



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

FOURTH SECTION

CASE OF SIMONA MIHAELA DOBRE v. ROMANIA

(Application no. 8361/21)

JUDGMENT

Art 8 • Family life • Domestic courts' refusal to allow applicant and her child to move residence to Canada, in absence of father's consent, based on child's best interests • Relevant and sufficient reasons • Fair balance struck between competing interests at stake

STRASBOURG

21 March 2023

FINAL

21/06/2023

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

In the case of Simona Mihaela Dobre v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Branko Lubarda,

Armen Harutyunyan,

Anja Seibert-Fohr, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 8361/21) 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 Romanian national, Ms Simona Mihaela Dobre (“the applicant”), on 1 February 2021;

the decision to give notice of the application to the Romanian Government (“the Government”);

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

the parties’ observations;

Having deliberated in private on 29 November 2022 and 28 February 2023,

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

INTRODUCTION

1. The application concerns the domestic courts’ refusal to allow the applicant’s request for permission to move her and her child’s residence to Canada, where she argued she would be able to offer him better living conditions and better access to education. The applicant invoked Article 8 of the Convention, which safeguards the right to respect for family life.

THE FACTS

2. The applicant was born in 1976 and lives in Bucharest. She was represented first by Ms M. Drăghici and then by Mr A. Amuza, lawyers practising in Bucharest.

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

4. The facts of the case may be summarised as follows.

I. DIVORCE AND CONTACT SCHEDULE

5. The applicant and X had a child, Y, born in 2008. The couple married in 2010 but separated in 2014. Upon the parent's separation, Y stayed with his mother. The applicant also has an older child, E, from a previous relationship.

6. According to the applicant, Y suffered from an eating disorder which made him sensitive to certain food textures and flavours, and required a carefully planned diet, with which she had provided him since early childhood.

7. By a decision of 9 February 2016 the Bucharest District Court granted the applicant and X a divorce. That decision was amended by a final decision of 22 November 2017 of the Bucharest County Court. The courts took note of an agreement reached by the parties regarding the sharing of parental authority, assigning Y's residence with the applicant and determining a schedule for X's contact with Y. X also agreed to pay child support to the applicant in respect of their son. X was entitled to take Y to his home every other week from Friday evening until Sunday evening, and was allowed to spend time with him at Christmas, New Year and Easter, spend one month exclusively with him in summer and spend half of the time with him during each of the other school holidays. X was to confirm forty-eight hours in advance whether he would take over care of the child according to the contact schedule each time he was scheduled to do so.

II. PROCEEDINGS BEFORE THE DISTRICT COURT

8. On 5 January 2018 the applicant informed X of her intention to move to Canada with Y, but on 15 January 2018 X told her that he was opposed to this, arguing that if they moved abroad, Y would lose contact with his father and his extended family.

9. On 18 January 2018 X brought an action in the Bucharest District Court seeking that custody of the child be assigned to him and that responsibility for supporting the child financially be shared between the two parents. He argued mainly that the applicant had systematically failed to consult him on matters concerning Y or to involve him in decisions concerning the child.

10. On 16 March 2018 the applicant submitted to the court her response to X's allegations, and at the same time brought a counteraction against him. She argued that Y's interests would be better served if he remained with her. She argued that X had never become involved in Y's life and upbringing and had behaved irresponsibly in respect of Y's needs in terms of safety and health. He had neglected Y's special dietary needs and had imposed on Y his own will, ignoring Y's wishes and choices. She denied ever having tried to block contact between X and Y, even when those visits had taken place outside the schedule approved by the court (see paragraph 7 above). She

further explained that after her separation from X, Y had never remained alone overnight with his father because Y had not wanted to and because X had never requested that. She submitted several email exchanges from June 2016 to February 2018 in which she had asked X if he intended to come to pick the child up and he had refused for various reasons. On many occasions, she added, X had not wanted to visit Y when he had been in hospital or to accompany him to medical appointments.

11. On the same date, the applicant also brought a counteraction, seeking the court's authorisation for her to move with the child to Canada. She asserted that the child's best interests would be better served economically, socially and educationally if he moved to Canada, and made extensive arguments in support of her assertion.

12. She submitted that she held a permanent residence permit for Canada, had been offered a job there and had sufficient financial means with which to sustain herself and Y in that country and that her education afforded her access to well paid jobs. She also had friends living there.

13. She explained that when they had visited Canada, Y had seen the house she intended to buy for them and had liked it. There was a suitable school for Y, who was fluent in English, near the house that she intended to buy. However, she was unable to register Y with a school in Canada without X's consent.

14. In this regard, she also asked that parental authority be granted exclusively to her, as communication with X was impossible and it was difficult to identify the scope of the shared parental authority (that is to say the scope of the matters on which both parents should consult each other) in the child's day-to-day life.

15. Alternatively, if the court considered that parental authority should continue to be shared, she asked that the court grant her permission to settle in Canada with the child, thus overriding the father's objections.

16. As for the relationship between X and Y, she noted that there were direct flights from Canada to Romania and that X was used to travelling as he was already travelling frequently for work. She was also open to other forms of contact and suggested, as an example, the benefits and ease of videoconferencing.

17. The applicant provided the court with a set of questions to be addressed to X about his relationship with Y. In his answers X acknowledged that he had never taken Y to school or to a doctor's appointment, that Y had never stayed overnight in his home or spent holidays with him, and that he did not see Y regularly – sometimes they saw each other every weekend and sometimes less often. He blamed some of those issues on the applicant.

18. The District Court ordered a psychological assessment of the family. The court-appointed psychologist was instructed to identify Y's actual needs, determine Y's views on a potential change to his place of residence (as requested by both the father and the mother – see paragraphs 9 and 11 above)

and give his opinion on whether a change of residence would serve Y's needs. The psychologist was also requested to assess the parental style and abilities of each parent and whether the child had been subjected to parental alienation (that is to say whether the mother – as alleged by the father – had alienated the child from him).

19. From 12 November until 2 December 2018 the court-appointed psychologist held several meetings with the applicant, X and Y to assess each of them individually and also their relationships with each other. She sent her report to the court on 11 January 2019.

20. During their respective interviews with the psychologist, both parents talked about Y's eating disorder. X blamed the situation on the applicant who, according to him, had never allowed the child to eat properly and adequately for his age. Y also told the psychologists that "his brain simply did not allow [him] to taste certain foods".

21. The psychologist observed that Y was ambivalent about his parents' respective proposals to change his place of residence, but showed a preference for moving to Canada. However, the psychologist noted that Y might not have been aware of the consequences of such a change. She explained that Y's need for emotional reassurance was stronger with respect to his mother than to his father, and that his mother's behaviour and attitudes served as developmental benchmarks for him. Although the father could adequately respond to Y's need for autonomy, the psychologist did not recommend moving the child's residence to that of his father, as Y was more emotionally attached to his mother and half-brother, E (see paragraph 5 above), than to his father.

22. For these reasons, the psychologist considered that a change in the child's residence – either to that of his father or to Canada with the applicant – would not be beneficial for the child. She recommended counselling to help him achieve better sensory integration ("*recomandăm psihoterapie centrată pe integrarea senzorială a minorului*"). She also recommended counselling to help the applicant learn how to support and encourage the child to achieve an age-appropriate level of autonomy. Lastly, the psychologist recommended to the parents that they avoid involving their child in their conflicts and mutual dissatisfaction.

23. On 15 January 2019 the court, sitting in camera, interviewed Y. He told the judge of the court that he liked school, had friends, visited his father as often as he wanted but that he always returned home for the night. He preferred living with his mother and would like to move to Canada. He told the judge that he had spent a summer holiday in Canada with his mother and that he had enjoyed the nature and touristic destinations visited. He was confident that his father, who already travelled around the world, would be able to come to visit him in Canada and spend time with him there.

24. The District Court also ordered a social inquiry report from the Bucharest Directorate General for Social Welfare and Child Protection ("the

child protection authority”) but refused to order a similar assessment of the applicant’s proposed accommodation arrangements situation in Canada (as it had been requested to do by the applicant), as it considered that it was irrelevant for the case.

25. The court gave its decision on 18 February 2019, refusing all requests lodged by the parents during the father’s action and the mother’s counteraction.

26. The court considered that the applicant had not demonstrated that there were serious reasons to justify depriving the father of his parental authority. It further noted that although the child spent a very limited amount of time with his father, there was no evidence of the latter being verbally abusive with him or systematically verbally abusive to the applicant, or of him being negligent or refusing to contribute financially to the child’s upbringing. At the same time, the court considered that, although the applicant’s actions had contributed to the child’s alienation from his father and had prevented him from exercising as much autonomy as his age would allow, changing Y’s residence to that of his father would go against his best interests and would not correspond to his emotional needs, given the role his mother played in providing him with security and emotional comfort. The court considered that a change in residence would not be beneficial for the child even assuming that the mother had a negative influence on his eating disorder.

27. The court also dismissed the applicant’s counteraction seeking the court’s authorisation for her to move with Y to Canada (see paragraphs 11-16 above). It noted that although the child had told the court that he wanted to move to Canada (see paragraph 23 above), such a change would not serve his interests. The court noted that Y’s arguments for wanting to move – for example, he had liked the touristic landmarks that he had visited, and had appreciated people’s good conduct while travelling on public transport – were not decisive, given the applicant’s young age and level of maturity.

28. Referring to the psychologist’s report (see paragraphs 19-22 above), the court pointed out that it was possible that Y did not understand the consequences of moving to Canada – in particular as he perceived reality through the medium of his mother’s attitudes. At that moment, the move to Canada would not serve the needs of the child, whose priority was to gain in autonomy, responsibility and independence. Such a move would redirect his focus onto adapting to the new environment rather than allowing him to concentrate on his emotional development.

29. The court also considered that the move to Canada would deprive Y of the presence of his father, and also of E (who did not intend to move to Canada with his mother), and of their positive influence on his psychological development.

III. APPEAL PROCEEDINGS

30. Both parents appealed. The applicant argued that the child's situation warranted the moving of his residence to Canada and that owing to his age and degree of maturity, his opinion should have counted for more in the reasoning of the court. She pointed out that the child had visited both their intended location and his future school in Canada, and was thus able to make an informed choice.

31. She reiterated that she held a permanent residence permit for Canada, had been offered work, had secured accommodation for her and the child and had sufficient funds to buy property for them in Canada.

32. She asked again for a social inquiry report to be ordered in respect of her proposed accommodation arrangements in Canada. The court refused to order it, as it considered that the inquiry could not shed light on the living environment (as the applicant and her son did not live there); the question thus remained hypothetical and irrelevant.

33. The applicant submitted to the appellate court two domestic decisions whereby the courts had allowed an application for permission to move a child's residence to England, where his mother and her husband lived and worked (Tulcea District Court – decision of 25 October 2013 – and Tulcea County Court – final decision of 7 May 2014).

34. By a final decision of 7 August 2020 the Bucharest County Court upheld the decision of 18 February 2019 (see paragraphs 25-29 above), for the same reasons as those detailed in the latter decision. The County Court concluded that, bearing in mind the child's best interests, the applicant had not given specific reasons that would warrant moving her and her son's residence to Canada at the expense of the child's right to gain in autonomy and maintain his relationship with his father and older brother.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The Children's Act

35. The relevant parts of the Children's Act (Law no. 272/2004 on the protection and promotion of the rights of the child) read:

Article 1

“1. This Law regulates the legal framework on respect for [and] the promotion and safeguarding of children's rights.

2. Public authorities, accredited private providers and natural persons and legal entities responsible for child protection are obliged to respect, promote and safeguard the rights of the child [as] set out in the Constitution and [Romania's] laws, in accordance with the provisions of the United Nations Convention on the Rights of the

Child, ratified by Law no. 18/1990 ... with subsequent amendments, and of the other relevant international covenants to which Romania is party.”

Article 2

“1. This Law [and] any other regulations adopted [in order to further] respect for and [to promote] the rights of the child – as well as any judicial instrument issued or, as the case may be, concluded in this field – shall be subordinated to the principle of [giving priority to] the best interests of the child, which takes precedence.

2. The best interests of the child encompass the child’s rights to normal physical and moral development, to socio-emotional balance and to family life.

3. The principle of [giving priority to] the best interests of the child is [connected] to the rights and obligations of the child’s parents, other legal guardians and any persons legally responsible for the child’s care.

4. The principle of [giving priority to] the best interests of the child shall prevail in respect of all actions and decisions concerning children taken by public authorities and accredited private providers, as well as in court cases.

5. The persons referred to in paragraph 4 are obliged to involve the family in all decisions, actions and measures concerning the child and to support the care, upbringing, development and education of the child within the family.

6. In determining the best interests of the child the following aspects shall be taken into account, as a minimum:

- a) the need for physical and psychological development, education and health, security and stability and [to] belong to a family;
- b) the child’s opinion, depending on [his or her] age and degree of maturity;
- (c) the child’s background, taking into account in particular any instances of abuse, neglect, exploitation or any other form of violence against the child, as well as potentially risky situations that may arise in the future;
- (d) the ability of the parents or carers to meet the child’s specific needs;
- (e) the maintenance of personal relationships with persons to whom the child has developed an attachment.”

B. The Civil Code

36. Article 497 of the Civil Code read:

“(1) A child’s residence, together with the parent with whom the child lives, can only be changed with the prior consent of the other parent if it affects the exercise of parental authority or rights.

(2) In the event of disagreement between the parents, the ... court shall decide in accordance with the best interests of the child, taking into account the conclusions of the psychosocial inquiry report and after hearing the parents. The child must be heard ... ”

II. INTERNATIONAL LAW MATERIAL

37. The relevant provisions of the United Nation Convention on the Rights of the Child (“the CRC”) and the European Union Charter – as well as UN material relating to the concept of what is in a child’s best interests – are described in *Penchevi v. Bulgaria*, no. 77818/12, §§ 32-39, 10 February 2015.

38. In particular, the following provisions of the CRC are of relevance in the present case:

Article 2

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

Article 3

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

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 6

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

Article 12

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

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or

through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

39. Romania ratified the CRC in 1990.

40. In addition, several “General Comments” on the CRC relevant to the subject matter of the present case are presented in the following paragraphs.

41. General Comment No. 5 (2003), on the general measures of implementation of the CRC reads, in so far as relevant:

“12. The development of a children’s rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.

Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children. The article refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.

Article 6: the child’s inherent right to life and States parties’ obligation to ensure to the maximum extent possible the survival and development of the child. The Committee expects States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.

Article 12: the child’s right to express his or her views freely in “all matters affecting the child”, those views being given due weight. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.

Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If

consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to “listen” to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children’s rights.

One-off or regular events like Children’s Parliaments can be stimulating and raise general awareness. But article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views. The emphasis on “matters that affect them” in article 12 (1) implies the ascertainment of the views of particular groups of children on particular issues - for example children who have experience of the juvenile justice system on proposals for law reform in that area, or adopted children and children in adoptive families on adoption law and policy. It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions. In the early years of the Convention, NGOs had played a notable role in pioneering participatory approaches with children, but it is in the interests of both Governments and children to have appropriate direct contact.”

42. General Comment No. 12 (2009) to the CRC on the right of the child to be heard reads, in so far as relevant:

“2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child’s best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.”

43. General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 § 1 of the CRC) reads, in so far as relevant:

“1. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context.

...

6. The Committee underlines that the child’s best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

...

14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:

(a) The obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;

(b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.

(c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

...

32. The concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.”

44. In paragraphs 43 et seq. of General Comment No. 14, the Committee on the Rights of the Child identified the elements that must be taken into account when assessing and determining a child's best interests. They

include: the child's views, the child's identity, maintaining family relations, the protection and care of the child, and the child's education and health.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicant complained that the domestic courts' decision refusing her application to be permitted to move her and her child's residence to Canada, had disregarded the principle of giving priority to the child's best interests and had breached her right to respect for her private and family life, as enshrined in Article 8 of the Convention, which, in so far as relevant, reads:

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

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

A. Admissibility

46. 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' observations

(a) The applicant

47. The applicant considered that the courts had not properly identified her child's best interests in relation to her application for permission to move their residence to Canada. According to the applicant, the courts had failed to properly balance and correctly assess the conflicting interests at stake – namely: on the one hand, the child's interest in living with his mother and receiving a proper education, and, on the other hand, the father's right to maintain contact with him. She considered that the authorities had prioritised the father's interests over those of the child, given that they had forced them to live in Romania for the sole reason of ensuring that X had easy access to the child.

48. She pointed out that Y had consistently expressed the desire to move to Canada and had even explained what it was that he had liked there. However, his wishes had been disregarded, despite his being considered mature enough to be heard by the courts that had decided on the matter.

49. Lastly, the applicant pointed out that the trial had taken too much time (two years and seven months), bearing in mind what had been at stake for them – in particular for the child.

(b) The Government

50. The Government argued that the authorities had correctly identified Y's best interests and that those interests had included maintaining a stable relationship with his father. If the child had been allowed to move to Canada his father would have been completely removed from his life and his right to actively participate in all aspects of Y's life would have been compromised. Contact between them and participation in shared activities would also have been affected. Those factors would have had an impact on Y's psychological development.

51. Furthermore, the domestic courts had taken the applicant's arguments into account and had provided her with an answer to all her queries. They had also considered Y's position and level of maturity. In the Government's view, the applicant had failed to give serious reasons indicating that it would be in Y's best interests to move to Canada.

2. The Court's assessment

(a) General principles

52. The relevant principles concerning interference with the right to respect for family life are summarised in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, §§ 202-04, 10 September 2019):

“202. The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision. Any such interference constitutes a violation of this Article unless it is ‘in accordance with the law’, pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as ‘necessary in a democratic society’ (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII; and *Johansen v. Norway*, 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 52).

203. In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, among many other authorities, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017, § 179). The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (*ibid.*, § 181).

204. In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see,

among other authorities, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic [v. Sweden]*, no. 10592/12, 22 October 2015), § 77, and *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX)."

53. Within the context of its examination of the present case, the Court does not propose to substitute its own assessment for that of the domestic courts. Nevertheless, it 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 (see *Cînta v. Romania*, no. 3891/19, § 42, 18 February 2020, and *X v. Latvia* [GC], no. 27853/09, § 102, ECHR 2013, with further references).

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

54. The Court observes that the possibility for the applicant to live at the place of her choosing is a fundamental consideration that clearly falls within the scope of her private life (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 71, ECHR 2007-I, with a further reference). Moreover, the possibility for her to continue to live together with her son, as decided by the courts (see paragraphs 7, 26 and 34 above) also falls within the sphere of family life within the meaning of Article 8 of the Convention (see, *mutatis mutandis*, *Penchevi v. Bulgaria*, no. 77818/12, §§ 59, 10 February 2015). Bearing in mind that the applicant raises primarily arguments connected to the right to respect for her family life (see paragraphs 47-49 above), the Court considers it opportune to examine the case from that point of view alone.

(i) Whether there was an interference

55. The Court observes that the domestic proceedings at stake in the present case ended with the refusal of the County Court to allow the applicant and her child to move their residence to Canada (see paragraph 34 above). As a consequence, the applicant was unable to organise her family life as she wished and as she considered best for her son.

56. The Court thus considers that there was an interference with the applicant's right to protection of her family life, under Article 8.

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

57. The Court observes that Article 497 of the Civil Code allows a court to decide on a child's residence in the absence of the parents' agreement on the issue, including in cases of shared parental authority (see paragraph 36 above). The interference with the applicant's right to respect for her family life was thus provided for by law.

(iii) Whether the interference pursued a legitimate aim

58. The Court accepts that the interference pursued the legitimate aim of protecting the rights of others – more precisely the right of X and Y to maintain contact with each other.

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

59. It remains for the Court to determine whether the interference in question was “necessary in a democratic society” within the meaning of Article 8 § 2 of the Convention – that is to say whether, when striking the balance between the competing interests at stake, namely the applicant’s interest in moving to Canada with Y, and Y’s interests to maintain contact with his father and older half-brother E, the authorities took appropriate account of the child’s best interests within the margin of appreciation afforded to the competent national authorities, in the light of the nature of the issues and the seriousness of the interests at stake (see *Strand Lobben and Others*, cited above, § 211, and *Penchevi*, cited above, § 66). In that connection, the Court reiterates that there is a broad consensus, including in international law, that in all decisions concerning children, their best interests are of paramount importance (see, *Strand Lobben and Others*, cited above, § 204).

60. In this respect, the Court notes that, under the prescription of domestic law, the courts deciding on the change of a child’s residence must take into account the conclusions of psychological examinations and social inquiries and hear the parents and the child (see paragraph 36 above).

61. Importantly, the domestic decision must be guided by the principle of giving priority to the child’s best interests, a rule that permeates both the domestic legislation (see paragraph 35 above) and the international law (see paragraphs 37 to 44 above). Moreover, precise guidelines on how to identify and assess the child’s best interests are present in both domestic and international law. In particular, in accordance with General Comment No. 14 on the CRC the courts must determine and assess the child’s best interests in light of the specific circumstances of the child concerned, taking into consideration his or her personal context, situation and needs (see paragraphs 43-44 above). This international obligation is reflected in Article 2 of the Children’s Act, which offers the Romanian courts guidelines on how to identify and assess the child’s best interests (see paragraph 35 above).

62. In the present case, the Bucharest District Court interviewed the child, as required by the applicable law – namely, Article 2 § 6 (b) of the Children’s Act (see paragraphs 23 and 35 above). The Court is satisfied that the child’s wishes were considered and given due weight, as required by Article 8 of the Convention (see also, in this sense, the CRC – cited in paragraph 38

above – , and the above-mentioned General Comments Nos. 5 and 12 – cited in paragraphs 41 and 42 above).

63. Furthermore, the report on the above-mentioned psychological assessment of Y's family played a central role in the domestic courts' reasoning (see paragraphs 28 and 34 above). That report was ordered by the courts in the course of the proceedings giving rise to the present application (see paragraph 18 above; also contrast *Strand Lobben*, cited above, § 223). The expert was tasked with assessing Y's needs and determining his views on a potential change to his place of residence – the very issue lying at the heart of the action brought by X before the domestic courts (see paragraph 9 above), the applicant's counteraction (see paragraph 11 above) and of the instant application.

64. The domestic courts relied on the expert's indication that Y needed to achieve an age-appropriate level of autonomy and had regard to her advice against a change in Y's place of residence be it either to that of his father or to Canada with the applicant (see paragraph 22 above). The Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Strand Lobben*, cited above, § 213 and the case-law cited in paragraph 53 above). In the light of the above, the Court has no reason to depart from the domestic courts' assessment of the views expressed by Y (see paragraphs 27-28 above).

65. The Court further accepts that the domestic courts had to ensure that the ties between Y and his father would not be severed by the child's residence being moved to Canada, as that might have gone against Y's best interests (see, among many other authorities, *Gnahoré*, cited above, § 59). The same applies for the ties between Y and his older half-brother E who had a positive influence on Y's psychological development (see paragraphs 29 and 34 above). In this respect, the Court is satisfied that, in reaching their decision, the domestic courts, relying on the conclusions of the psychological assessment, identified what would be the most beneficial solution for the child and assessed the impact that the change of residence would have in practice on contact between Y and his family members X and E (see paragraphs 18 to 22 and 28 above).

66. The Court further notes that the domestic courts examined the information presented by the applicant concerning her accommodation prospects and financial status in Canada, and Y's schooling options in that country. It has no reason to depart from the courts' finding that the applicant had not submitted specific reasons justifying moving her son's residence to Canada (see paragraph 34 above).

67. Lastly, the Court observes that the applicant raised in her observations the issue of the length of the proceedings aimed at deciding on whether to allow a change to Y's place of residence (see paragraph 49 above). However, at that time there was no uncertainty as to the child's legal situation, and furthermore throughout the proceedings the exercise of the applicant's

parental rights remained unhindered. For these reasons, and assuming that the new submissions were merely an elaboration of the applicant's original complaint, the Court does not consider that the duration of the proceedings, namely a little less than two years and seven months (see paragraphs 9 and 34 above), is in itself decisive for the question whether the domestic authorities complied with Article 8 (contrast *E.S. v. Romania and Bulgaria*, no. 60281/11, §§ 64-68, 19 July 2016).

68. In view of the foregoing considerations, and having regard to the margin of appreciation (see paragraph 59 above), the Court concludes that when refusing the request to allow the applicant to move to Canada with her son, the domestic courts struck a fair balance between the competing interests at stake, giving due weight to the best interests of the child, which they had duly identified and assessed, and they provided relevant and sufficient reasons for their decisions.

69. 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 21 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President