

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

THIRD SECTION

CASE OF HOHOLM v. SLOVAKIA

(Application no. 35632/13)

JUDGMENT

STRASBOURG

13 January 2015

FINAL

01/06/2015

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



In the case of Hoholm v. Slovakia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 35632/13) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr Tommy Hoholm ("the applicant"), on 30 May 2013.

2. The applicant was represented by Ms I. Kalinová, a lawyer practising in Bratislava.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged in particular that, contrary to the requirements of Article 6 § 1 of the Convention, he had been denied a hearing within a reasonable time in respect of the claim he had lodged in Slovakia for the return of his children ("the children") to the Kingdom of Norway under the Convention on the Civil Aspects of International Child Abduction ("the Hague Convention").

4. On 11 July 2013 the application was communicated to the Government. At the same time, the Government of the Kingdom of Norway were informed of the case and invited to exercise their right of intervention (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), in response to which they informed the Court that they wished to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Asvag (Norway).

A. Events and decisions in Norway

6. In 2000 the applicant married a Slovak national (A.) in Norway. There were two children from the marriage, born in 2000 and 2002 respectively.

7. The family lived together in Norway until May 2004, when the applicant left the family home. On 18 August 2004 an administrative decision was taken in Norway on the couple's separation.

8. On 7 September 2004 the Vesterålen District Court (*tingrett*) issued an interim order that, until the resolution of the matter on the merits, the children should be the joint responsibility of both parents and should remain in the care of A. The court also determined the applicant's visiting rights and forbade both parents to remove the children from the Norwegian territory without the consent of the other parent.

9. Nevertheless, on 8 July 2005 A. left Norway for Slovakia, taking the children with her.

10. On 21 September 2005 the Vesterålen District Court ruled that the children be put under the exclusive parental responsibility and in the care of the applicant. It also determined the visiting rights of A. and issued an order that she should not remove the children from the territory of Norway. This judgment was upheld by the Hålogaland High Court (*lagmannsrett*) on 10 March 2006 following an appeal by A., and her request for leave to appeal on points of law was dismissed by the Appeals Leave Committee of the Supreme Court (*Høyesteretts kjæremålsutvalg*) on 23 May 2006.

B. Proceedings in Slovakia

11. On 14 December 2005 the applicant initiated proceedings in Slovakia against A. under the Hague Convention, seeking an order for the return of the children to their country of habitual residence – Norway.

12. The action was examined by the courts in four rounds, two of which were followed by enforcement proceedings. They are described below in turn.

1. First round of examination and first constitutional complaint

13. The first examination resulted in the dismissal of the action by the Liptovský Mikuláš District Court (*Okresný súd*) on 23 May 2006 and of the

applicant's appeal (*odvolanie*) by the Žilina Regional Court (*Krajský súd*) on 28 February 2007. These decisions became final and binding (*právoplatnosť*).

14. The applicant subsequently petitioned the Prosecutor General ("the PG") to exercise his discretionary power to challenge these decisions by way of an extraordinary appeal on points of law (*mimoriadne dovolanie*) on the applicant's behalf. However, in a letter of 25 October 2007 he was informed that, under the applicable procedural rules, no such extraordinary appeals were available in family law matters.

15. Meanwhile, on 30 May 2007, the applicant had challenged the ordinary courts' decisions by way of a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended).

16. Upon examining this complaint, on 12 June 2008, the Constitutional Court (*Ustavný súd*) found a violation of the applicant's rights under Article 6 § 1 (fairness), but no separate issue under Article 8 of the Convention.

As a result, it quashed the decision of 28 February 2007 and remitted the matter to the Regional Court for re-examination of the applicant's appeal against the decision of 23 May 2006.

17. In consequence, on 7 October 2008 the Regional Court re-examined the appeal and decided to quash the decision of 23 May 2006 and to remit the case to the first-instance court for re-examination.

2. Second round of examination and first petition for enforcement

18. In the second round of examination, an order for the return of the children was issued by the District Court on 16 April 2009 and, following an appeal by A., it was upheld by the Regional Court on 23 June 2009.

As the order thereby became final and binding, on 13 August 2009 the applicant petitioned for enforcement.

19. However, the return order was quashed by the Supreme Court (*Najvyšší súd*) on 7 September 2010, following an appeal on points of law (*dovolanie*) by A. The matter was consequently remitted to the District Court for a fresh examination and, on 30 September 2010, the enforcement proceedings were discontinued.

3. Third round of examination and second petition for enforcement

20. In the third round of examination, a new order for the return of the children was issued by the District Court on 22 October 2010 and, following an appeal by A., it was upheld by the Regional Court on 25 January 2011.

The order thus became final and binding and, on 24 February 2011, the applicant petitioned for enforcement.

21. However, the return order was again quashed by the Supreme Court, on 27 July 2011, following an extraordinary appeal on points of law lodged by the PG on behalf of A.

Among other things, the Supreme Court observed that the courts were duty-bound to examine as carefully as possible the overall situation to which the children would return in the place of their habitual residence.

On the facts of the present case, the lower courts had based their assessment regarding the social situation of the applicant on reports drawn up by the Norwegian Central Authority responsible for implementing the Hague Convention. However, these reports dated back to February and April 2009 and, in the circumstances, they were outdated. For this reason and others, the matter was again remitted to the District Court for a fresh examination and the enforcement proceedings were terminated.

4. Fourth round of examination

22. The fourth and final round of examination resulted in the dismissal of the applicant's petition by the District Court on 21 November 2011. This decision was appealed against by the applicant and the public prosecution service, who had previously joined the proceedings but later withdrew their appeal.

23. On 8 February 2012 the Regional Court discontinued the proceedings in respect of the appeal by the public prosecution service and declared the applicant's appeal inadmissible for being out of time.

24. On 20 February 2012 the Regional Court corrected its decision of 8 February 2012 in so far as the applicant's appeal was concerned. In particular, having established an error in its previous calculation of the applicable statutory time-limit, the Regional Court ruled that the applicant's appeal had in fact been lodged in good time and that the proceedings on it were to continue. A. then challenged this decision by means of an appeal on points of law, but her appeal was rejected by the Supreme Court on 28 June 2012 as being inadmissible.

25. The Regional Court heard the applicant's appeal on 22 October 2012 and dismissed it on 6 November 2012.

26. In dismissing the petition and the appeal, the courts relied on the Supreme Court's judgment of 27 July 2011 (see paragraph 21 above) and took into account the fact that the children wished to stay with A. in Slovakia, that they had spent more than half of their lives in Slovakia, and that they were integrated there. The courts concluded that it was therefore in the best interests of the children that they should not be returned to Norway.

The matter was settled by force of a final and binding decision on 31 December 2012.

5. The applicant's second constitutional complaint

27. Meanwhile, on 3 September 2012 the applicant had turned to the Constitutional Court with a fresh individual complaint. Directing it against the District Court, the Regional Court, and the Supreme Court, he alleged a violation of his rights under Articles 6 (fairness and length) and 8 of the Convention and their constitutional equivalents.

In particular, the applicant contended that the proceedings had been pending for nearly seven years, and that in the given situation the excessive length thereof worked against him.

In addition, he argued that the District Court's decision of 21 November 2011 violated his right to respect for his private life and, challenging in substance mainly the Supreme Court's decision of 27 July 2011, he asserted that the proceedings had been unfair *inter alia* because the PG had lodged an extraordinary appeal on points of law on behalf of A., although such a remedy had been denied to the applicant on the grounds that it was not available as a matter of law (see paragraphs 14 and 21 above).

28. On 30 October 2012 the Constitutional Court declared the complaint inadmissible.

At the time of the Constitutional Court's decision, the applicant's Hague Convention petition was still pending before the Regional Court on his appeal against the first-instance ruling of 21 November 2011 in the fourth round of examination (see paragraphs 22 *et seq*. above), after the second final and binding return order had been quashed by the Supreme Court on 27 July 2011 following an extraordinary appeal on points of law lodged by the PG on behalf of A. (see paragraph 21 above).

As regards the length of the proceedings, the Constitutional Court observed that the Supreme Court and the District Court had determined the matter on 27 July and 21 November 2011 respectively. Therefore, at the time the constitutional complaint was introduced, these courts were no longer dealing with the case. Examination of the length of the proceedings before these courts could thus no longer aid their acceleration and, consequently, the applicant could not be deemed to have the requisite interest in having it examined. In addition, the length of the proceedings before the Regional Court being relatively short, the remainder of the length-of-proceedings complaint was manifestly ill-founded.

In so far as the constitutional complaint concerned the Supreme Court's decision of 27 July 2011, it had evidently been lodged outside the statutory two-month time-limit and, as the proceedings on the applicant's appeal against the decision of 21 November 2011 were still pending, any complaint in relation to their outcome was premature.

The decision was served on the applicant's lawyer on 4 December 2012.

II. RELEVANT EUROPEAN AND INTERNATIONAL LAW AND PRACTICE

A. Hague Convention

29. For the purposes of the present case, the key provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction state:

> "The States signatory to the present Convention,
>
> Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
>
> Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
>
> Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –
>
> ...
>
> Article 1
>
> The objects of the present Convention are –
>
> (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
>
> ...
>
> Article 2
>
> Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.
>
> ...
>
> Article 11
>
> The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.
>
> If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.
>
> ..."

B. Further relevant provisions of European and international law

30. Further relevant provisions of the Hague Convention, the United Nations Convention on the Rights of the Child, the Charter of Fundamental

Rights of the European Union and Regulation No. 2201/2003 have recently been summarised in the Court's judgment in the case of *X v. Latvia* ([GC], no. 27853/09, §§ 34-42, ECHR 2013).

III. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

31. Article 127 reads:

> "1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. If the Constitutional Court finds a complaint to be justified, it shall deliver a decision stating that the person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash that decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the [person's] rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from violating the [person's] fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to a person whose rights under paragraph 1 have been violated.
>
> 4. The liability for damage or other loss of a person who has violated the rights or freedoms as referred to in paragraph 1 shall not be affected by the Constitutional Court's decision."

B. Code of Civil Procedure

32. The statutory provisions providing for ordinary and extraordinary remedies in civil proceedings are embodied in the Code of Civil Procedure (Law no. 99/1963 Coll., as amended).

33. The relevant provisions concerning appeals on points of law are summarised in, for example, the Court's decision in *Ringier Axel Springer Slovakia v. Slovakia* (no. 35090/07, §§ 65-8, 4 October 2011, with further references).

34. An extraordinary appeal on points of law empowers the PG to challenge final and binding judgments and decisions of the courts at the request of a party to the proceedings or a person affected by them, provided that the impugned judgment or decision contravenes the law, that the protection of the rights and interests of individuals, legal entities or the State so requires, and that such protection cannot be obtained by other legal means (Article 243e § 1 of the Code of Civil Procedure).

C. The UN Convention on the Rights of the Child and the Hague Convention in Slovakia

35. The UN Convention on the Rights of the Child entered into force in respect of Slovakia on 6 February 1991 (Notice of the Ministry of Foreign Affairs no. 104/1991 Coll.), and the Hague Convention did so on 1 February 2001 (Notice of the Ministry of Foreign Affairs no. 119/2001 Coll.).

D. Opinion of a judge concerning extraordinary remedies in Hague Convention proceedings

36. In an unrelated international child-abduction case before the Bratislava II District Court (case no. 49P 414/2007), an extraordinary appeal on points of law was lodged by the PG against a final, binding and enforceable return order. On 4 February 2009, in response to an enquiry prompted by the father of the child concerned, the President of the District Court provided the Office of the President of Slovakia with an update on the state of the proceedings and added the following comment:

> "It does not behove me to judge the actions of the Office of the [PG]. I am not privy to the reasons why an extraordinary appeal on points of law was lodged. I detect a problem in the system, which allows for such a procedure even in respect of decisions on the return of minor children abroad ('international child abductions'). Irrespective of the outcome of the specific case, the possibility of lodging an appeal on points of law and an extraordinary appeal on points of law in cases of international child abduction protracts the proceedings and negates the object of the [Hague Convention], which is as expeditious a restoration of the original state [of affairs] as possible, that is to say the return of the child to their country of habitual residence within the shortest possible time."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS CONCERNS THE LENGTH OF THE PROCEEDINGS, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

37. The applicant complained that the length of the proceedings in his Hague Convention petition had conflicted with the requirement of "reasonable time", as provided in Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

38. In substance, the applicant also relied on Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

40. The applicant contested the length of the proceedings in his Hague Convention petition.

41. In reply, the respondent Government conceded that the complaint under Article 6 § 1 of the Convention was not manifestly ill-founded.

Nevertheless, they submitted that the subject-matter of the proceedings had called for careful examination, that the availability of ordinary and extraordinary remedies in the given type of proceedings was not in itself contrary to the Convention requirements, and that the course and length of the proceedings had reflected the particular circumstances of the present case.

The respondent Government have made no separate submission as regards Article 13 of the Convention.

42. The Norwegian Government emphasised the importance of the subject-matter of the proceedings and of the passage of time in matters regulated by the Hague Convention.

Referring to the Court's judgment in the case of *Maumousseau and Washington v. France* (no. 39388/05, § 69, 6 December 2007), they pointed out that the Court was "entirely in agreement with the philosophy underlying the Hague Convention".

Moreover, they considered that the length of proceedings in child-abduction cases appeared to be a systemic problem in Slovakia, which might be a consequence of the legal remedies available to the parties in such cases.

The Norwegian Government also pointed out that the length of the proceedings had in itself resulted in a report of the Norwegian Central Authority concerning the applicant's social situation becoming outdated (see paragraph 21 above), which in turn generated further delays in the proceedings.

43. In a further reply, the respondent Government denied the existence of any systemic problem with regard to the length of international child-abduction proceedings in Slovakia and argued that the recourse to legal remedies in the present case had been the expression of its particular circumstances.

44. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In cases relating to civil status, the question of what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which excessively lengthy proceedings may have, especially on enjoyment of the right to respect for family life (see, for example, *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

45. On the facts, the Court notes that the Hague Convention proceedings in the present case commenced on 14 December 2005 and were ultimately concluded with the binding effect of a final decision on 31 December 2012. They thus lasted about seven years, during which time the case was examined on its merits four times by the ordinary courts at two levels of jurisdiction, twice by the court of cassation, and once by the Constitutional Court.

46. The Court finds no reason to consider that the case was of any particular complexity as regards the facts or the applicable substantive law, neither has it found any indication that the lengthy duration of the proceedings was in any way imputable to the applicant.

47. As regards the subject-matter of the proceedings, the Court notes in particular that although it called for an adequate scrutiny in compliance with the standards of the Convention, the scope of such proceedings is limited to no more than the questions of whether there has been a removal or retention of a child, whether such removal or retention was wrongful, and whether there are any obstacles to the child's return, the idea behind this limitation being that any other substantive questions such as ones relating to the status of the child and the rights and responsibility of the parents should be determined by the courts in the country of the child's habitual residence (see *López Guió v. Slovakia*, no. 10280/12, § 90, 3 June 2014).

48. As regards the conduct of the authorities, the Court observes that their final and binding decisions, which had originated in two-instance proceedings before the ordinary courts, were repeatedly quashed through recourse to extraordinary remedies. By the same means, two final, binding and enforceable return orders where quashed, their enforcement was terminated, and the case was remitted to the first-instance court, thereby twice over setting at naught the entire preceding judicial process.

49. Without passing any abstract judgment on the system of remedies available in Slovakia in international-child-abduction proceedings, the Court notes the opinion of the President of the Bratislava II District Court (see paragraph 36 above), which may be interpreted as implying that there is a systemic problem in allowing appeals and extraordinary appeals on points of law in the given type of proceedings, with the attendant effect of negating the object and purpose of the Hague Convention. Moreover, the Court observes that one of the extraordinary remedies applied in the present case, the extraordinary appeal on points of law, was indeed applied by the PG on behalf of A., and yet it was found to be unavailable as a matter of law when petitioned for by the applicant.

50. In any event, the Court points out that at the commencement of the Hague Convention proceedings the children were five and three, whereas at their conclusion they were twelve and ten, having spent the majority of their lives in Slovakia.

51. In that respect, it reiterates the critical importance attached to the passage of time in proceedings of this type, which is often – and in this case appears actually to have been – instrumental in the ultimate determination of the merits (see paragraph 26 above and *López Guió*, cited above, §§ 97 and 109).

52. Moreover, the Court agrees with the argument advanced by the Norwegian Government that the present proceedings appear to have created a downward spiral, since the delay with which the evidence was examined resulted in the need for the re-taking of the same evidence which, in view of all the circumstances, bordered on a denial of justice.

53. The foregoing considerations are sufficient to enable the Court to conclude that the length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement.

54. As regards Article 13 of the Convention in the present context, the Court reiterates that it guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

55. In the instant case, in view of the Court's finding as regards the "reasonable time" requirement, the applicant's complaint under Article 6 § 1 of the Convention must be considered "arguable" for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

56. In so far as he attempted to remedy his grievance under the former provision, the Constitutional Court rejected his complaint after dividing the proceedings into three segments according to the courts involved.

In particular, in the Constitutional Court's assessment – since the proceedings before the District Court and the Supreme Court had ended before the constitutional complaint had been introduced – the relevant part

of the applicant's constitutional complaint was out of time. At the same time, as regards the part of the proceedings that took place before the Regional Court, the Constitutional Court found the length thereof not sufficient to raise any issue under Article 6 § 1 of the Convention.

57. Conversely, although not having been prevented from doing so by the formulation of the applicant's complaint (contrast *Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006), the Constitutional Court failed to examine the overall length of the proceedings, a practice that was long ago found to be at odds with the Convention requirements (contrast *Bako* v. Slovakia (dec.), no. 60227/00, 15 March 2005 and *A.R., spol. s r.o. v. Slovakia*, no. 13960/06, §§ 35 *et seq*., 9 February 2010). The applicant therefore cannot be said to have had the benefit of an "effective remedy" in terms of the Court's case-law.

58. There has accordingly been a violation of Article 6 § 1 of the Convention, taken both alone and in conjunction with Article 13 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 AND OF ARTICLE 8 OF THE CONVENTION

59. Relying on Article 6 § 1 and Article 8 of the Convention, the applicant also complained that (i) the excessive length of the proceedings in his Hague Convention petition had resulted in the children being subjected to manipulative influence, in combination with which the merits of the case had been determined by the mere passage of time; (ii) during and as a result of the lengthy proceedings he had been completely cut off from his children with no access whatsoever; (iii) by allowing an array of various remedies, the respondent State had failed to secure his right to respect for his family life; and (iv) the ultimate dismissal of his action had been arbitrary.

60. The Government argued that, in so far as the applicant could be said to be wishing to challenge the enforcement proceedings under Article 6 of the Convention, his complaint was incompatible *ratione materiae* with the requirements of the Convention and its Protocols. Moreover, as regards all of these remaining complaints, they raised an objection of non-exhaustion of domestic remedies: a properly formulated constitutional complaint.

61. Neither the applicant nor the Norwegian Government have advanced any arguments other than those of the Norwegian Government summarised above with regard to the length-of-proceedings complaint.

62. The Court considers that there is no call to examine separately the Government's incompatibility objection since the relevant part of the application is in any event inadmissible for the following reasons.

63. The Court reiterates the general principles surrounding the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention which are of relevance in this case, as formulated and

summarised in, for example, its judgment in the case of *Akdivar and Others v. Turkey* (16 September 1996, §§ 65 - 69, *Reports of Judgments and Decisions* 1996‑IV).

64. Turning to the circumstances of the present case, the Court observes that since 2002 an individual complaint to the Constitutional Court under Article 127 of the Constitution has been viewed by the Court as a remedy that, in general, must be exhausted for the purposes of satisfying Article 35 § 1 of the Convention in respect of allegedly excessively lengthy proceedings or other alleged procedural or substantive violations of the Convention (see *L.G.R. and A.P.R. v. Slovakia* (dec.), no. 1349/12, §§ 56 and 58, 13 May 2014 as well as *López Guió*, cited above, § 72).

65. The Court observes that, in his constitutional complaint of 3 September 2012 (see paragraph 27 above), the applicant only formulated his challenge to the length of the proceedings with reference to his rights under Article 6 § 1 of the Convention, and not his rights under Article 8 of the Convention.

In addition, although in that complaint he also advanced other arguments relating to the fairness of the proceedings and his right to respect for his family life, the Court observes that applicant directed his complaint *per se* only against the decisions of the Supreme Court and the District Court, the part of it concerning the former decision being belated, and that concerning the latter decision being premature.

The Court also notes that, in so far as substantiated, the ultimate outcome of the proceedings has been challenged neither in the constitutional complaint of 3 September 2012 nor in any other complaint before the Constitutional Court. The same goes *mutatis mutandis* for applicant's alleged lack of access to his children and his unsuccessful attempts at having the previous court orders for their return enforced.

66. It follows that the remainder of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

68. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the Hague Convention proceedings and concerning the alleged lack of an effective remedy in that respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention, taken both alone and in conjunction with Article 13 of the Convention.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President