, the second applicant. Two years later the wife started divorce proceedings and both she and the first applicant sought custody of the child. In 2008, while the proceedings were still pending, the wife took the child to Russia without the first applicant's consent. The latter complained that the Russian authorities had failed to take appropriate steps to assist him in re-establishing contact with his daughter.

The Court held that there had been a **violation of Article 8** of the Convention, finding that, by failing to put in place the necessary legal framework to secure a prompt response to international child abduction at the time of the events in question, Russia had failed to comply with its positive obligation under Article 8. Further noting that since 2008 the child had settled in her new environment in Russia and her return to her father's care would have run contrary to her best interests, as the first applicant also admitted, the Court considered that the Russian courts' decision not to recognise and enforce a Czech court's judgment of 2011 granting the first applicant custody had **not amounted to a violation of Article 8**. Lastly, the Court held that there had been a **violation of Article 8** as regards the other measures taken by the Russian authorities after June 2011, finding that the latter had failed to take all the measures that could have been reasonably expected of them to enable the applicants to maintain and develop family life with each other.

R.S. v. Poland (no. 63777/09)

21 July 2015

The applicant, whose children were retained in Poland by their mother, argued that the Polish courts had failed to correctly apply the Hague Convention of 25 October 1980 when deciding on his request for the return of his children to Switzerland. Notably, the courts, basing their decision on the custody decision issued in the divorce proceedings in Poland, had allegedly failed to take into account the fact that he had never given his agreement to their permanent stay in Poland and that the children's habitual place of residence at that time had been in Switzerland.

The Court held that there had been a **violation of Article 8** of the Convention. Having regard to the circumstances of the case seen as a whole, it was of the view that Poland had failed to secure to the applicant the right to respect for his family life. The Court observed in particular that, in matters pertaining to the reunification of children with their parents, the adequacy of a measure is also to be judged by the swiftness of its implementation, such cases requiring urgent handling, as the passage of time can have

irremediable consequences for the relations between the children and the parent who does not live with them. In the applicant's case, it found that the time it took for the Polish courts to adopt the final decision had failed to meet the urgency of the situation. Moreover, it had not been argued, let alone shown, either in the domestic proceedings or before the Court, that the children's return to Switzerland would have not served their best interest.

M.A. v. Austria (no. 4097/13)

15 January 2015

The applicant's partner removed their daughter from Italy, where the family lived, to Austria in February 2008. He complained about the Austrian courts' failure to enforce two judgments by Italian courts ordering the return of his daughter to Italy.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Austrian authorities had failed to act swiftly, in particular in the first set of proceedings, and that the procedural framework had not facilitated the expeditious and efficient conduct of the return proceedings. In sum, the applicant had not received effective protection of his right to respect for his family life.

G.S. v. Géorgie (n° 2361/13)

21 July 2015

This case concerned proceedings in Georgia for the return of the applicant's son, born in 2004, to Ukraine. Her former partner decided to keep their son in Georgia with family at the end of the summer holidays in 2010, while himself living in Russia and occasionally visiting his son in Georgia. The applicant complained in particular about the refusal of the Georgian courts to order the return of her son to Ukraine and about the length of the return proceedings.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the decision-making process before the domestic courts under the Hague Convention had amounted to a disproportionate interference with the applicant's right to respect for her family life. It considered in particular that there had been shortcomings in the Georgian courts' examination of the expert and other evidence in the return proceedings on the case. In particular, when identifying what would be in the boy's best interests, the courts gave no consideration to reports by social workers and a psychologist, which had concluded that the boy was suffering from lack of contact with both parents and a situation which was barely understandable. Indeed, it was questionable whether keeping the boy, who had spent the first six years of his life in Ukraine, in Georgia in the care of his paternal family – who had no custody rights – and without either of his parents, was in itself in his best interests.

Henrioud v. France

5 November 2015

This case concerned the applicant's inability to secure the return to Switzerland of his children, who had been taken to France by their mother. The applicant submitted that the French authorities had neither shown the requisite diligence during the impugned proceedings nor expended sufficient or adequate efforts to ensure respect for his right to the return of his children. He further complained of the violation of his right of access to a tribunal on the grounds of the inadmissibility of his appeal on points of law.

The Court held that there had been **no violation of Article 8** of the Convention. It noted in particular that, before the Court of Appeal, the applicant had at no stage mentioned his appeal against the cancellation of the prohibition on the mother leaving Swiss territory. The Court consequently considered that the applicant, who had been a voluntary joint plaintiff and been represented by counsel, had not provided the Court of Appeal with the requisite information to contest his tacit acceptance of the situation. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the dismissal of the applicant's appeal on points of law for formal reasons which were attributable to the prosecutor had deprived him of access to a tribunal.

K.J. v. Poland (no. 30813/14)

1 March 2016

This case concerned a Polish national's complaint about the proceedings before the Polish courts for the return of his child to the United Kingdom where he he was living and where the child had been born and raised for the first two years of her life. The mother, also Polish, left the United Kingdom with their daughter for a holiday in Poland in July 2012 and has never returned. In the ensuing Hague Convention proceedings, the Polish courts dismissed the father's request for the return of his daughter.

The Court held that there had been a **violation of Article 8** of the Convention, finding that, notwithstanding its margin of appreciation in the matter, the Polish State had failed to comply with its positive obligations under Article 8. It found in particular that the mother, instead of substantiating any specific risks to her daughter if she were returned to the United Kingdom, had only referred to the break-up of her marriage and her fear that the child would not be allowed to leave the United Kingdom. The Polish courts had, however, accepted her reasons as convincing enough to conclude that – with or without the mother – the child's return to her habitual environment in the United Kingdom would place her in an intolerable situation. The Court considered that that assessment by the Polish courts was misguided: firstly, there was no objective obstacle to the mother's return to the United Kingdom; secondly, in assessing that the child's return to the United Kingdom with her mother would not have a positive impact on the child's development, the courts had not taken into account the conclusions in an expert report by psychologists that the child, who adapted easily, was in good physical and psychological health, was emotionally attached to both parents and perceived Poland and the United Kingdom on an equal footing. Lastly, the Court noted that, despite the recognised urgent nature of the Hague Convention proceedings, one year had elapsed between the request for return and the final decision, a period for which no explanation had been provided by the Polish Government.

See also: **G.N. v. Poland (no. 2171/14)**, judgment of 19 July 2016.

M.K. v. Greece (no. 51312/16)

1 Februray 2018

This case concerned the inability of the applicant, the mother of two children, to exercise custody of one of her sons (A.) despite a decision by the Greek courts awarding her permanent custody. Her ex husband lived in Greece with their two sons, while she lived in France. The applicant complained in particular that the Greek authorities had not complied with the judgments in her favour given by the Greek and French courts regarding the custody of her son. She further alleged that they had refused to facilitate the child's return to France and had failed to act on her complaints against her ex-husband for child abduction.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Greek authorities had taken the measures that could reasonably be expected of them in order to comply with their positive obligations under Article 8. Among other things, they had taken into account the overall family situation, the way it had changed over time and the best interests of the two brothers, and especially of A. The latter, who had been 13 at the time, had clearly expressed to the Greek authorities a wish to remain with his brother and father in Greece. In this case, the Court recalled in particular that the wishes expressed by a child who had sufficient understanding were a key factor to be taken into consideration in any judicial or administrative proceedings affecting him or her. The right of children to be heard and to be involved in the decision-making in any family proceedings primarily affecting them was also guaranteed by several international legal instruments. In particular, Article 13 of the Hague Convention of 25 October 1980 provided that the authorities could refuse to order the return of a child if the child objected to being returned and had attained an age and degree of maturity at which it was appropriate to take account of his or her views.

See also:

Mitovi v. "the former Yugoslav Republic of Macedonia"
16 April 2015

Vujica v. Croatia
8 October 2015

Vilenchik v. Ukraine
3 October 2017

Mansour v. Slovakia
21 November 2017

Edina Tóth v. Hungary
30 January 2018

Royer v. Hungary
6 March 2018[4]

M.R.and D.R. v. Ukraine (no. 63551/13)
22 May 2018[5]

Pending applications

Simões Balbino v. Portugal (no. 26956/14)
Application communicated to thePortuguese Government on 9 November 2015

B.S. v. Poland (no. 4993/15)
Application communicated to the Polish Government on 22 August 2016

Adžić v. Croatia (no. 2) (no. 19601/16)
Application communicated to the Croatian Government on 1 September 2016

M. V. v. Poland (no. 16202/14)
Application communicated to the Polish Government on 9 February 2017

Ushakov v. Russia (no. 15122/17)
Application communicated to the Russian Government on 16 June 2017

Applications lodged by the abducting parent

Eskinazi and Chelouche v. Turkey
6 December 2005 (decision on the admissibility)
The first applicant, who is married, visited Turkey with her daughter (the second applicant), then 4 years old, initially for a short stay, but later decided to remain there with her daughter despite the disapproval of the girl's father. She then filed a petition for divorce. She was provisionally granted custody of her daughter, which she had previously shared with her husband. The husband, who was living in Israel, in turn filed a petition for divorce in the Tel Aviv rabbinical court, which ordered the mother to return the child to Israel, failing which her action would be classified as a "wrongful removal of a child" under the Hague Convention of 25 October 1980. Proceedings were initiated in order to secure the child's return to Israel. They resulted in an order of the Turkish courts that the child be returned pursuant to the provisions of the Hague Convention. The father brought an action for enforcement. The interim measure indicated by the

[4]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.
[5]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

European Court of Human Rights under Rule 39 (interim measures[6]) of the Rules of Court resulted in execution of the order being stayed. The applicants contended that sending the child back to Israel would amount to a violation of their right to respect for private and family life. According to the first applicant, it would be against the best interests of the child to be separated from her mother and sent to a country where she had no points of reference and did not speak the language. She further argued that, should her daughter be sent to Israel, she would be permanently deprived of her right to a fair hearing in the Turkish courts, as the decisions concerning the divorce and related issues would then be taken by the Rabbinical Court.
The Court declared the application **inadmissible** as being manifestly ill-founded. In the light of the case file as a whole, it observed that, at the time when the Israeli central authorities lodged the request for the child's return, she was regarded as having been wrongfully removed for the purposes of the Hague Convention of 1980. Further, the Turkish authorities had no substantial grounds for refusing the request, either under the Hague Convention or on the basis that possible shortcomings in any proceedings to which the applicants might be subject in Israel were liable to amount to a "flagrant denial of a fair trial". Having reiterated that Article 8 of the European Convention on Human Rights was to be interpreted in the light of the Hague Convention, the Court held, having regard to all the evidence before it, that, in deciding to return the child to Israel, the Turkish authorities could not be regarded as having been in breach of their obligations under Article 6 (right to a fair trial), or of the right to respect for family life guaranteed by Article 8 of the European Convention. The Court further decided to lift the interim measure indicated to the Turkish Government under Rule 39 of the Rules of Court.

Paradis and Others v. Germany

4 September 2007 (decision on the admissibility)

The first applicant, a German national, left her Canadian husband in 1997. A Canadian court granted her custody of the four children, but ordered her not to remove them from Canada without her husband's consent. In the summer of 2000 she failed to return with the children from a two-week stay in Germany, where she petitioned for divorce and applied for custody. The Canadian court then granted her husband sole custody and a German court of appeal ordered the first applicant to return the children to her husband. Following her repeated refusals to comply with that order a German district court ordered her coercive detention in order to compel her to reveal the children's whereabouts. The order stipulated that she should be released immediately after the children had been returned. The first applicant' appeal was rejected and the Federal Constitutional Court refused to admit her constitutional complaint. She was detained for a six-month period in 2003, but did not disclose the children's whereabouts.
The Court declared the application **inadmissible**, finding the first applicant's complaint relating to the order for detention manifestly ill-founded. It observed in particular that one of the aims of the Hague Convention on the civil aspects of international child abduction of 1980 was to secure the swift return of children to their country of habitual residence to prevent their growing accustomed to their illegal retention. In the instant case, the Court noted that the children had already been separated from their father for almost two years when the court of appeal ordered their return and almost three years before the district court ordered the first applicant's detention. It was therefore of the utmost importance not to further prolong their illegal retention. Although detention was the most drastic coercive measure available under domestic law, the first applicant was fiercely determined not to return the children, as evidenced by the fact that she had sent them into hiding abroad. In such circumstances, the Court considered that the district court's finding that it would have been futile to impose a coercive payment was not unreasonable and the order for the applicant's coercive detention not disproportionate.

[6]. These are measures adopted as part of the procedure before the Court, under Rule 39 of the Rules of Court, at the request of a party or of any other person concerned, or of the Court's own motion, in the interests of the parties or of the proper conduct of the proceedings. See also the factsheet on "Interim measures".

Maumousseau and Washington v. France

15 November 2007

The applicants are a French national who lives in France and her daughter, a French and US national who was born in the United States of America in 2000 and lives with her father in the United States. The case concerned the return to the United States of the child, then aged four, further to an order by the French courts in December 2004 on the basis of the Hague Convention of 25 October 1980 and a decision by a US court granting custody of the girl to her father. The child, whose habitual residence had been in the United States, had arrived in France in March 2003 for a holiday with her mother, who had then decided not to return to the United States but to remain with her daughter in France. In her application, the first applicant submitted in particular that the child's return to the United States had been contrary to her daughter's interests and had placed her in an intolerable situation in view of her very young age. She further alleged that the police intervention at the child's nursery school in September 2004 would leave her daughter with significant psychological after-effects.

The Court held that there had been **no violation of Article 8** of the Convention. Regarding the reasons for the decision ordering the child's return to the United States, it considered that the French courts had taken into account the child's "best interests", understood as her immediate reintegration into the environment she was familiar with. They had in particular carefully examined the family situation as a whole, studied a number of different factors, conducted a balanced and reasonable assessment of the respective interests and constantly endeavoured to ascertain what was the best solution for the child. The Court also noted that there was no cause to consider that the decision-making process that led the French courts to order the child's return to the United States had been unfair or had not permitted the applicants to assert their rights effectively. Further, as to the conditions of enforcement of the return order, the Court observed that the circumstances of the police intervention at the child's nursery school were the result of her mother's constant refusal to hand the child over to her father voluntarily, despite a court order which had been enforceable for more than six months. Although intervention by the police was not the most appropriate way of dealing with situations like the one in the applicant's case, and might have traumatic effects, the Court noted that it had taken place under the authority and in the presence of the public prosecutor, a professional State legal officer invested with a high level of decision-making responsibility under whose orders the accompanying officers were placed. It further noted that, faced with the resistance of the people who had taken the applicants' side in the dispute, the authorities did not persist in trying to take the child away.

Neulinger and Shuruk v. Switzerland

6 July 2010 (Grand Chamber)

The first applicant, a Swiss national, settled in Israel, where she got married and the couple had a son. When she feared that the child (the second applicant) would be taken by his father to an ultra-orthodox community abroad, known for its zealous proselytising, the Tel Aviv Family Court imposed a ban on the child's removal from Israel until he attained his majority. The first applicant was awarded temporary custody, and parental authority was to be exercised by both parents jointly. The father's access rights were subsequently restricted on account of his threatening behaviour. The parents divorced and the first applicant secretly left Israel for Switzerland with her son. At last instance, the Swiss Federal Court ordered the first applicant to return the child to Israel.

The Court held that **there would be a violation of Article 8** of the Convention in respect of the two applicants **if the decision ordering the** child's **return** to Israel **were to be enforced**. It was in particular not convinced that it would be in the child's best interests for him to return to Israel. He was indeed a Swiss national and had settled very well in the country where he had been living continuously for about four years. Even though he was at an age (seven years old) where he still had a significant capacity for adaptation, the fact of being uprooted again would probably have serious consequences for him and had to be weighed against any benefit that he was likely to

gain from it. In this connection, it was noteworthy that restrictions had been imposed on the father's right of access before the child's abduction. Moreover, the father had remarried twice since then and was now a father again but had failed to pay maintenance for his daughter. As to the mother, the Court further considered that she would sustain a disproportionate interference with her right to respect for her family life if she were forced to return to Israel.

Sneersone and Kampanella v. Italy

12 July 2011

This case concerned the Italian courts' decision to order the return to his father in Italy of a young boy (the second applicant) living with his mother (the first applicant) in Latvia. The applicants alleged that the decision in question was contrary to the child's best interest and a violation of international and Latvian law. They further complained that the Italian courts had heard the case in the mother's absence.

The Court held that there had been a **violation of Article 8** of the Convention. It found in particular that the decisions by the Italian courts had given scant reasoning and did not constitute an appropriate response to the psychological trauma that would inevitably stem from a sudden and irreversible cutting of the close ties between mother and child. In addition, the courts had not considered any other solutions to ensure contact between the child and his father.

M.R. and L.R. v. Estonia (no. 13420/12)

4 June 2012 (decision on the admissibility)

The applicants were a mother and her daughter, whose father was seeking her return to Italy under the Hague Convention of 25 October 1980. The applicants had not returned to Italy after a trip to Estonia. They complained about the proceedings before the Estonian courts and their decisions ordering the return of the child to Italy.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found in particular that the Estonian authorities, in rejecting the mother's arguments to the effect that she was unable to return to Italy, had not overstepped their margin of appreciation. Nor was there anything to suggest that their decision to order the child's return had been arbitrary or that the authorities had failed in their obligation to strike a fair balance between the competing interests at stake.

See also: **K.H. v. Poland (n° 6809/14)**, decision on the admissibility of 20 October 2015.

B. v. Belgium (no. 4320/11)

10 July 2012

This case concerned a decision to order the return of a child to the United States of America after her mother had taken her to Belgium without the agreement of the father or the US court. The applicants, the mother and the child, argued in particular that sending the child back to the United States would deprive her of her mother and place her in an intolerable situation. The European Court of Human Rights had requested the Belgian Government, under Rule 39 (interim measures[7]) of the Rules of Court, not to send the child back to the United States for the duration of the proceedings before the Court.

The Court held that there had been a **violation of Article 8** of the Convention. It found in particular that the Belgian courts, in ordering the child's return to the United States, had not sufficiently sought to assess the risk that a return to her father represented; they should also have taken into account the passage of time and the child's integration in Belgium. The Court further considered that the interim measures indicated to the Belgian Government in application of Rule 39 of its Rules of Court were to remain

[7]. See footnote 6 above.

in force until the judgment became final[8] or the Court issued another decision in this respect.

X v. Latvia (no. 27853/09)

26 November 2013 (Grand Chamber)

This case concerned the procedure for the return of a child to Australia, her country of origin, which she had left with her mother at the age of three years and five months, in application of the Hague Convention of 25 October 1980, and the mother's complaint that the Latvian courts' decision ordering that return had breached her right to respect for her family life within the meaning of Article 8 of the Convention.

The Court held that there had been a **violation of Article 8** of the European Convention on Human Rights. It considered that the European Convention and the Hague Convention of 25 October 1980 had to be applied in a combined and harmonious manner, and that the best interests of the child had to be the primary consideration. In the present case, it considered that the Latvian courts had not complied with the procedural requirements of Article 8 of the European Convention, in that they had refused to take into consideration an arguable allegation of a "serious risk" to the child in the event of her return to Australia.

Rouiller v. Switzerland

22 July 2014

This case concerned the removal of two children from France to Switzerland by their mother, who had been granted residence after her divorce. The applicant complained that the return of her children to France, as ordered by the Swiss courts, had constituted a violation of Article 8 of the European Convention on Human Rights. Her children had lived with her in Switzerland for almost two years and she claimed that the Swiss courts had been wrong to apply the Hague Convention of 25 October 1980 in ordering their return to France. She added that the children's opinion had not been sufficiently taken into account.

The Court held that there had been **no violation of Article 8** of the European Convention. Like the Cantonal and Federal Courts which had ruled on appeal, it found that the removal of the children to Switzerland by their mother was an "wrongful removal" and that the Hague Convention did not grant a child the freedom to choose where he or she wished to live. The reasons given by one of the children for wanting to remain in Switzerland did therefore not suffice to justify the application of one of the exceptions to a child's return provided for in Article 13 of the Hague Convention, bearing in mind that those exceptions had to be interpreted strictly.

Gajtani v. Switzerland

9 September 2014

The applicant, a citizen from the Republic of Kosovo[9], lived in "the former Yugoslav Republic of Macedonia" with her two children and their father. In November 2005 she separated from the children's father and moved with the children to join her family in Kosovo. There she married an Italian national and went to live with him in Switzerland. In 2006 the children's father took steps to have the children returned to "the former Yugoslav Republic of Macedonia". The applicant complained in particular about her children's forced removal to that country. She also complained that the Federal Court had ruled that her appeal had been out of time even though it was lodged within the time-limit indicated by the lower court.

The Court held that there had been **no violation of Article 8** of the Convention, finding that the order for the return of the children to "the former Yugoslav Republic of Macedonia" did not appear disproportionate. Concerning in particular the question as to

[8]. This judgment became final on 19 November 2012, in the circumstances set out in Article 44 § 2 of the Convention.

[9]. All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244(1999) and without prejudice to the status of Kosovo.

whether the competent authorities had taken sufficient account of the children's views, the Court, having regard to the circumstances of the case, considered that the court of appeal could not be criticised for refusing to take account of the objections to returning voiced in particular by the applicant's son. The decision-making process under domestic law had therefore satisfied the procedural requirements inherent in Article 8 of the Convention. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention on account of the lack of access to a court.

Phostira Efthymiou and Ribeiro Fernandes v. Portugal

5 February 2015

This case concerned the procedure for the return of the first applicant, the daughter of the second applicant, to her country of habitual residence, Cyprus, which was requested by the child's father and granted by the Portuguese Supreme Court, which found that retaining the child in Portugal was wrongful for the purposes of the Hague Convention of 25 October 1980 and that the return of the child to Cyprus would not expose her to a grave risk within the meaning of that Convention. The applicants alleged an infringement of their right to respect for their family life on account of the decision of the domestic courts ordering the child's return to Cyprus.

The Court held that **there would be a violation of Article 8** of the European Convention on Human Rights **if the decision ordering the** child's **return** to Cyprus **were to be enforced**. It found in particular that the decision-making process under domestic law did not satisfy the procedural requirements inherent in Article 8, having regard notably to the absence of any information about the situation in Cyprus and the risk to the child in case of separation from her mother.

Pending applications

Lacombe v. France (no. 23941/14)

Application communicated to the French Government on 4 May 2016

Y.S. and O.S. v. Russia (no. 17665/17)

Application communicated to the Russian Government on 19 June 2017

Andersena v. Latvia (no. 79441/17)

Application communicated to the Latvian Government on 23 November 2017

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