

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

THIRD SECTION

DECISION

Application no. 49437/14
Rabiya AKDAĞ
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 18 October 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 4 July 2014,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Rabiya Akdağ, is a dual Dutch and Turkish national who was born in 1990 and lives in Vlaardingen. She was represented before the Court by Ms Y.M. Schrevelius, a lawyer practising in Rotterdam.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background

3. The applicant, who was born and grew up in the Netherlands, had a relationship in that country with Mr S., who is a Dutch national and who was born in Suriname. A son was born to them on 10 January 2012. Initially the child was given up for adoption. However, after three months the son was placed back with the applicant as the latter no longer wished to continue the adoption process. Mr S. then also got involved in the upbringing of the son. Mr S. acknowledged paternity on 16 April 2012. He obtained joint parental authority on 11 June 2012.

4. On 26 June 2012 the applicant and her son, who, like the applicant, has both Dutch and Turkish nationality, emigrated to Suriname to settle there with Mr S. The applicant, Mr S., and their son lived there with the parents of Mr S.

5. On 6 July 2013 the applicant returned to the Netherlands with her son. She initially stayed with Mr S.'s grandmother. Two weeks later, Mr S. followed the applicant back to the Netherlands. Their relationship ended soon after.

6. On 26 September 2013 the applicant lodged a criminal complaint against Mr S., as he was planning to take their son back to Suriname, allegedly without her permission. Mr S. was arrested at the airport on the same day and the son was returned to the applicant.

2. Proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention")

7. On 31 October 2013 Mr S. applied to the Regional Court (*rechtbank*) of The Hague for an order requiring the applicant, pursuant to Article 12 of the Hague Convention (see paragraph 22 below), to either return the son to Suriname or to hand in the son's valid travel documents so that he could take the child back to Suriname.

8. On 1 November 2013 the Regional Court ruled that the Rotterdam Youth Care Office (*Stichting Bureau Jeugdzorg*) should have temporary guardianship over the applicant's son until 22 November 2013. At the same time, the assessment of the application made by Mr S. was adjourned.

9. A preparatory hearing (*regiezitting*) was held on 14 November 2013. At this meeting, in the presence of the guardian (*voogd*) of the Rotterdam Youth Care Office, who submitted that it would be better if the parents mutually reached a solution and that the son was seemingly developing well, the applicant and Mr S. agreed to start a mediation process. However, on 18 November 2013 the Regional Court was informed that mediation had failed.

10. The Regional Court decided on 22 November 2013 to extend the temporary guardianship of the Rotterdam Youth Care Office until a decision was put into effect on the return of the son.

11. Another hearing was held on 5 December 2013 to obtain further statements from the applicant and Mr S. The applicant stated that she and Mr S. had intended to return to the Netherlands to resettle there, that she was the primary carer of her son, and that it was impossible for her to return to Suriname. Mr S. stated that he had not agreed to return to the Netherlands to settle there permanently, and added that the applicant had a residence permit in Suriname which allowed her to live and work there and, should she choose not to return to Suriname, he could take care of their son.

12. On 19 December 2013 the Regional Court refused Mr S.'s application for an order for the son to be returned to Suriname. At the outset the Regional Court noted that by virtue of section 11(1) of the International Child Abduction Implementation Act (*Uitvoeringswet internationale kinderontvoering*; hereafter "the Implementation Act") it had jurisdiction to deal with all cases concerning the forced return of an abducted child to the person who had parental authority over said child and the repatriation of that child from the Netherlands. It further noted that Mr S. had based his request for the son's return on the Hague Convention, and although Suriname was not a Contracting State, it observed that the Implementation Act also applied to situations of international abduction of children that were not covered by a convention. It also noted that section 13(3) of the Implementation Act provided that in situations which were not covered by a convention the judge could refuse the return request on the grounds set out in Article 12 paragraph 2, Article 13 and Article 20 of the Hague Convention. Therefore the Regional Court found that the Implementation Act allowed it to apply the Hague Convention by analogy in the case before it.

13. As regards the assessment of Mr S.'s application, the Regional Court held that it was undisputed that the son had been habitually resident in Suriname before his retention in the Netherlands and that joint parental authority was, or would have been, exercised during that period had this not been the case. The Regional Court noted that, contrary to her submissions in the proceedings at issue, the applicant had not said, in the statements given by her to the police on 26 September 2013 in relation to the criminal complaint she had made against Mr S., that the latter had consented to the child moving to, and living permanently in, the Netherlands. Having failed to explain her contradictory statements regarding any permission given by Mr S. for their son's resettlement in the Netherlands, the Regional Court found that documentary evidence introduced by the applicant, including an email reply from a company in the Netherlands to a job application made by Mr S. and a letter from a social housing cooperation, also in the Netherlands, about an outstanding payment, were insufficient to conclude that Mr S. had indeed given his prior permission to the applicant to take their son to the Netherlands. The Regional Court concluded that the son's retention by the applicant violated the parental authority of Mr S. and was

wrongful within the meaning of Article 3 of the Hague Convention (see paragraph 22 below).

14. With reference to Article 12 of the Hague Convention, the Regional Court noted that this provision required the immediate return of the child when a period of less than a year had lapsed between the child's retention and the submission of the return application, and that even in cases where more than a year had lapsed an immediate return may be ordered unless it was demonstrated that the child was rooted in its new environment. The Regional Court held that in the present case, where the period between the retention and the return application was less than a year, it did not have to assess whether the son was rooted in the Netherlands, and that his immediate return should be ordered, unless an exception as provided in Article 13 of the Hague Convention (see paragraph 22 below) applied.

15. Accordingly, the Regional Court next examined whether Article 13 of the Hague Convention stood in the way of an order being issued for the son's immediate return. It held, firstly, that it had not been established that Mr S. had subsequently acquiesced in the retention of his son (Article 13 (a) of the Hague Convention). Secondly, as to the question whether the return of the son would expose him to physical or psychological harm or otherwise place him in an intolerable situation (Article 13 (b) of the Hague Convention), the Regional Court observed that the applicant and Mr S. were young adults and that the pregnancy had not been planned, but that after the first three months of their son's life they had both assumed their parental roles. As the birth of their son had changed their study and work plans and there had been problems between, on the one hand, the applicant and Mr S. and, on the other, the couple and the applicant's family, they had decided to start a new life in Suriname, where the family of Mr S. were residing. The Regional Court noted that the applicant and Mr S. had not been able to build up an independent life in Suriname, where they depended on Mr S.'s family for both their income and housing. The applicant's return to Suriname would entail a return to the same situation of dependency. The Regional Court also noted that Mr S. had acknowledged that the applicant did not have independent accommodation and for the time being also no means of subsistence in Suriname. While the applicant would be able to obtain work in Suriname, it remained unclear if and when she would succeed in doing so and how she would be able to fend for herself in the meantime. The Regional Court further noted that Mr S. had not offered to contribute to the applicant's residence in Suriname, other than to propose that she return to live in his parents' house, which could not be expected of her as her relationship with Mr S. had ended. The Regional Court therefore concluded that it was impossible for the applicant to return with her son to Suriname. Accordingly, were the return of the son to be ordered, the son would be separated from his mother. The Regional Court held that it was generally known that children of the son's age, who was at that time two years old,

were going through a crucial phase of the process of forming an attachment bond. The son had primarily formed such a bond with his mother, given that she had been his main carer in Suriname as Mr S. was employed full-time in his family's company. Also, it took into account that the son was even more vulnerable given his early history. The Regional Court concluded that the son would be placed in an intolerable situation by separation from the applicant.

16. On 2 January 2014 Mr S. lodged an appeal with the Court of Appeal (*gerechtshof*) of The Hague disputing the conclusion of the Regional Court that the son would be put in an intolerable situation in the event of a return to Suriname. He argued that the applicant had not provided any evidence to that end, that the exceptions provided in Article 13 of the Hague Convention should be interpreted restrictively, and that he was also able to take care of his son, with the support of his family when necessary. Mr S. further submitted a statement from his father in which the latter pledged to provide the applicant with housing in Suriname, within a maximum distance of 15 km of her son's place of residence and for a period of six months and with a financial allowance for the same period of time, as well as to make the necessary effort to help find a job for the applicant.

17. The applicant argued that it could not be expected of her to return to Suriname, where she lacked social and family ties. She added that she could not rely on the guarantees provided by the family of Mr S. and that in any event these were insufficient and only valid for a period of six months, after which she would most likely either have to live below the poverty line or be separated from her son because she would need to work many hours per week in order to make a living. The applicant further added that a child of her son's age forms an attachment bond with one person only and, with reference to a scientific publication and the website of the Netherlands Youth Institute (*Nederlands Jeugdinstituut*), that a disruption of a secure attachment bond could have serious repercussions and lead to behavioural problems at a later stage in a child's life. Given that her son had formed such an attachment bond primarily with her, as his main carer, she submitted that a separation from his mother would place her son in an intolerable situation.

18. A hearing was held before the Court of Appeal on 13 January 2014. Mr S. submitted that he would pay for the applicant's ticket, and that his father's offer to provide housing for the applicant for the first six months after her return to Suriname also applied regardless of whether the son lived with the applicant or with him (Mr S.); it would be for a Surinamese court to decide with which of his parents the son would live. The applicant stated that she could not rely on the statements made by Mr S. or his father. The son's guardian had been unable to attend the hearing. At the end of the hearing, the presiding judge informed the parties that the guardian would be contacted by telephone prior to the Court of Appeal issuing its decision, and

that the parties would be given an opportunity to respond to the contents of that telephone conversation.

19. On 15 January 2014 the presiding judge telephoned the guardian, who stated, *inter alia*, that the son would be in good hands with either the father or the mother, that there was no risk of abuse (*mishandeling*), that the son was developing age-appropriately, that he recognised the family in Suriname from photographs, and that he had in the meantime also become acquainted with his mother's family. However, he did not understand the situation very well and clarity was needed. The following day the presiding judge contacted the representatives of the applicant and Mr S. to allow them to respond to the findings of the guardian. Mr S. submitted that if the son were to remain in the Netherlands he foresaw problems in connection with the fact that the applicant's family did not accept him (Mr S.). The applicant stated that nothing had been said about the bonding of the son or about how he might react to being separated from one of his parents.

20. In its decision of 27 January 2014, the Court of Appeal upheld Mr S.'s appeal, quashed the Regional Court's decision in so far as it concerned its rejection of the request submitted by Mr S., and ordered that the son be returned to Suriname. While the Court of Appeal agreed with the Regional Court that the son's retention was wrongful within the meaning of Article 3 of the Hague Convention, it found in contrast to the lower court that the applicant had made an insufficiently plausible case for believing that the son would be exposed to physical or mental harm or put in an intolerable situation upon his return to Suriname. Although the child was only two years old, had changed his place of residence multiple times and had been separated from his parents for the first three months of his life, it was undisputed that he was doing well, that he was developing age-appropriately, and that he was attached to both parents. It considered that both parents were involved in their son's life and were able to take good care of him. The appellate court found that the applicant had insufficiently substantiated her argument that she would be unable to fend for herself in Suriname and take care of her son due to a lack of financial means, as a result of which her son would be put in an intolerable situation. The Court of Appeal referred in this regard to the undertaking given by Mr S.'s father to the effect that he would provide the applicant with accommodation and an income for the first six months of her stay in Suriname, and the further explanation of that undertaking provided by Mr S. at the hearing, including the additional undertaking that Mr S. would cover the cost of a flight ticket for the applicant.

B. Relevant domestic and international law and practice

1. The International Child Abduction Implementation Act

21. Provisions of the Implementation Act relevant to the case are the following:

Section 11

"1. Without prejudice to the competence of the provisional measures judge of the Regional Court of The Hague in interim injunction proceedings, the juvenile judge of the Regional Court of The Hague has exclusive first-instance jurisdiction to hear all cases relating to the forced return of an internationally abducted child to the person who holds parental authority [over that child] and the repatriation of such a child across the Netherlands border ..."

Section 12

"The cases referred to in section 11 are introduced by an application."

Section 13

"... 3. In cases where no convention applies the judge may refuse the application on the grounds set out in Articles 12, paragraph 2, 13 and 20 of the Hague Convention ..."

2. The Hague Convention on the Civil Aspects of International Child Abduction

22. The Hague Convention, ratified by the Netherlands, in its relevant parts reads as follows:

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 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."

23. The Explanatory Report on the Hague Convention, prepared by Elisa Pérez-Vera and published by The Hague Conference on Private International Law (HCCH) in 1982 ("the Pérez−Vera Report"), provides the following comments on the notion of "the best interest of the child":

"... one fact has rightly been highlighted, *viz.* that 'the legal standard "the best interest 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 ... the general statement of the standard does not make it clear whether "the interests" of the child to be served are those of the immediate aftermath of the decision, of the adolescence of the child, of young adulthood, maturity, senescence or old age' ..." (§ 21, p. 431)

and

"... [the philosophy of the 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. Now, 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. ... In fact, ... in the literature devoted to a study of this problem, 'the presumption generally stated is that 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'." (§ 24, pp. 431 and 432)

and

"It is thus legitimate to assert that the two objects of the Convention – one preventive, the other designed to secure the immediate reintegration of the child into his 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. ..." (§ 25, p. 432)"

24. The Pérez-Vera Report contains the following general comments about the exceptions to the principle of the child's prompt return:

"... [the exceptions] to the rule concerning the return of the child must be applied only as far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them – those of the child's habitual residence – are in principle best placed to decide upon questions of custody and access. As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration." (§ 34, pp. 434 and 435)

and

"... the exceptions [in Articles 13 and 20] do not apply automatically, in that they do not invariably result in the child's retention; nevertheless, the very nature of these exceptions gives judges a discretion – and does not impose upon them a duty – to refuse to return a child in certain circumstances." (§ 113 p. 460)

and

"With regard to *article 13*, the introductory part of the first paragraph highlights the fact that the burden of proving the facts stated in sub-paragraphs *a* and *b* is imposed on the person who opposes the return of the child, ..." (§ 114, p. 460; [italics in original])

and

"The exceptions contained in [Article 13] *b* deal with situations ... where the return of the child would be contrary to its interests, ... Each of the terms used in this provision is the result of a fragile compromise reached during the deliberations of the Special Commission [of the Hague Conference on Private International Law] and has

been kept unaltered. Thus it cannot be inferred, *a contrario*, from the rejection during the Fourteenth Session of proposals favouring the inclusion of an express provision stating that this exception could not be invoked if the return of the child might harm its economic or educational prospects, that the exceptions are to receive a wide interpretation." (§ 116, p. 461)

COMPLAINT

25. The applicant complained under Article 8 of the Convention that no adequate and thorough examination had been carried out of her arguments relating to the consequences of a disruption of the attachment bond which her son had formed with her. She claimed in that regard that the guardian was not an expert on this issue, that he had been contacted outside the presence of the parties' legal representatives, thus preventing her from responding to the guardian's statements and putting questions to him, and that no expert investigation had been ordered. She further argued that an adequate and thorough examination of the guarantees provided by Mr S. and his father should have taken place, in particular whether – as she claimed – they only applied if her son were to live with Mr S.

THE LAW

26. The applicant complained that the Court of Appeal had failed to examine thoroughly her arguments concerning the formation by children of attachment bonds as well as the guarantees provided by Mr S. and his father as a consequence of which she had been the victim of an infringement of her right to respect for family life with her son. She relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

"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. General principles

27. The general principles on the relationship between the European Convention of Human Rights and the Hague Convention, on the scope of the Court's examination of applications concerning international child abduction, on the best interests of the child and on the procedural obligations of the States are laid down in the Court's Grand Chamber

judgment in the case of *X v. Latvia* ([GC], no. 27853/09, §§ 93-102 and 107, ECHR 2013) and also in a number of other judgments concerning proceedings for the return of children under the Hague Convention (see *Maumousseau and Washington v. France*, no. 39388/05, § 68, 6 December 2007; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 131, 6 July 2010; and *Adžić v. Croatia*, no. 22643/14, §§ 93-95, 12 March 2015).

B. Application of the general principles to the present case

1. Applicability of Article 8

28. The Court notes, firstly, that the tie between the applicant and her son amounted to "family life" within the meaning of Article 8 of the Convention. It reiterates that 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 Article 8 (see, amongst many other authorities, *Neulinger and Shuruk*, cited above, § 90, 6 July 2010; *Maumousseau and Washington*, cited above, §§ 58-59, 2 June 2008; and *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005). Therefore the domestic court's decision ordering the return of her son interfered with the applicant's right to respect for her family life within the meaning of Article 8 of the Convention.

29. Such interference violates Article 8 unless it is in accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article, and is necessary in a democratic society to achieve the aim or aims concerned.

2. Whether the interference was in accordance with the law and pursued a legitimate aim

30. The Court notes that the decisions of the domestic courts were based on the terms of the Hague Convention, which entered into force in the Netherlands in 1990. The Hague Convention applies to children who, prior to their wrongful removal or retention, had been habitually resident in a Contracting State. In the present case the applicant's son was habitually resident in Suriname. Although Suriname was not a Contracting State to the Hague Convention, the Dutch domestic courts had jurisdiction in this matter, as the Implementation Act allowed the analogical application of the Hague Convention to the present case (see paragraph 12 above). The Court therefore concludes that the interference was "in accordance with the law".

31. Furthermore, the Court considers that the domestic courts' decision to return the applicant's son pursued the legitimate aim of protecting the rights and freedoms of the child and his father.

3. Whether the interference was necessary

32. The Court would emphasise at the outset that it is not its task to take the place of the competent domestic authorities in examining whether there would be a grave risk of the applicant's son being exposed to harm within the meaning of Article 13 (b) of the Hague Convention. However, the Court is competent to ascertain whether the domestic court, in applying and interpreting the Hague Convention, secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child's best interests (see *X v. Latvia*, cited above, § 68).

33. In this context the Court observes that the Netherlands authorities first conducted a thorough assessment of Article 3 of the Hague Convention, leading to the conclusion that the son had been wrongfully removed from his place of habitual residence within the meaning of that provision. They then had regard to the fact that the period between the retention and initiation of the procedure concerning the return application was less than a year and therefore, pursuant to Article 12 of the Hague Convention, an assessment of whether the child was rooted in the new environment was not needed and the child's immediate return should be ordered, unless an exception within the meaning of Article 13 of the Hague Convention applied (see paragraph 14 above). The Court cannot disagree with those findings.

34. As regards the question of the return of the child to Suriname, the Court has previously held that the basic rule of the Hague Convention, namely that a child should be returned to his or her state of habitual residence when he or she has been wrongfully removed from there, is not to be applied automatically or mechanically (see *X v. Latvia*, cited above, § 98, and *Maumousseau and Washington*, cited above, § 72). The Hague Convention contains several exceptions to allow for situations where a non-return is justified for objective reasons that correspond to the child's interests, 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)).

35. In addition to restating that the exceptions to return under the Hague Convention must be interpreted strictly (see *Maumousseau and Washington*, cited above, § 73), this Court has also specifically held that the harm referred to in Article 13 (b) of the Hague Convention cannot arise solely from separation from the parent who was responsible for the wrongful removal or retention. Such separation, however difficult for the child, would not automatically meet the grave risk test (see *G.S. v. Georgia*, no. 2361/13, § 56, 21 July 2015).

36. The Court has further considered that it is the parent opposing the return for fear of a risk as described in Article 13 (b) of the Hague Convention who must adduce sufficient evidence to this effect. Moreover, this provision cannot, in light of Article 8 of the Convention, be read as

including all of the inconveniences necessarily linked to the experience of return: the exception provided for in Article 13 (b) of the Hague Convention concerns only situations which go beyond what a child might reasonably bear (see *X v. Latvia*, cited above, § 116). 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 (b) of the Hague Convention.

37. In this connection the Court observes that before the national courts the applicant relied on several grounds in order to establish that the return of the son to Suriname would not serve his best interests. The applicant relied on the risk of the child's exposure to psychological harm if separated from her and returned to Suriname on the one hand, and the lack of means to take care of him if she returned with him to Suriname on the other. Yet while the Regional Court accepted that a return to Suriname would entail placing the applicant's son in an intolerable situation (see paragraph 15 above), the Court of Appeal found that she had made an insufficiently plausible case for believing that her son would be exposed to a grave risk of harm or placed in an intolerable situation in the event of his return to Suriname. In this connection the Court of Appeal considered, *inter alia*, that the son was in good hands with either of his parents, that he was attached to both of them, and that the applicant had insufficiently demonstrated that she would be unable to meet the basic needs of herself and her son in Suriname (see paragraph 20 above).

38. The Court further observes that the applicant drew attention to the possible negative consequences of disruption of a child's bonding process, and referred to (scientific) publications on the issue. The Court notes, however, that when she was given an opportunity to respond to the statements of the guardian or even at any time prior to that, she did not question the guardian's expertise or indicate that a further expert opinion was required on the issue of a child's bonding process. In this respect, and as has been mentioned above, the Court reiterates that separation from the parent who was responsible for the wrongful removal or retention does not automatically meet the grave risk test. Moreover, the Court of Appeal took the view that the applicant might well return to Suriname, and there would thus not be a separation from her son. In those circumstances no further consideration was needed as regards the issue raised by the applicant concerning a child's bonding process and any consequences of the disruption of such a process.

39. As regards the guarantees offered by Mr S. and his father, the Court notes that in the first-instance proceedings it was, among others, the absence of any contribution from Mr S. in helping the applicant establish an independent existence in Suriname that led the Regional Court to conclude that it was impossible for the applicant to return to that country and that a consequent separation between the applicant and her son would thus harm

the latter's development and put him in an intolerable situation (see paragraph 15 above). However, at the stage of the appeal proceedings, undertakings were given by Mr S. and his father relating to housing, financial support and assistance in finding a job for the applicant (see paragraph 16 above). The Court cannot agree with the applicant that the Court of Appeal failed to conduct a proper examination of the reliability of these undertakings. It observes in this regard that a more detailed explanation of the exact nature of the undertakings was provided at the hearing before the Court of Appeal (see paragraph 18 above), and it sees no reason why, in view of that further explanation, the appellate court should have been precluded from placing reliance on the undertakings which had, moreover, been expressed in writing. As to the applicant's claim that the undertakings only applied if her son was to live with Mr S., the Court notes that this was contradicted by Mr S. and that, in any event, it was not the task of the Court of Appeal to decide with which of the parents the child should live, but only on whether or not he was to return to the country where he had his habitual place of residence.

40. The Court is satisfied that the Court of Appeal carried out a sufficiently thorough examination and was not required to initiate further investigations or request evidence of its own motion, considering the absence of proof on the part of the applicant in support of her allegations. It therefore sees no grounds to depart from the conclusions drawn by the Court of Appeal, given, moreover, that the applicant has not made any submissions about circumstances or provided any supporting documents to lead the Court to depart from those conclusions. The Court further considers that the Court of Appeal's decision was based on reasons that were relevant and sufficient. Accordingly, the decision-making process satisfied the procedural requirements inherent in Article 8 of the Convention.

41. The Court is therefore of the view, having regard also to the authorities' margin of appreciation in the matter, that the Court of Appeal's decision to order the son's return to Suriname pursuant to the Hague Convention did not fail to strike a fair balance between, on the one hand, the applicant's and son's shared interest and right to continue to exercise family life in the Netherlands, and, on the other hand, the son's own interest, recognised as paramount by the Hague Convention, not to be wrongfully removed and retained from those also lawfully attributed with joint parental authority over him; *in casu* his father, Mr S. Accordingly, the interference complained of was not disproportionate to the legitimate aim pursued for the purposes of paragraph 2 of Article 8.

42. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 17 November 2016.

Stephen Phillips
Registrar

Luis López Guerra
President