



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

FOURTH SECTION

CASE OF VOICA v. ROMANIA

(Application no. 9256/19)

JUDGMENT

Art 8 • Respect for family life • Domestic court's order for the return of children from Romania to France • Unlawful removal of children from France, for the purpose of the Hague Convention, hindering the possible exercise by the father of his granted contact rights • Domestic courts' examination of the exceptions to having to return the children invoked by the mother, the applicant, under Article 13 of the Hague Convention • Examination of the whole family context including the allegations of violence perpetrated by the father • Identification and due consideration of the children's best interests when deciding not to give significance to their integration in their new Romanian environment • Contact maintained with France and the French culture able to facilitate their return • No interview of the children by domestic court as a result of their young age • Interpretation and application by the domestic courts of the Hague Convention and of the Brussels II bis Regulation sufficient to secure the guarantees of Art 8

STRASBOURG

7 July 2020

FINAL

07/10/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Voica v. Romania,

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

Yonko Grozev, *President*,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 9256/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French and Romanian national, Ms Alexandra-Livia Voica (“the applicant”), on 4 February 2019;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

the fact that the French Government did not express the wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 16 June 2020,

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

INTRODUCTION

1. The application concerns an alleged infringement of the applicant’s right to respect for her family life, in so far as a court decision ordered her children’s return to France, where they used to live before moving to Romania and where their father still lived. The applicant alleged that those proceedings had not taken full account of the French court decisions establishing the children’s residence as being with her, nor of the grave risk to which the children would be exposed if returned to their father, who had been violent towards her in the past.

THE FACTS

2. The applicant was born in 1982 and, according to the information available in the file, lives in Bucharest. She was represented by Ms D. Iovanovici-Șoșoacă, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

I. THE FAMILY SITUATION

5. In 2009 the applicant started living together with a French national, Mr X. They had two sons together: Y, born in 2012, and Z, born in 2015. The family was living in France. According to the applicant, the children were raised bilingually (in Romanian and French), and regularly visited their maternal grandparents in Romania.

6. In April 2016 the couple separated and X moved out of the family home to start a new relationship. The applicant and the children remained together.

II. THE CUSTODY ARRANGEMENTS: BOBIGNY *TRIBUNAL DE GRANDE INSTANCE*

7. On 2 September 2016 the Bobigny *tribunal de grande instance* granted joint parental authority to the parents and established the children's residence as being with their mother, who at that time was living in France. X was granted contact rights. In accordance with the scope of the rights conferred by law on the holders of parental authority, the court imposed an obligation on both parents to inform each other when they changed their residence, in order to allow for a proper organisation of the parental rights and responsibilities of both parents. It also ordered them to consult each other in any matter concerning the children's welfare.

8. Both parents appealed. The Paris Court of Appeal heard the case (see paragraphs 32-35 below).

III. THE CRIMINAL PROCEEDINGS FOR DOMESTIC VIOLENCE

9. According to the applicant, X had subjected her to psychological pressure throughout their relationship. After their separation, he had also become verbally and physically abusive towards her.

10. She recounted one such episode which had taken place on 2 December 2016 when X had returned to the family home to take the children with him. Y had refused to leave with him and the applicant had tried to stop X from dragging Y away by force. X had then become violent towards the applicant and in the commotion had broken one of her fingers. Both children had been present during the incident.

11. On 25 December 2016 the Bobigny *tribunal de grande instance* put in place a restraining order. By a decision of 14 February 2017 the same

court convicted X of domestic violence, fined him 1,000 euros (EUR) in relation to the incident of 2 December 2016 and suspended the sentence. X appealed. It appears that in a final decision of 21 February 2019 the Paris Court of Appeal quashed the conviction. The applicant claimed that she had not been informed about the progress of those proceedings and had been unable to participate in them.

12. In March 2017 the applicant sought support from a French organisation specialised in protecting victims of domestic violence, which provided her with assistance, psychological counselling and advice on how to deal with X.

IV. THE MOVE TO ROMANIA

13. In June 2017 the applicant's French employer offered her a three-year contract in Romania, starting on 1 September 2017. According to the applicant, on 3 July 2017 she informed X of her intention to leave France and take the children with her, but he did not respond.

14. In the meantime she moved to Romania with the children and on 19 August 2017 communicated their new address to X.

15. The applicant enrolled the children in a French school in Bucharest.

V. THE CUSTODY ARRANGEMENTS: PARIS COURT OF APPEAL

16. In the proceedings before the Paris Court of Appeal concerning the appeals against the decision of 2 September 2016 (see paragraphs 8 above and 32-35 below), X lodged an interim request for the return of the children to France. The applicant asked the court to approve the change of residence to Romania and to grant her exclusive parental authority over the children.

17. On 21 November 2017 the Paris Court of Appeal dismissed these requests. With regard to the request for return, the court noted that X had not sought to have the children placed with him, and had not started proceedings under the provisions of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention", see paragraph 39 below). The court also dismissed the applicant's request, arguing that the change of residence to Romania did not justify a change in the attribution of parental authority. It therefore maintained the custody arrangements established by the decision of 2 September 2016 (see paragraph 7 above).

VI. THE PROCEEDINGS UNDER THE HAGUE CONVENTION

18. On 6 February 2018 X contacted the French Central Authority for the application of the Hague Convention with a request for the return of Y and Z to France. On 27 March 2018, while the administrative proceedings

between the two Central Authorities were pending, X lodged an action with the Bucharest County Court (“the County Court”) requesting the children’s return under the Hague Convention.

19. On 30 April 2018 the County Court examined the case under the requirements of the Hague Convention and ordered the children’s return to France. The court found that at the time when the children had been taken to Romania, their habitual residence had been in France and the parents had exercised parental authority jointly. Under French law, that meant that the children’s residence could only be changed if both parents agreed or, in the absence of such agreement, if a court authorised the move. On the facts of the case, the court found that the applicant had taken the children to Romania without the father’s consent and before the French courts had had an opportunity to determine by means of a final decision her request to take the children to Romania. The County Court examined both the decision of 2 September 2016 by the Bobigny *tribunal de grande instance* (see paragraph 7 above) and the decision of 21 November 2017 by the Paris Court of Appeal (see paragraph 17 above).

20. The court considered that X’s alleged abusive behaviour did not constitute the exception of “grave risk” preventing the children’s return in accordance with the provisions of Article 13 § (b) of the Hague Convention (see paragraph 39 below). The court examined the evidence adduced by the applicant concerning the incident of 2 December 2016 (see paragraph 10 above). However, based on that evidence and on the witness testimonies available to it, the court considered that it had not been established that X had been in any way violent, abusive or neglectful towards the children, either while they had been living together or after the parents’ separation. It thus concluded that his behaviour would not put them at “grave risk” for the purpose of Article 13 of the Hague Convention. The court further considered that, in any case, a risk to the children’s physical or psychological integrity would not lead the court to reject the request for return. In the court’s view, such a risk would simply require it to seek international cooperation to ensure the children’s protection by the French authorities after their return (Article 60 (e) of the Brussels II *bis* Regulation – see paragraph 41 below).

21. The court decided not to interview the children. In that regard it considered that they were still too young to give evidence.

22. Lastly, the court observed that the children had become fully integrated in their new environment in Romania. However, it considered that legalising their stay in Romanian would not serve their best interests, in so far as their situation had been unjustly and unilaterally altered by their mother, in violation of the custody arrangements.

23. The applicant appealed, but in a final decision of 9 August 2018 the Bucharest Court of Appeal upheld the above decision for the same reasons as those given by the County Court.

VII. THE ENFORCEMENT PROCEEDINGS

24. According to the applicant, in July 2018 X took the children to France for two weeks during their school holidays. He returned them to Romania at the end of that period. The applicant was not allowed any contact with the children during that time. She further claimed that on 21 August 2018 she had gone to France with the children. She stated that she had contacted X to let him know where they were, but that X had not visited them.

25. On 26 October 2018 X visited the applicant in Romania and sought to take the children away with him. According to the applicant, he verbally abused her and her parents in the children's presence. The applicant called the police. Y and Z refused to accompany their father and the police advised him that he would not be allowed to take them by force.

26. On 1 December 2018 X again attempted to visit the children, but the applicant refused to let him in as the children were asleep at that hour. X allegedly slashed the applicant's car tyres on his way out.

27. According to the applicant the verbal abuse and threats continued.

28. As the children continued to live with their mother in Romania, X started enforcement proceedings. On 7 and 23 January 2019 the applicant brought Y and Z to the bailiff's office, where they met their father. The children refused to return to France with him. The bailiff noted the children's opposition and submitted a request for them to be included in a counselling programme, in accordance with the requirements of the Code of Civil Procedure (see paragraph 37 below).

29. On 4 January 2019 the applicant lodged an objection to enforcement of the final decision of 9 August 2018 (see paragraph 23 above).

30. On 5 April 2019 the Bucharest District Court ordered psychological counselling for the children under Article 913 of the Code of Civil Procedure (see paragraph 37 below).

31. On 28 October 2019 the District Court dismissed the objection to enforcement and ordered the resumption of the enforcement proceedings. The court noted that the applicant had been unable to produce evidence that she had actually visited France and contacted X in August 2018. Moreover, she had opposed all attempts by X and by the bailiff to enforce the decision of 30 April 2018 (see paragraphs 19 to 22 above). On the other hand, X's efforts to contact the children had been uncontested. The court therefore considered that the applicant had failed to comply with the obligation to return the children to France.

VIII. THE FINAL CUSTODY DECISION OF THE FRENCH COURTS

32. On 22 October 2019 the Paris Court of Appeal dismissed the appeal lodged by the applicant against the decision of 2 September 2016 (see paragraphs 7 and 8 above).

33. The court upheld the joint exercise of parental authority by the two parents. It dismissed as unsubstantiated the applicant's allegations that X had been verbally and physically abusive towards her.

34. The court examined the applicant's request to allow the children to continue living with her in Romania. It did not accept that the mother was better placed than X to take care of the children, in so far as she had unilaterally changed their residence to Romania and hindered X's contact with the children ever since. The court considered that maintaining the children's residence with her would only consolidate an illegal situation that she had created unilaterally.

35. The court concluded that the applicant, through her attitude, had infringed the children's right to maintain personal relations with their father. Consequently, the court established the children's residence as being with their father in France and granted the applicant contact rights only in France. The parents were required to obtain each other's approval before taking the children outside France.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

36. The relevant provisions of Law no. 369/2004 on the enforcement of the Hague Convention are set out in *Ferrari v. Romania* (no. 1714/10, § 25, 28 April 2015) and *Blaga v. Romania* (no. 54443/10, § 50, 1 July 2014).

37. The special enforcement procedure for the enforcement of court orders concerning children, as regulated by the Code of Civil Procedure, is described in *Niță v. Romania* ([Committee], no. 30305/16, §§ 28 and 29, 3 July 2018). In particular, at the time of the facts of the present case, under Article 913 of that Code, if the bailiff observed that the children refused in absolute terms contact with their estranged parent, a psychological counselling programme was to be put in place by court order for the benefit of the children, for a period not exceeding three months. The enforcement proceedings were to be stayed during that time.

II. INTERNATIONAL MATERIAL

38. The relevant provisions of the international instruments applicable in the present case are set out in *X v. Latvia* ([GC] no. 27853/09, §§ 34-42, ECHR 2013).

A. The Hague Convention

39. The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (“the Hague Convention”) was ratified by Romania by means of Law no. 100/1992. The relevant parts of that Convention read as follows:

“...Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

...”

Article 1

“The objects of the present Convention are –

(a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

...”

Article 3

“The removal or the retention of a child is to be considered wrongful where –

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

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

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

Article 4

“The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.”

Article 5

“For the purposes of this Convention –

(a) ‘rights of custody’ shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;

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(b) ‘rights of access’ shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

...”

Article 12

“Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.”

Article 13

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child’s habitual residence.

...”

Article 21

“An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.”

40. The Explanatory Report on the Hague Convention, prepared by Elisa Pérez-Vera (“the Explanatory Report”), defines as follows the notion of “the best interests of the child”:

“21. ... the legal standard ‘the best interests of the child’ is at first view of such vagueness that it seems to resemble more closely a sociological paradigm than a concrete juridical standard.

24. ... [the philosophy of the Hague Convention] can be defined as follows: the struggle against the great increase in international child abductions must always be inspired by the desire to protect children and should be based upon an interpretation of their true interests. ... the right not to be removed or retained in the name of more or less arguable rights concerning its person is one of the most objective examples of what constitutes the interests of the child.

... the true victim of the ‘childnapping’ is the child himself, who suffers from the sudden upsetting of his stability, the traumatic loss of contact with the parent who has been in charge of his upbringing, the uncertainty and frustration which come with the necessity to adapt to a strange language, unfamiliar cultural conditions and unknown teachers and relatives.

25. It is thus legitimate to assert that the two objects of the Convention – the one preventive, the other designed to secure the immediate reintegration of the child into its habitual environment – both correspond to a specific idea of what constitutes the ‘best interests of the child’. However ... it has to be admitted that the removal of the child can sometimes be justified by objective reasons which have to do either with its person, or with the environment with which it is most closely connected. Therefore the Convention recognizes the need for certain exceptions to the general obligations assumed by States to secure the prompt return of children who have been unlawfully removed or retained.”

B. The Brussels II *bis* Regulation

41. 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 (known as “the Brussels II *bis* Regulation”) reads, in particular, as follows:

Article 3 General jurisdiction

“1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or

- the spouses were last habitually resident, insofar as one of them still resides there,
or

- the respondent is habitually resident, or

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- in the event of a joint application, either of the spouses is habitually resident, or
 - the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
 - the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her ‘domicile’ there;
- (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the ‘domicile’ of both spouses.”

Article 10 Jurisdiction in cases of child abduction

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

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

or

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

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

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

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

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

Article 11 Return of the child

“1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter ‘the 1980 Hague Convention’), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

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3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained under Article 6 § 1 of the Convention that the courts had disregarded the evidence adduced by her. She further complained, under Article 8 of the Convention, that the Romanian courts had forced her and her children to change their residence and to return to France, in disregard of the applicant’s rights and the children’s best interests. Lastly, relying on Articles 2 and 3 of Protocol No. 4 to the Convention, the applicant complained of a violation of the right to freedom of movement, as the court decisions restricted her right to visit and live in Romania.

43. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), will examine the complaint from the standpoint of Article 8 alone (see, for further clarifications, *Andersena v. Latvia*, no. 79441/17, § 65, 19 September 2019, and, *mutatis mutandis*, *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, § 111, 1 December 2009).

Article 8 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

44. The Court notes that the application 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' submissions

(a) The applicant

45. The applicant reiterated that the evidence adduced by her had not been taken into account by the courts. In deciding to return the children to France, the courts had ignored the decisions adopted by the French courts establishing the children's residence as being with their mother and authorising her to move with them to Romania. She had informed X about the move and he had visited the children in their new home unhindered. He had also been able to take the children with him to France even after the change of residence.

46. She further argued that the risk of domestic violence towards the children had not been correctly assessed by the courts. She also considered that the courts had failed to recognise that the children had become integrated in their new environment in Romania. In her view, the courts had erred in choosing not to seek the children's views when deciding their fate.

47. Lastly, the applicant argued that in ordering the children's return to France, the courts had paved the way for the most recent French decision changing the custody arrangements and establishing the children's residence as being with their father.

(b) The Government

48. The Government accepted that the decision to return the children to France constituted an interference with the applicant's right to respect for her family life. That interference had nevertheless been in accordance with the law, namely Law no. 100/1992 which incorporated the Hague Convention into domestic law (see paragraph 39 below). It had also pursued a legitimate aim, namely the protection of the rights of others, and in particular the right of the children to maintain contact with their father.

49. As to the justification for the interference, the Government argued that the domestic courts had taken into account all the evidence in the file in finding that the applicant had changed the children's residence without X's agreement. As to the allegations of "grave risk", the court had rightly refused to rely on simple allegations of ill-treatment made by the applicant and had instead taken into account all the evidence adduced by the parties; this proved that the French courts had considered X to be fit to exercise parental authority. The allegation of grave risk had thus been examined objectively by the domestic courts, which had given detailed reasons for their decisions. In their examination, the courts had taken account of the children's best interests, which did not always coincide with their parents' interests.

2. The Court's assessment**(a) General principles**

50. The relevant principles regarding interference with the right to respect for family life, as well as the State's positive obligations under Article 8 of the Convention in cases concerning the return of a child under the Hague Convention, are summarised in *X v. Latvia* ([GC], no. 27853/09, §§ 92-108, ECHR 2013).

51. The Court has held in particular that, in the area of international child abduction, the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention 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 (*ibid.*, § 93, with further references; as regards fundamental rights and the principle of mutual trust within the European Union ("the EU"), see *Avotiņš v. Latvia* [GC], no. 17502/07, §§ 46-49, ECHR 2016).

52. In all decisions concerning children, their best interests must be paramount (*ibid.*, § 96; see also *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 204, 10 September 2019). The same philosophy is inherent in the Hague Convention, which associates this interest with restoration of the status quo by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of unlawful

abduction, while taking account of the fact that non-return may sometimes prove justified for objective reasons that correspond to the child's interests, thus explaining the existence of exceptions, specifically in the event of a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (Article 13, first paragraph, (b)). The Court further notes that the European Union subscribes to the same philosophy, in the framework of a system involving only European Union member States and based on a principle of mutual trust. The Brussels II *bis* Regulation, whose rules on child abduction supplement those already laid down in the Hague Convention, likewise refers in its Preamble to the best interests of the child (see paragraph 41 above), while Article 24 § 2 of the Charter of Fundamental Rights emphasises that in all actions relating to children the child's best interests must be a primary consideration (see *X v. Latvia*, cited above, § 97).

53. In the specific context of the present case, the Court reiterates that it does not propose to substitute its own assessment for that of the domestic courts. That said, notwithstanding the State's margin of appreciation, the Court must satisfy itself that the decision-making process leading to the adoption of the impugned measures by the domestic courts was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (*ibid.*, § 102, with further references; see also *Blaga v. Romania*, no. 54443/10, § 67, 1 July 2014).

(b) Application of those principles to the facts of the case

(i) On the existence of an interference

54. Turning to the circumstances of the present case, the Court considers that the decision of 30 April 2018, whereby the County Court ordered the return of the applicant's children to France (see paragraphs 19 to 22 above), constituted interference with her right to respect for her family life. At that time the children were living with the applicant, who exercised parental authority, albeit jointly with X (see paragraph 7 above). The decision at issue was upheld by the Bucharest Court of Appeal on 9 August 2018 (see paragraph 23 above).

55. It now remains to be determined whether the interference was "in accordance with the law", pursued one or more legitimate aims and was "necessary in a democratic society" (see *Andersena*, cited above, § 113).

(ii) Whether the interference was "in accordance with the law"

56. The Court observes that the interference was provided for by law, namely by Articles 3 and 12 of the Hague Convention as ratified by the respondent State by means of Law no. 100/1992 (see paragraph 39 above). On this point, the Court also notes that as member States of the EU both States are bound by the Brussels II *bis* Regulation (see paragraph 41 above),

which is thus applicable in the present case (see, *mutatis mutandis*, *K.J. v. Poland*, no. 30813/14, § 58, 1 March 2016).

(iii) *Whether the interference pursued a legitimate aim*

57. The Court notes that the County Court acted in what it considered to be the pursuit of the legitimate aim of protecting the rights and freedoms of the children (see, *mutatis mutandis*, *Vladimir Ushakov v. Russia*, no. 15122/17, § 87, 18 June 2019, and *Blaga*, cited above, § 74), an aim that is consistent with the protection of the rights and freedoms of others as provided for by Article 8 § 2 of the Convention.

(iv) *Whether the interference was “necessary in a democratic society”*

58. Lastly, the Court must determine whether the interference in question was “necessary in a democratic society” within the meaning of Article 8 § 2 of the Convention, interpreted in the light of the relevant international instruments, and whether when striking a balance between the competing interests at stake the authorities gave appropriate weight to the children’s best interests, within the margin of appreciation afforded to the State in such matters (see the case-law quoted in paragraph 53 above). In order to do so, the Court will have regard to the reasoning advanced by the County Court for its decision of 30 April 2018 (see paragraphs 19 to 22 above).

59. The first element of the applicant’s complaint is the manner in which the County Court assessed the scope of her parental rights, notably the right to establish the children’s residence. The applicant contested the findings of the County Court, arguing that she had the right to move to Romania with the children, as their residence had been established as being with her and she had informed X of the change of residence (see paragraph 45 above). The Government disputed that statement and referred to the County Court’s findings (see paragraph 49 above).

60. The Court must reiterate that the concept of custody rights, within the meaning of the Hague Convention, has an autonomous meaning since it has to be applied to all the States Parties to that Convention and may be defined differently in their various legal systems (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 65-68 and 102, ECHR 2010). In addition it is noteworthy that, even though in principle the Hague Convention applies only to breaches of custody rights, it can be seen from its Preamble and from Article 1 (b) and Article 21 (see paragraph 39 above) that it also seeks to protect access rights (*ibid.*, § 104).

61. In the present case, in addition to the joint exercise of parental authority, the French courts granted X contact rights with the children as well as the right to be consulted in any matters concerning their welfare (see paragraph 7 above). The County Court examined in detail the case under the

Hague Convention and found that the children were to be returned to France (see paragraph 19 above). The Court sees no need to depart in the present case from the findings reached by the County Court in its decision of 30 April 2018.

62. The fact that on 21 November 2017 the Paris Court of Appeal dismissed the request made by X for the return of the children (see paragraph 17 above) does not alter this conclusion, in so far as those proceedings were not instituted under the provisions of the Hague Convention but concerned the attribution of custody within the meaning of the concept in French law, and the determination of the children's residence. For this reason they fall outside the scope of the current examination.

63. Moreover, it is also clear from the applicant's own behaviour that she had been aware when she took the decision to move to Romania with the children that she could not do so without the father's consent or a court order. According to the applicant, she had informed X of her intentions (see paragraph 13 above) and she sought the approval of the court that awarded custody (see paragraph 16 above). However, nothing in the file indicates that at the time when she changed the children's residence to Romania either X or the court consented to that change.

64. There is thus no doubt in the present case that the children's removal from France, which hindered the possible exercise by the father of the contact rights that he had been granted, was unlawful for the purpose of the Hague Convention.

65. The Court will now turn its attention to the second element of the applicant's complaint, namely the manner in which the domestic courts examined the exceptions to return invoked by the applicant under Article 13 of the Hague Convention (see paragraph 46 above).

66. In this connection the Court reiterates that under Article 13, first paragraph, (b), of the Hague Convention, the courts examining the return request are not obliged to grant it if "if the person, institution or other body which opposes its return establishes that ... there is a grave risk". It is the parent who opposes the return who must, in the first place, adduce sufficient evidence to this effect. In the instant case, it was therefore for the applicant to provide sufficient evidence to substantiate her allegations, which, moreover, had to concern the existence of a risk specifically described as "grave" by Article 13, first paragraph, (b) (see *X v. Latvia*, cited above, § 116).

67. Turning to the facts of the present case, the Court notes that the County Court examined the whole family context including the allegations of violence perpetrated by the father (see paragraph 20 above). The domestic court took into account the evidence presented by the applicant as well as the relevant court decisions rendered by the French courts and, based on that evidence, considered that the allegations made by the applicant were unsubstantiated. In addition, the court was prepared to seek

international cooperation to ensure the children's safety in France (see paragraph 20 above *in fine*), in line with the principle of mutual trust between EU member States (see *Royer v. Hungary*, no. 9114/16, § 50, 6 March 2018).

68. Furthermore, the Court observes that the County Court examined the evolution of the children's situation since their relocation to Romania and took into account the fact that they were integrated in their new environment (see paragraph 22 above). The Court is satisfied that the County Court identified the children's best interests and considered them when deciding not to give significance for the purpose of the Hague Convention to the children's integration in their new environment. In this respect, the Court cannot but note that throughout their stay in Romania, the children maintained contact with France and the French culture, which remained present even in their new environment. In particular, they continued their education in French (see paragraph 15 above) and, according to the applicant, visited France twice since their relocation to Romania: first with their father and then with the applicant (see paragraph 24 above). The Court also notes that the applicant's stay in Romania was only intended to be temporary (see paragraph 13 above). For these reasons, the Court is prepared to accept that in addition to being integrated in their new environment in Romania, the children continued to remain linked to France; this fact would facilitate their return to their habitual environment in that country. The Court is thus satisfied that the County Court's decision in this respect, albeit brief, convincingly established the children's best interest in this respect.

69. Lastly, the Court notes that the applicant criticised the County Court for deciding on the children's fate without interviewing them directly (see paragraph 46 above). In this connection the Court observes, however, that Article 13 § 2 of the Hague Convention only requires a judge to take into account a child's views if the said judge finds that the child has attained a sufficient degree of maturity (see paragraph 39 above). In any case, the Court has previously found that the domestic courts may be called upon to examine other aspects of the child's circumstances, in addition to the child's stated wishes, before exercising their discretion to refuse to order a return (see, *mutatis mutandis*, *Blaga*, cited above, § 80).

70. In the case at hand, the County Court gave reasons for its decision not to interview the children (see paragraph 21 above). Observing that the children were six and three years old at that time (see paragraph 5 above), the Court accepts the arguments put forward by the domestic court in this regard.

71. In sum, the Court does not find any indication of arbitrariness in the manner in which the County Court assessed the allegations of grave risk made by the applicant. Throughout its in-depth assessment of the circumstances brought before it, the court considered what was in the

children's best interests, which in cases such as the present one must be of primary consideration (see *X v. Latvia*, cited above, §§ 95-96).

72. As to the impact which, in the applicant's view, the County Court's decision had on the custody arrangements (see paragraph 47 above), the Court cannot but note that on 22 October 2019 the Paris Court of Appeal decided to place the children with their father not because of the Romanian courts' ruling on the proceedings for return lodged under the Hague Convention, but as a consequence of the applicant's own behaviour and her opposition to any contact between X and the children (see paragraph 35 above). There are thus no grounds to criticise the County Court or the Romanian authorities in general in this regard.

73. In the light of the above findings, the Court concludes that the interpretation and application by the domestic courts of the provisions of the Hague Convention and of the Brussels II *bis* Regulation were sufficient to secure the guarantees of Article 8 of the Convention, and that the interference with the applicant's right to respect for her family life was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

74. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 7 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Yonko Grozev
President