

EUROPEAN COURT OF HUMAN RIGHTS

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JUDGMENT IN THE CASE OF IGNACCOLO-ZENIDE v. ROMANIA

In a judgment delivered at Strasbourg on 25 January 2000 in the case of Ignaccolo-Zenide v. Romania, the European Court of Human Rights held by six votes to one that there had been a violation of Article 8 (right to respect for family life) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 186,000 French francs (FRF) for non-pecuniary damage and for legal costs and expenses.

1. Principal facts

The applicant, Rita Ignaccolo-Zenide, a French national, was born in 1953 and lives at Metz (France).

Following her divorce a French court ruled, in a judgment that had become final, that the two children of the marriage were to live with her. In 1990, during the summer holidays, the children went to stay with her former husband; he held dual French and Romanian nationality and lived in the United States. However, at the end of the holidays, he refused to return them to the applicant. After changing addresses several times in order to elude the American authorities, to whom the case had been referred under the Hague Convention of 25 October 1980 on International Child Abduction, he managed to flee to Romania in March 1994, where he has lived ever since. On 14 December 1994 the Bucharest Court of First Instance issued an injunction requiring the children to be returned to the applicant. However, her efforts to have the injunction enforced proved unsuccessful. Since 1990 the applicant has seen her children only once, at a meeting organised by the Romanian authorities on 29 January 1997.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 22 January 1996. Having declared the application admissible, the Commission adopted a report on 9 September 1998 in which it expressed the unanimous opinion that there had been a violation of Article 8 of the Convention. The case was brought before the Court by the Romanian Government on 27 January 1999.

In accordance with the transitional provisions of Protocol No. 11 to the Convention, a panel of the Grand Chamber of the Court decided on 31 March 1999 that the case should be examined by a Chamber constituted within the first Section of the Court. On 14 September 1999 the Chamber held a hearing in public.

Judgment was given by that Chamber, composed as follows:

Elisabeth **Palm** (Swedish), *President*,
Gaukur **Jörundsson** (Icelandic),
Riza **Türmen** (Turkish),
Josep **Casadevall** (Andorran),
Wilhelmina **Thomassen** (Dutch),
Rait **Maruste** (Estonian), *Judges*,
Ana **Diculescu-Şova**, *ad hoc Judge*,

and also Michael **O’Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained that the failure of the Romanian authorities to enforce the injunction issued by the Bucharest Court of First Instance on 14 December 1994 constituted a breach of her right to respect for her family life, as guaranteed under Article 8 of the Convention.

Decision of the Court

Article 8 of the Convention

The Court reiterated that although the essential object of Article 8 was to protect the individual against arbitrary action by the public authorities, it also imposed positive obligations inherent in an effective “respect” for family life. Article 8 included a right for parents to have measures taken with a view to their being reunited with their children and an obligation for the national authorities to take such measures. That obligation was not absolute, since some preparation might be needed prior to the reunion of a parent with a child who has been living for any length of time with the other parent. The nature and extent of the preparation depended on the circumstances of each case and any obligation the authorities had to apply coercion in this area was limited, since the interests and rights and freedoms of all concerned, and in particular the paramount interests of the child and his rights under Article 8 of the Convention, had to be taken into account. Where contact with the parent might threaten those interests or interfere with those rights, it was for the national authorities to strike a fair balance between them.

The Court considered that the positive obligations which Article 8 of the Convention imposed on the Contracting States to help reunite parents with their children had to be construed in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. That approach was particularly relevant to the case before the Court, since the respondent State was a party to that instrument.

¹ This summary by the registry does not bind the Court.

The decisive factor for the Court was therefore to determine whether the national authorities had taken all reasonable steps to facilitate the enforcement of the order of 14 December 1994.

Although first attempts at enforcement of the injunction were made promptly, in December 1994, the Court noted that as from January 1995 the bailiffs made only two further attempts: in May and December 1995. It noted, too, that the authorities took no action between December 1995 and January 1997 and that no satisfactory explanation for that inactivity had been forthcoming from the Government.

Moreover, the authorities had not done the groundwork necessary for the enforcement of the order, as they had failed to take coercive measures against D.Z. or to prepare for the children's return by, for example, arranging meetings of child psychiatrists and psychologists. No social workers or psychologists took part in the preparation of the meeting on 29 January 1997. The Court noted, lastly, that the authorities had not implemented the measures set out in Article 7 of the Hague Convention to secure the children's return to the applicant.

The Court found that the Romanian authorities had failed to take adequate and sufficient steps to comply with the applicant's right to the return of her children and had thus infringed her right to respect for her family life, as guaranteed by Article 8. The Court therefore concluded that there had been a violation of Article 8.

Article 41 of the Convention

The Court held that the applicant must have sustained non-pecuniary damage as she alleged. Ruling on an equitable basis, it awarded her FRF 100,000 under that head.

It awarded the applicant FRF 86,000 for costs and expenses.

Judges Maruste and Diculescu-Şova expressed dissenting opinions and these are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.